

Freedom of Information Act 2000 (FOIA) Decision notice

Date: 13 June 2023

Public Authority: The Governing Body of Ulster University
Address: Cromore Road
Coloraine
BT55 7EL

Decision (including any steps ordered)

1. The complainant requested from Ulster University (the University) information related to communications between the University and businesses with regard to the awarding of Honorary Doctorates. The University stated it does not hold information falling within the scope of parts (i), (ii), (vi) and (ix) of the request. It also applied section 12(1) (cost of compliance) of FOIA to parts (vii) and (viii) of the request.
2. The Commissioner's decision is that, on the balance of probabilities, the University does not hold information falling within the scope of some parts of the request and has complied with section 1(1) of FOIA. Where recorded information was held and had been disclosed to the complainant, the Commissioner cannot consider the adequacy of the information provided.
3. The Commissioner also finds that the University was entitled to rely on section 12(1) of FOIA to refuse some parts of the request. However, he notes that the University had not complied with its obligations under section 16 to provide advice to assist the complainant in refining the request, or to explain why this would not be possible. The University has therefore breached section 16(1) of FOIA.
4. The Commissioner does not require the University to take any steps as a result of this decision.

Background information

5. The complainant submitted a similar request for information to the University on 5 July 2022, and a response was provided on 9 August 2022. The University disclosed information which it held relating to the request and confirmed information was not held to the remaining parts. The complainant expressed their dissatisfaction with this response and asked the University to address further points which they subsequently added. On 25 August 2022, the University upheld its original position and considered that, where recorded information was held, this had been provided to the complainant in line with their request.
6. With regard to the additional questions the complainant raised and requests for information, the University advised they were entitled to submit these as a new FOI request as appropriate. This is because these points were not within the original information request and therefore they fall outside the scope of the review.

Request and response

7. On 8 September 2022 the complainant wrote to the University and requested information in the following terms:
 - i. "All correspondence between any member or employee of the University and/or external participants who on or around June 27th, 2022 - according to your Vice Chancellor- "re-examined our decision and have fully satisfied ourselves that Ms Henry remains a suitable candidate for an Honorary Degree" This to include how and what they had fully satisfied themselves of when they concluded their review. Where this review took place? Who was party to this decision? How did they undertake this review? Detail of the review process and the criteria that was applied to reach their conclusion.
 - ii. Did the review of the original decision made by the Honorary Degrees Committee, include a review of new information provided to the University regarding Ms Henry's role, and conduct in the Northern Ireland Water debacle, her authoring of a subsequently discredited report by the Public Accounts Committee, (this report which was subsequently relied upon to dismiss the Chairman and three Non-Executive Directors of the NIW Board)?

- iii. Provide the name of the Chair of The Council who participated in the meeting with Mr Bartholomew - it is no doubt recorded material by the UU?
 - iv. In your FOI response of August 9th, 2022, I received copies of the enquiries from the media and your reply. As such I would request detailed answers to the questions raised in the journalist's emails of June 24th (Points 1-5) and the questions raised in the email dated June 28th email (Questions 1-5).
 - v. Can you provide me with the relevant Data Protection Act reference the UU is relying upon which specifically prohibits retention of due diligence reports or the details contained therein by the UU?
 - vi. On the basis that you have confirmed that due diligence took place, can you provide me with a copy of the relevant criteria being assessed, and a copy of the reporting documentation which is used to record the audit.
 - vii. A list of all donors, and sponsors to the Business Faculty.
 - viii. A complete list of all companies or organisations that have provided donations, sponsorship, monetary or in lieu contributions to the UU business school from Jan 2012 to July 2022 - this list to include the 20 companies referenced in the statement issued to the Irish Times.
 - ix. A list of all Honorary Doctorates awarded to employees, Directors, shareholders, or other affiliates associated with companies who have made donations, contributions, sponsorship or support by monetary or in lieu services with monetary value to the UU from Jan 2012 to July 2022
 - x. Can you advise how nominations for Honorary Doctorate are sought? Is there a formal process? If so can you provide all relevant details in relation to how and why a nomination would be made. Can you advise is there a specific date or time when nominations should be made? If so, who is this information communicated to, and is there a process to follow? If so, can you provide details and copies of any nominating documentation or Templates."
8. On 5 October 2022 the University provided its response. It refused information under section 12 (cost of compliance) of FOIA to parts (vii) and (viii) of the request. The University stated recorded information is not held relating to parts (i), (ii), (vi) and (ix) of the request.

9. With regard to the remaining parts of the request, the University disclosed details or provided an explanation to the complainant.
10. On 7 October 2022 the complainant asked the University for further clarification on its responses to his request. The University replied and explained "there is no provision with the FOIA for institutions to have to create information where this is not held." It confirmed that it had responded to his request on this basis previously.
11. The University also clarified that the Honorary Degree in question was awarded to Ms Henry in June 2022, and it confirmed that this decision will stand.
12. On 6 November 2022 the complainant expressed their dissatisfaction with the response, and made a request for the University to provide them with the information requested – an internal review.
13. On 16 November 2022 the University provided its review of the request. It maintained its position and explained its entitlement to refuse requests for information under section 12 of FOIA.

Reasons for decision

14. This reasoning covers whether, on the balance of probabilities, the University holds information within scope of parts (i), (ii), (vi) and (ix) of the request. Also, whether the University is entitled to rely on section 12 of FOIA to refuse to provide the requested information at parts (vii) and (viii) of the request.

Section 1 – Information held/not held

15. Section 1 of FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
16. The public authority is not obliged to create or acquire information in order to satisfy a request. The Commissioner's role when determining whether a public authority has or has not complied with section 1(1) of FOIA, is limited to determining whether it is more likely than not that the public authority has provided all the recorded information it holds. The Commissioner is not required to challenge the accuracy or the adequacy of the recorded information a public authority does (or, in some cases, does not) hold. This is because the terms of FOIA only relate to the provision of information as it is recorded, regardless of its accuracy or validity.

17. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-tier Tribunal decisions must decide whether, on the civil standard of the balance of probabilities, the public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. The University informed the complainant that with regard to parts (i) and (ii) of the request, the review in question was undertaken at an in-person meeting. The University confirmed it does not hold recorded information relating to this meeting. Regarding part (vi) of the request (copies of the criteria being assessed and the reporting document) the University stated that it does not hold any recorded information relating to this process.
19. With regard to part (ix) of the request (list of Honorary Doctorates awarded), the University said this information is not currently held in this format by the University. It explained, to undertake this work, University staff would be required to carefully compile a list of all honorary graduates and then cross reference this against its finance systems (which would not capture contributions in kind) to determine where these tie up with donations, sponsorships or monetary contributions to the Business School, over a ten-year period. The University said an analysis would then have to be undertaken for each item to determine whether it would be in a position to release this information, for example; ascertaining that it had not been provided in confidence; that it was not commercially sensitive etc.
20. The University stated that it does publish a list of all Honorary Degrees awarded going back to 1985 [Honorary graduates - Ulster University](#) however, Honorary Degrees are not awarded to "employees, Directors, shareholders, or other affiliates associated with companies" (as the complainant suggested) the University said they are awarded to individuals. It further explained that some of these individuals will work for companies but none will be rewarded for that work. They are instead, rewarded for their contributions to the economy, to peace, to charity, to their work with children, equality and diversity etc.
21. Therefore, the University does not hold information that would link Honorary Degree recipients to specific companies as requested by the complainant. The University said that in reviewing this request, it considered whether it was possible to work through the Honorary Degree recipients over the past ten years (some 150 individuals) and try and link them back to companies, even the 20 specifically referenced by the complainant.

22. This, the University stated, was not performed as there was no link between the recipient and any company for which they worked. Any attempt to create this, would lead to the production of unreliable and misleading information. It also said that this would be a timely process. On reviewing its position, the University concluded that this part of the request (ix) is not held.
23. The Commissioner has considered the explanations from the University, specifically with regard to part (ix) of the request. He accepts the University's description of the work required to determine where these are relevant with donations sponsorships or monetary contributions to the Business School over a ten-year period. The Commissioner also acknowledges that there are details of the University's Honorary Graduates which are published, and the links to obtain these details were provided to the complainant.
24. The Commissioner is satisfied with the University's explanations for why information to parts of the request is not held. The University addressed some of the complainant's points satisfactorily, and had also directed the complainant to websites containing details which it considered relevant to parts of the request.

The Commissioner's position

25. The Commissioner notes the complainant's argument is that he finds "the limited responses made to be evasive and limited in relation to information provided." The complainant believes the University has not provided some of the information requested "to avoid answering or providing information which may cause further questions to be asked about the awarding of Honorary Doctorates in general." However, and as previously mentioned in this decision notice (paragraph 16), the adequacy of the information provided is outside the scope of FOIA and is beyond what the Commissioner can investigate as part of his remit. The Commissioner sees no reason to doubt the University's explanation. He recognises that it has responded to the complainant's questions.
26. Having considered the University's submissions, the Commissioner understands that decisions as to who should receive Honorary Degrees are made each year by a Joint Committee of Council and Senate. The Committee in March 2022, agreed to confer an Honorary Degree on Jackie Henry MBE at its meeting, and the Commissioner has viewed information about this decision which is in the public domain. It is clear from the queries raised by the complainant that he has concerns about how Honorary Doctorates are awarded. However, the Commissioner finds that some of the queries raised by the complainant do not fall within the FOI legislation.

27. The Commissioner is satisfied that on the balance of probabilities, the University does not hold information within the scope of parts (i), (ii), (vi) and (ix) of the request, therefore it cannot be provided. The University has therefore complied with section 1(1) of FOIA in this case.
28. Although the Commissioner has considered whether or not the requested information is held by the University, it should be noted that even if it were held, it would fall under section 12 of FOIA.

Section 12 – cost of compliance

29. Section 12(1) of FOIA states that a public authority is not obliged to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the “appropriate limit” as set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (“the Fees Regulations”).
30. The Regulations state the appropriate cost limit is £600 for central government, legislative bodies and the armed forces, and £450 for all other public authorities. The appropriate limit for the University is £450.
31. The Fees Regulations also specify the cost of complying with a request must be calculated at the rate of £25 per hour, meaning that section 12(1) effectively imposes a time limit of 18 hours for the University.
32. Regulation 4(3) of the Fees Regulations states that a public authority can only take into account the cost it reasonably expects to incur in carrying out the following permitted activities in complying with the request:
 - determining whether the information is held;
 - locating the information, or a document containing it;
 - retrieving the information, or a document containing it; and
 - extracting the information from a document containing it.

The University’s position

33. The University stated the cost of compliance would significantly exceed the appropriate limit (£450), and repeated its explanation as detailed in paragraph 19 of this notice.
34. The University further explained to the complainant, the purpose of the exemption is not to justify charging the public for the service, but to prevent University staff being removed from their substantive duties in order to comply with information requests, which could be deemed to be excessive in nature.

35. The University also reiterated its previous statement which is in its response of October 2022 to the complainant (paragraph 10 of this notice) that the legislation does not make provision for institutions to create documentation in response to FOI requests.
36. The Commissioner is of the view that the University should have provided the complainant with a better explanation with regard to the appropriate limit (£450) and that paying this amount is not an option.
37. The University said, "It follows that if a meeting took place at which no records were taken, there is no obligation on the University, under the legislation, to revisit that meeting and to attempt to create a record of what was discussed."
38. During the Commissioner's investigation, the University was asked to provide additional submissions with regard to its application of section 12 of FOIA to parts of the request – parts (vii) and (viii). It was asked to provide a detailed estimate of the time or cost to determine whether relevant information is held and/or the time or cost taken to locate, retrieve and provide the information falling within the scope of this request. The University was also asked to provide details of any sampling exercise which had been undertaken to determine this estimate.
39. The University responded, it said it had determined the information requested was not already held on record in a format that would allow it to respond to the complainant without a considerable amount of work. It repeated the explanation as described in paragraph 19 of this notice, concerning the work it would have to undertake to comply with the request.
40. With regard to details of any sampling exercise to determine its estimate, the University did not submit one but provided the Commissioner with details relating to sampling. It included the number of active customer accounts across the time period in question which it held. The total number of companies/organisations which had transactions with the Ulster Business School along with the total amount donated.
41. The University also provided the Commissioner with a table which produces information in a specific format. It said this is to illustrate how much each company donated, and that it would have to go through the University's accounts receivable ledger. From this point, the University said, "it would need to drill down into each transaction, to determine which payments fell under the categories of donations, sponsorship and monetary contributions – or for purposes outside of these categories."

42. The University explained that it "would then need to analyse each of these to ascertain if there were any contractual requirements/confidential agreements in place to limit the publication of the associated information. If such agreements were in place, these would be held in individual areas and not centrally."
43. The University said it worked out that the Fees Office would have to run similar reports to identify if any sponsor amounts were received from the accountancy firm through the University's Student IT payment system. However, this system would capture the fees of a student working with a company rather than a 'donation' type arrangement.
44. The University further explained that it would have to narrow down income received by the University, specifically for use in the Business School over the last ten years. It said it could run a financial report to determine the companies that provided income to the University/Business School over this period. Also, it would not be clear from the report the purpose for which the finance had been paid. Therefore, an analysis would have to be undertaken to determine which payments fell under the categories of donations, sponsorship, monetary contributions or for purposes outside of these categories.
45. With regard to in-kind contributions, which would include guest lecturing etc, the University said it recognised this information was not held on any form of database. It also said "this information would not be routinely gathered on any form of database, and so we felt that to secure this information, we would have to contact every member of staff across the Business School and ask each to list any such relationships/engagement they would have had in place/supported over the past ten years." It stated, an analysis would then have to be undertaken for each item to determine if the University would be in a position to release this information, for example, ascertaining it had not been provided in confidence, it was not commercially sensitive etc.
46. It should be noted that the time taken to consider whether an exemption is applicable, or redacting exempt information, cannot be included in section 12 calculations. Therefore, the Commissioner has disregarded this specific argument.
47. The University also said that "in the absence of any central database for this information, contact would again have to be made with individual staff members for information supporting each individual relationship." This statement was considered unclear, therefore the Commissioner asked the University to clarify the meaning of "supporting each individual relationship".

48. The University provided the following explanation:

"Ulster University has a very progressive Business School with strong links to the local business community and industry. To add real value to the strength of our educational offer, the Business School develops networks and relationships with key business figures and alumni and, through these relationships, encourages these individuals to contribute to the University for the benefit of our students.

These contributions will not be financial but will be in-kind and include guest lecturing, placement provision, interview training, Masterclasses, workshops etc. The individuals will turn up and give their time freely to the University."

49. The University confirmed that it could not be possible to undertake all this (contact with staff) in the appropriate timescale. It said that extracting the information relevant to this request would require a high level of skill and judgement i.e. a very senior member of staff would have to work through each individual donation, sponsorship, monetary or in lieu contribution to the Business School over a ten year period, and try to determine which of these were relevant to the request and which could be released. The University said that having considered the feasibility of this process, it would clearly amount to "creating new information not already held". It informed the complainant that it could not produce the information requested within the appropriate limit.

50. It is the Commissioner's view that if a public authority holds the 'building blocks' to the information, although not necessarily in an easily retrievable format, then it is not creating new information. In addition, the seniority of the staff reviewing the information is not relevant in terms of section 12 as the exemption has a flat rate of £25 per hour.

The complainant's position

51. The complainant is dissatisfied with the response from the University. They referred to the University's position where it stated an analysis would be required to determine whether information had been provided in confidence, or commercially sensitive, before the University would be in a position to release the information. The complainant believes the information requested is not unreasonable in the context of why it has been requested. His view is the information "should include the personal data of individuals (and their organisations) that have contributed either directly or in kind to the University and subsequently have been the beneficiary of Awards from the University." The complainant said he finds it "implausible for a complaint to be handled in this way."

52. In response to the complainant's argument, the Commissioner would like to emphasise that the context - personal data concerns, is not relevant with section 12 of FOIA. This exemption covers requests where the cost of compliance exceeds the appropriate limit, and does not relate to personal data.

The Commissioner's position

53. The Commissioner notes that the University did not support its claim of section 12 by providing a sampling exercise, or a detailed estimate of the time or cost to determine whether relevant information is held and/or the time or cost taken to locate, retrieve and provide the information falling within scope of this request. However, he recognises that where a request is so broad (such as in this case) it would be difficult to quantify the total cost of compliance.
54. Taking into account the scope of the request and the University's additional submissions regarding its reliance on section 12 of FOIA to parts (vii) and (viii), the Commissioner is in no doubt that compliance with this request would exceed 18 hours. Although the University had not stated an estimated cost in carrying out the activities in complying with the request, the Commissioner is satisfied that the University's arguments are justified.
55. The Commissioner's decision is that section 12(1) of FOIA is engaged and the University was entitled to apply the exemption to parts (vii) and (viii) of the request.

Section 16 – advice and assistance

56. Section 16(1) of the FOIA states that a public authority is required to provide advice and assistance to any individual making an information request.
57. Section 16(2) clarifies that, providing an authority conforms to the recommendations as to good practice contained within the section 45 code of practice¹ in providing advice and assistance, it will have complied with section 16(1) of FOIA.

¹ <https://www.gov.uk/government/publications/freedom-of-information-code-of-practice>

58. The University informed the Commissioner it had considered section 16 of FOIA, and ways in which it could suggest that the complainant refine his request. It said, given the "enormity" of the request, the University is unable to determine ways to reduce this to a manageable size that could be executed within the appropriate limit.
59. The University is aware that it should have referenced section 16 of FOIA within its response to the complainant, and apologised to the Commissioner for this oversight.
60. The Commissioner finds that the University had not complied with its obligations under section 16 to provide advice to assist the complainant in refining the request, or to explain to him why this would not be possible. The University has therefore breached section 16(1) of FOIA.

Right of appeal

61. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk.

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

62. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
63. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Susan Duffy
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