



## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Dated 5 July 2006**

**Public Authority: Cardiff University**

**Address: 47 Park Place  
Cardiff  
CF10 3AT**

### **Summary Decision and Action Required**

**The Commissioner's decision in this matter is that Cardiff University (the 'University') have applied section 42 of the Act appropriately to the information requested. However, the Commissioner considers that the University have failed to comply with the provisions of section 1(1)(a) in relation to certain aspects of the information.**

**In the light of this decision, the Notice specifies no remedial steps to be taken by the University.**

#### **1. Freedom of Information Act 2000 (the 'Act') – Applications for a Decision and the Duty of the Commissioner**

**1.1 The Information Commissioner (the 'Commissioner') has received an application for a decision whether, in any specified respect, the Complainant's request for information made to the public authority has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000.**

**1.2 Where a complainant has made an application for a decision, unless:**

- a complainant has failed to exhaust a local complaints procedure, or**
- the application is frivolous or vexatious, or**
- the application has been subject to undue delay, or**
- the application has been withdrawn or abandoned,**

**the Commissioner is under a duty to make a decision.**

- 1.3 The Commissioner shall either notify the complainant that he has not made a decision (and his grounds for not doing so) or shall serve a notice of his decision on both the complainant and the public authority.

## **2. The Complaint**

- 2.1 The Complainant has advised that, on 7 January 2005, the following information was requested from the public authority in accordance with section 1 of the Act.
- “Documentary or other appropriate evidence to show all monies, itemized as individually billed by the payee or payees concerned, spent since March 2003 by Cardiff University for any legal advice (including that from solicitors, legal counsel, or whomever) in connection with the Employment Tribunal Case of [Dr A] v Cardiff University.
  - Documentary or other appropriate evidence to show all monies, itemized as individually billed by the payee or payees concerned, spent by Cardiff University for any external legal advice (including that from solicitors, legal counsel, or whomever) in connection with all aspects of the ongoing case of [Professor B’s] suspension by Cardiff University since 22 January 2004; this request includes all monies spent since that date or from any earlier date upon which Cardiff University may have received external legal advice from whatsoever source upon that case”.
- 2.2 The University issued a Refusal Notice to the Complainant on 2 February 2005, confirming that they held details of legal expenditure in respect of the two cases in question, but that all of the information requested fell within the exemption in section 42 of the Act (legal professional privilege). The University considered that there was no public interest in disclosing the information. The Complainant requested a review of the University’s decision, arguing that legal professional privilege covered the substance of legal advice, not the fees charged for such advice. He also considered that there was a strong public interest in how much public money the University had spent on the two cases in question. The University responded on 18 February 2005. They upheld the decision not to disclose details of legal fees in respect of Professor B’s case, but provided copies of invoices for Dr A’s case.

## **3. Relevant Statutory Obligations under the Act**

- 3.1 **Section 1(1)** provides that –

“Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.”

- 3.2 **Section 41** provides that –

“(1) Information is exempt information if –

- (a) it was obtained by the public authority from any other person (including another public authority); and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.”

**Section 42** provides that –

“(1) Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.”

#### **4. Review of the case**

- 4.1 The Complainant sought details of all legal expenses incurred by the University in respect of an employment tribunal case, and the suspension of a University Professor. In their response the University confirmed that they held the requested information but considered that it was exempt from disclosure by virtue of section 42 of the Act. They stated that they had applied the public interest test but had taken the view that there was no public interest in disclosing details of expenditure on the legal costs involved in the cases in question. The complainant requested a review of the University’s refusal to provide him with the information as he did not believe that legal expenses could possibly attract legal professional privilege, and that there was a strong public interest in how much public money was spent on the cases in question.
- 4.2 Having reviewed the case, the University upheld the view that section 42 applied to the information requested. They quoted two House of Lords’ decisions where it was ruled that solicitors’ bills of costs were privileged. The cases: (*Chant v Brown (1852) 9 Hare 790* and *Turton v Barber (1874) LR 17 eq 329*) were long standing cases but had not been overruled and remained relevant under English law. The University also upheld the view that the public interest in withholding the information in respect of Professor B’s case outweighed the public interest in disclosing the information. However, it had been decided that the public interest in Dr A’s case was less strongly in favour of withholding the information, and it was therefore released to the Complainant.

#### The Complainant’s view

- 4.3 The Complainant argues that, in relation to Dr A’s case, although the University have provided him with some information about expenditure on legal fees, this has not met his request. He had asked for an itemised breakdown of all monies spent, but had been provided only with a brief summary of bills.
- 4.4 In relation to Professor B’s case, the Complainant does not believe that the information attracts legal professional privilege, and considers that the two House

of Lords' cases cited by the University are not relevant to his information requests. He also believes that the public interest has changed between 1852/1874 and the present time. The complainant points out that the University considered that there was a public interest basis in releasing the information for Dr A, but not for Professor B.

### The University's view

- 4.5 In their comments to the Commissioner the University have said that they were unable to trace any records relating to fees in Dr A's case at the time of the complainant's request. In an attempt to be helpful the University contacted the solicitor's practice involved and asked for copies of the relevant bills, which they released to the Complainant following his request for a review. The reason for the decision to release the information was that, unlike Professor B's case, the case of Dr A had been concluded and it was thought that there was a greater public interest argument in favour of release. The University have said that this was one of the first requests for information under the Act that they had received, and their understanding of how to deal with such a situation was limited at the time. They now acknowledge that they should have responded to the Complainant at the time of his request informing him that the records could not be traced.
- 4.6 The University have maintained their view that, in the case of Professor B, the public interest lies in favour of not releasing the information. They have explained that, following disciplinary proceedings which led to her dismissal, Professor B has brought additional claims in the Employment Tribunal. In view of this the University consider that disclosure of the details of legal fees incurred in connection with internal disciplinary proceedings and external Tribunal proceedings would disadvantage them in the context of continuing litigation. They have also stated that, as the covering letters to the invoices from the solicitors involved were headed 'Strictly Private and Confidential', they now wish to apply the section 41 exemption to the information.

## **5. The Commissioner's Decision**

### The section 42 exemption

- 5.1 In the case of Professor B, the Commissioner's decision is that the University have dealt with the Complainant's request in accordance with the Act in that the section 42 exemption has been applied correctly to the information requested. However, the University have failed to comply with the requirements of section 1(1)(a) in that they incorrectly informed the Complainant that they held information in respect of Dr A.
- 5.2 The Commissioner is satisfied that, in the case of Professor B, the information requested falls within the exemption set out in section 42. The Complainant has made it clear that he requires a detailed breakdown of legal costs incurred by the University, not simply a global figure for the amounts charged. While the two House of Lords' decisions quoted by the University date back to 1852 and 1874

they are still current law and are used in the pre-eminent guide to English Law as evidence of the fact that “Bills of cost rendered by a solicitor, relating to litigation, actual or in contemplation are also privileged” (Halsbury’s Laws Vol 37, paragraph 573). This applies only to bills of costs which contain a detailed narrative of work carried out such as details of meetings, telephone calls and research conducted as well as figures for the amount charged. The Chant and Brown case states that the bill of costs is covered by privilege (owed to the client) on the basis that the bill contains details of the work conducted on the matter. It is the contents of the narrative that is relevant to the application of the privilege and not the figure for the amount charged. As the Complainant has requested a detailed breakdown of costs, and was dissatisfied with the global figure given in the case of Dr A, the Commissioner considers that the section 42 exemption is engaged.

- 5.3 As section 42 is a qualified exemption, it is however necessary to consider the public interest arguments for and against maintaining that exemption. The Commissioner acknowledges that there is a public interest in the way that educational establishments spend public money. However, the Commissioner believes that there is a strong generic public interest in maintaining the section 42 exemption. The concept of legal professional privilege has developed to ensure that clients are able to communicate with their legal advisers in confidence. This is a central concept in the justice system and there is a strong public interest in protecting that confidentiality. Therefore, there would need to be a compelling argument in favour of disclosure in order to override that inbuilt public interest. A recent Information Tribunal decision relating to the section 42 exemption (EA/2005/0223) reinforced that view.
- 5.4 The University have said that disclosure of the bill of costs would potentially disadvantage them in the context of continuing litigation. The information contained in the bill includes comprehensive details and dates of work carried out as well as the costs involved. The Commissioner agrees that the disclosure of a detailed breakdown of such charges for legal work carried out could be advantageous to an opponent as it would provide information on tactics and strategies adopted in pursuing a case. He believes, therefore, that it is in the public interest that advice on matters such as disciplinary procedures can be obtained without the prospect of details of work conducted and issues addressed by legal advisers being disclosed. While acknowledging the public interest in expenditure incurred by public authorities, the Commissioner does not consider that, in this case, this is sufficient to outweigh the public interest in the University withholding the information requested by the Complainant.
- 5.5 Turning to the case of Dr A the University, as stated above, did not hold the information requested by the Complainant but, following his request for a review, made enquiries which led them to provide him with basic information about monies spent on the case. Therefore, although the complainant is not satisfied with the information provided, the University hold no further information which they could make available to him. In giving the complainant information which suggested that they held the information at the times of his request, they failed to comply with section 1(1)(a) of the Act. At the same time, the commissioner recognises that this failure arose directly from an attempt on the part of the

University to be helpful to the applicant and to obtain a copy of information which it did not, in fact, hold.

The section 41 exemption

5.6 In view of the fact that the Commissioner agrees that the section 42 exemption is engaged, he does not propose to examine the application of the section 41 exemption to the information requested.

**6. Action Required**

6.1 In view of the matters referred to above, the Commissioner hereby gives notice that in exercise of his powers under section 50 of the Act, he does not require any steps to be taken by the University.

**7. Right of Appeal**

7.1 Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process may be obtained from:

Information Tribunal  
Arnhem House Support Centre  
PO Box 6987  
Leicester  
LE1 6ZX

Tel: 0845 600 0877  
Fax: 0116 249 4253  
Email: [informationtribunal@dca.gsi.gov.uk](mailto:informationtribunal@dca.gsi.gov.uk)

7.2 Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

**Dated the fifth day of July 2006**

**Signed .....**

**Phil Boyd  
Assistant Commissioner**

**Information Commissioner  
Wycliffe House  
Water Lane**

Reference FS50069921

**Wilmslow  
Cheshire  
SK9 5AF**