

## Freedom of Information Act 2000 (Section 50)

### Decision Notice

Dated 7<sup>th</sup> March 2006

**Public Authority:** De Montfort University

**Address:** Leicester

### Summary Decision and Action Required

The Commissioner's decision in this matter is that De Montfort University has not dealt with the complainant's request in accordance with Part I of the Freedom of Information Act 2000 ('the Act') in that it has failed to comply with its obligations under section 1(1).

The Commissioner requires that the University shall, within 30 days of the date of this Decision Notice, provide the complainant with the information he requested on 25 January 2005, apart from information that has already been provided to him. This information to be in redacted form as specified in the attached guidance.

- 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 (the 'Act').
  - 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    - the application has been withdrawn or abandoned,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 On 25 January 2005 the complainant requested the following information from the University in accordance with section 1 of the Act:

*A copy of "all the original documents relating to concerns investigated last year regarding the maintenance of standards on the university's pharmacy courses. In particular I would like:*

- 1. a copy of the letter sent in summer last year by the external examiners in pharmacy to the vice chancellor, Philip Tasker*
- 2. any report made by pro-vice chancellor Professor J Symonds into the concerns*
- 3. all recorded communications to all members of the pharmacy subject authority board regarding pass rates, passing grades and the maintenance of student numbers."*

The complainant was asked to clarify his request on 4 February 2005, which he did as follows:

*"I understand that the specific programme where concerns were raised by the external examiners and others about standards was the Pharmacy MPharm degree. I understand that there was an instruction from Gillian Grant, dean of health and life sciences, to staff to adjust module pass criteria down for this degree. I am not sure whether the instruction was made informally, or through a written email but I understand that the concerns about it were raised after either the May/June exams or the September resits last year. Professor Judy Simmons has been instructed to carry out an investigation in these matters so her report and all material submitted to her during the course of her investigation (which I hope to receive under the Act) should be quite clear about specific material and specific times and incidents."*

In response to the request, on 22 March 2005 a number of documents were disclosed in full or in redacted form. The University also provided a list showing which documents had been released and which had been withheld, along with a brief explanation of its reasons for withholding some of the information.

The Commissioner has been provided with a copy of the table and also the withheld information.

The University withheld nine documents falling within the complainant's request. The withheld documents were considered by the University to be exempt from disclosure under section 36 (prejudice to the effective conduct of public affairs), section 40 (personal information) and section 43 (commercial interests) of the Act.

On 23 March 2005, the complainant asked the University for a review of its decision to withhold some of the information. On 15 June 2005 the University's review upheld its original decision.

### 3. Relevant Statutory Obligations under the Act

- **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.”

### 4. Review of the case

The complainant asked the Commissioner to investigate the University's decision to withhold the nine documents.

The Commissioner requested copies of the withheld information from the University. The information comprised:

- One memo from staff member to Subject Authority Board (SAB) meeting of 16 June 2004
- Health & Life Sciences (HLS) Faculty minutes of extra-ordinary SAB assessment meeting on 16 June 2004
- Memo from staff member on adjustments of marks in recent MPharm modules.
- HLS Faculty minutes of SAB assessment meeting of 11 June 2004
- Extracts of pharmacy SAB minutes and pharmacy progression statistics.
- Confidential report by Dean of HLS to Professor Simons
- Letter from Professor Goodyer to external examiners re MPharm first and second year results
- Email from staff member re extra SAB and exam results
- HLS Faculty Executive meeting minutes of 22 June 2004

The University's application of the exemptions under sections 36, 40 and 43 of the Act as the basis for withholding the information was examined.

### **Section 40 (personal information)**

The University relied upon section 40 of the Act as a basis on which to withhold the information. This states that:

- 40.** - (1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
- (2) Any information to which a request for information relates is also exempt information if-
- (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or the second condition below is satisfied.
- (3) The first condition is-
- (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-
    - (i) any of the data protection principles, or
    - (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

The relevant part of the section is s40(2).

The University considers some of the information to be exempt under section 40 of the Act as it contains personal information about staff and

students. The Commissioner has examined the withheld information and it is his view that releasing redacted versions of the information would satisfy the requirements of the data protection principles. This would entail the redaction of information identifying students, lecturers and examiners. It is the Commissioner's view, however, that employees working in an official capacity should, depending on their seniority and the nature of their job, expect to be identified in relation to their professional activities. In this case the Commissioner has decided that the names of senior staff should be disclosed.

### **Section 36 (prejudice to effective conduct of public affairs)**

The University sought to withhold certain information on the grounds of section 36 of the Act. This states that:

(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and

(b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

- (a) would, or would be likely to, prejudice-
  - (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
  - (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
  - (iii) the work of the executive committee of the National Assembly for Wales,
- (b) would, or would be likely to, inhibit-
  - (i) the free and frank provision of advice, or
  - (ii) the free and frank exchange of views for the purposes of deliberation, or
- (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

The University's Vice Chancellor, in his capacity as the qualified person, expressed his opinion that the information withheld from the complainant was exempt under section 36 of the Act.

Section 36 is a prejudice-based exemption. In the Vice Chancellor's opinion the information could be withheld on the grounds that disclosure would be prejudicial to the effective conduct of public affairs (s36 (2) (c)). He argued that release of the information would inhibit members of staff

from engaging in free and frank discussion and would therefore have a detrimental effect on internal debate (s36 (2) (b) (i) and (ii)). He argued that if internal debate was discouraged, this would weaken the University and may be detrimental to its proper running and to the maintenance of its standards.

Section 36 is a qualified exemption and in accordance with s.2 of the Act is subject to the public interest test. The Commissioner's consideration of the public interest test with regard to both sections 36 and 43 (commercial interests) is set out below.

### **Section 43 (commercial interests)**

The University used the exemption at s.43 of the Act as its basis for withholding the information. This states that:

**43.** - (1) Information is exempt information if it constitutes a trade secret.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

Section 43 is a prejudice-based exemption and as such it is necessary to establish the nature of the prejudice that might result from disclosure of the information requested.

The University took the view that disclosure of the withheld information would 'potentially harm the professional reputations of those concerned'. (Although this is a prejudice argument it was actually invoked by the University as a public interest argument as explained below.) The University also stated that disclosure would prejudice the commercial interests of staff, students and the University. However, it did not provide a detailed explanation of how prejudice might be caused.

In order to decide whether the requested information should be released, it is necessary to establish whether any prejudice resulting from the release of the information would be outweighed by the public interest in its disclosure.

### **Public interest test**

The Commissioner considered the arguments put forward by the University in favour of withholding the information and also the arguments in favour of disclosure.

The University put forward the following public interest arguments in support of its decision to withhold the information:

1. Disclosure would 'potentially harm the professional reputations of those concerned'
2. Disclosure would 'potentially affect their commercial interests in terms of future career progression whether at De Montfort University or elsewhere or in terms of publications and the like'
3. 'Release of such information in a detailed form and/or attributed, (would) weaken trust and confidence between staff and the University and/or external examiners and the University by affecting the relationship of confidence and trust which has been developed and which encourages those concerned to feel free to make comments as in this case'
4. Disclosure would 'discourage internal and external individuals from flagging concerns and bringing them to the attention of the authorities within the University so that matters can properly be investigated and dealt with as appropriate'
5. Some information has been released in response to the request and information will be made available in the future such as publication of extracts of the Senior Examiners Reports and availability of the QAA audit.

The Commissioner also considered two additional arguments which could be deployed in favour of withholding the information:

6. Subsequent damage to the academic reputation of the University may affect investment in it, such as research funding and sponsorship.
7. The pharmacological qualification that students are currently working towards may be perceived as being of less value. Current students may therefore experience difficulty in securing related employment and future students may not choose to apply for places.

Public interest arguments in favour of disclosure include the following:

1. There are serious concerns about the academic standards of a university degree which is sat each year by large numbers of students.
2. These same students may subsequently practice pharmacology in the wider community as professionals and in so doing administer medicines to the public.
3. Standards for the professional training of pharmacologists must be maintained. It is not in the public interest for standards to be lowered.
4. Disclosure allows public debate on how standards for passing examinations are set and how this may be influenced by wider issues concerning the provision and funding of education.
5. Universities receive substantial public funding to provide pharmacology courses, accordingly the disclosure of information regarding the integrity and quality of such courses is in the public interest.
6. Students and their families make considerable personal investments in order to study at university. Therefore information concerning the standard and quality of degree courses is of particular importance to those who may wish to study in the future.
7. Allegations of improper conduct against publicly funded organisations should be investigated properly. There should be proper accountability to the public in respect of both process and outcomes in this regard.
8. The Royal Pharmaceutical Society has expressed its concern and stated that the matter was sufficiently serious for it to place the University on probation as an accredited provider of M Pharm degrees.
9. This matter has been reported in the national press. For example, BBC News on-line reported on 25 May 2005 that De Montford University allowed students to pass pharmaceutical examinations who should have failed to pass their first year. 'The Guardian' and 'The Times Educational Supplement' also reported on this. The fact that this matter has already been widely reported weakens arguments against disclosure which are based on the detrimental effect that disclosure may have on the University.

**The Commissioner has weighed the competing public interest arguments and has concluded that the public interest in disclosing the information outweighs the public interest in withholding it.**

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

- 5.1 For the reasons stated above, the Commissioner's decision in this matter is that the University has not dealt with the complainant's request in accordance with the following requirements of Part I of the Act:

**Section 1(1)** – in that it failed to communicate to the complainant such of the information specified in his request as did not fall within any of the absolute exemptions from the right of access nor within any of the qualified exemptions under which the consideration of the public interest in accordance with section 2 would authorise the university to refuse access.

The Commissioner requires that the University shall, within 30 days of the date of this Decision Notice, provide the complainant with the information he requested on 25 January 2005 (to the extent that the information has not already been provided to him.)

The Commissioner requires that information identifying students, lecturers and examiners be redacted from the information prior to its provision to the applicant. Information contained in the documents that is not relevant to the request should also be redacted. (The Commissioner has provided the University with detailed guidance as to the information that should be redacted.)

**6. Right of Appeal**

6.1 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 7<sup>th</sup> day of March 2006**

**Signed .....**

**Graham Smith  
Deputy Commissioner**

**Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**