

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 20 April 2011

Public Authority: The Governing Body of the University of Bristol
Address: Senate House
Tyndall Avenue
Bristol
BS8 1TH

Summary

The complainant requested under the Freedom of Information Act 2000 (the 'Act') the workplace email addresses of all of the University's staff. The University confirmed that it held the requested recorded information, but believed that it was exempt. It applied section 21(1) [information accessible by other means] in its refusal notice and upheld this position at internal review. The case was referred to the Commissioner, where the complainant specifically asked the Commissioner to consider the operation of section 11(1) [means by which communication to be made] in relation to his request.

During the course of the Commissioner's investigation, the University continued to apply section 21(1) to all the workplace email addresses except for three. Two fell outside the scope of the request, and the third was an omission. The University released the third email address to the complainant.

The Commissioner has carefully considered this case. He has found that section 21 has been appropriately applied by the University and that its interpretation of section 11(1) was correct. However, he has found that it breached section 10(1) in failing to disclose the one non-exempt email address to the complainant. As this has now been disclosed, he requires no remedial steps to be taken.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant owns a website that enables all Universities to receive requests for information simultaneously. He believes that the website should be able to investigate higher education matters through FOI requests and publishes the results.
3. This request has been made to every University in the UK and the complainant has told the University that he requires this information to inform their staff about his website. He explained that each member of staff was to be invited to suggest topics worthy of investigation in confidence.
4. The request is asking for a list of all the email addresses of every member of the University's staff without any differentiation.
5. The complainant has asked the Commissioner to consider a number of his requests, where those requests have been refused. The Commissioner has considered the arguments the complainant has made to him, across all of these complaints, in reaching his decision in respect of this particular case.

The Request

6. On 26 April 2010 the complainant requested the following information from the University:

'FOI Request – Staff E-mail Addresses

I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.

A list of the workplace e-mail addresses for all staff.

By workplace I am referring to corporate e-mail addresses ending in .ac.uk.

By staff I am referring to all individuals employed by your institution.

Please note that I do not require any segmentation of the list or any associated details.'

7. On the same day, the University issued its response. It said:

'Our staff contact directory is publicly available via our website (www.bristol.ac.uk - 'Contacting People' or via links to departmental websites) and our staff contact details are therefore exempt from disclosure under section 21(1) of the Freedom of Information Act as they are accessible to you by other means.'

It then provided details of its internal review process and the Commissioner's contact details.

8. On 27 April 2010 the complainant asked for an internal review to be conducted, and for the following arguments to be taken into account:
- Section 21 cannot be applied because it would take 35,833 clicks to access the details for the 5119 staff through the contract database. This would take over 20 hours and was not in his view 'reasonably accessible';
 - Section 21 can only be applied where all the information is 'reasonably accessible'. The complainant explained that his experience of University contact databases was that between 5% and 15% of contacts are not on the University contact database and therefore the information on the email server amounted to a more reliable source of data than the contact directory;
 - Section 11 imposes an obligation to make information under the Act available in any format that is reasonably practicable and that it was reasonable for him to ask for the information in the format that he requests; and
 - That the applicant's circumstances must be taken into account when the University considers its obligations under section 11.
9. On 30 April 2010 the University communicated the results of its internal review. It said:

'Further to your request for an internal review of your recent Freedom of Information request regarding staff email addresses, I am supporting the application of the section 21(1) exemption as the information is reasonably accessible to you via the University's website.'

'As an absolute exemption has been applied, we are not obliged to provide you with a copy of the information requested and therefore section 11 of the Freedom of Information Act does not apply.'

The Investigation

Scope of the case

10. On 4 May 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the points he had raised with the University in his request for internal review (set out at paragraph 8 above).
11. During the course of the Commissioner's investigation the following matters were resolved informally and therefore these are not addressed in this Notice:
 - The complainant agreed on 26 August 2010 that he would restrict his complaint to those staff who had not expressed concern about their personal safety. The University explained that there were 2 individuals who had expressed such concerns and provided its evidence of this. The Commissioner accepts that these 2 email addresses are outside the scope of the complaint and will not be considered further.
12. It also became apparent that the University was unable to regenerate the list of work place email addresses as it stood on 26 April 2010, the date of the original request. The list had been amended as members of staff changed. The Commissioner agreed with the complainant and the University that the only equitable and practical course of action would be for him to consider the contemporary list in this investigation. In this case, he has considered the email list as it was on 25 March 2011.
13. The complainant raised issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act.

Chronology

14. The purpose of the chronology is to note the key exchanges of correspondence in this case. The arguments contained within the correspondence will be considered within the analysis section of this Notice.
15. On 17 June 2010 the Commissioner wrote to the complainant and the University to confirm that he had received an eligible complaint. He asked the University for a copy of the withheld information.
16. On 24 June 2010 the University wrote to the Commissioner. It explained in its view it had not withheld any information because it had pointed the complainant to its contact directory.

17. On 15 July 2010 the Commissioner wrote to the complainant about his complaint. He enquired as to whether the complainant would be amenable to resolve this complaint informally, or whether a Decision Notice would be required.
18. On 31 July 2010 the complainant responded to the Commissioner. He explained that he wanted definitive rulings about work email addresses and this meant that he wanted a Decision Notice. He explained his experience in requesting University workplace email addresses and made a number of points. Where relevant, the Commissioner has considered these points in the course of his investigation:
 - a number of the workplace email addresses are not available either on the website or through the contact directory;
 - the complainant could not see how those unavailable email addresses could be regarded as reasonably accessible to him; and
 - That he required a decision about the operation of section 11 in relation to this case. He explained that he *'doubt[s] that the ICO or anyone else would think it reasonable to ask an applicant to walk round 50 different buildings in order to uplift a page from each. If the buildings were all in the same part of a town it would take far less time than it takes to assemble a list from information dispersed on 5,000 different web pages. If an applicant asked for a total expenditure on something I doubt that they would be expected to trawl 5,000 web pages of copy invoices and then add up the total themselves. The ICO guidance makes clear that information held electronically in a database can be readily extracted in a variety of formats. Public authorities can run off lists of staff e-mail addresses in minutes if not seconds'*.
19. On 2 August 2010 the Commissioner responded to explain the scope of his likely Decision Notice at that time.
20. On 28 September 2010 the Commissioner wrote to the University to obtain further arguments about the operation of section 21(1).
21. On 8 October 2010 the University wrote to challenge the nature of the enquiries. The Commissioner responded the same day to explain his remit and asked it to respond to his questions dated 28 September 2010. On 5 November 2010 the University replied to those questions.
22. The Commissioner wrote to the University to ask further questions on 14 December 2010. He received a response on 17 January 2011.

23. On 22 February 2011 and 31 March 2011 the Commissioner wrote again to the University for further information. The University responded on 29 March 2011 and 1 April 2011.
24. On 4 April 2011 the Commissioner wrote to the University to ask it to disclose the email address it had identified as not being listed on the contact directory to the complainant. On 6 April 2011 it did so.

Findings of fact

25. The University confirmed that it held four sources of workplace email addresses at the time of the request:
 1. The University's HR records;
 2. The University's email server;
 3. The contact directory (called 'Contacting People')¹; and
 4. Elsewhere on its website.
26. The University confirmed that the most reliable source to derive all the information was from its email server. The University has 5296 members of staff. 4997 have workplace email addresses. 4994 of those are contained on its contact directory. The University has confirmed that when the server is updated, the contact database is automatically updated too.
27. There are three email addresses not included on the contact directory. Two individuals have opted out of the contact directory on grounds of health and safety. This was achieved by writing to the University Secretary outlining their reasons. The Commissioner has explained, above, that these two addresses do not form part of the scope of this decision. The final email address was the Vice Chancellor's.
28. Staff expect their name and email address to be placed on the contact directory unless they specify otherwise. The workplace email addresses can be used for both private and work-related correspondence.
29. The contact directory has been included on the University's publication scheme since January 2009. The publication scheme is available here:
<http://www.bristol.ac.uk/foi/pubscheme2009.doc>

¹ The Contact Directory can be found here: <http://www.bris.ac.uk/contacting-people/>

Analysis

Exemption

30. The sections of the Act referred to below are set out in full in the legal annex to this notice.
31. The University has maintained its position that it was entitled to withhold the 4994 email addresses that are contained on its contact directory by virtue of section 21(1). However, it has conceded that it was not entitled to withhold the one other email address that fell within the scope of the request and therefore it has now disclosed it.

Section 21(1)

32. Section 21(1) states that information is exempt from disclosure if it is reasonably accessible to the applicant by other means. The purpose behind the exemption is that if there is alternative route by which a requester can obtain information there is no need for the Act to provide the means of access. This removes the burden of responding to requests under the Act from public authorities.

33. Section 21(3) qualifies section 21(1). It explains:

'For the purposes of section 21(1), information which is held by a public authority...is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.'

34. The effect of the provisions quoted above means that for section 21(1) to be appropriately applied to this category of information the Commissioner needs to be satisfied that:

(1) all the relevant recorded information that is held is available to the applicant (the list is not incomplete); and

(2) the relevant recorded information is available in accordance with the University's publication scheme.

35. The University has explained that its contact database and its server are updated in synch (the only exception being the three individuals who have been discussed above). It follows that the 4994 outstanding email addresses are all on the contact directory. Accordingly, the complainant's concerns about the data set being incomplete are not founded in fact.

36. The Commissioner has considered the University's publication scheme and is satisfied that the contact directory was available via the scheme at the date of the request and remains so now.
37. It follows that section 21(1) has been applied appropriately to 4994 email addresses.
38. The Commissioner has considered the complainant's argument that obtaining the information would be particularly onerous. This is not a relevant consideration when the information is on the publication scheme. It is for the University to organise its publication scheme in a manner where its business objectives can be fulfilled.
39. The Commissioner has also considered whether the complainant's individual personal circumstances could work to disapply section 21(3). He is of the view that there is no discretion to read the Act in this way.
40. There is one email address that was not on the contact directory that was the Vice-Chancellor's email address. He does not have an email address that relates to his name, but to his position. The public authority explained that it was prepared to make this information publicly available. The Commissioner asked the public authority to disclose this information to the complainant and it did do so.

Procedural Requirements

Section 11

41. Section 11 requires that where an individual expresses a preference in relation to the means by which information is to be communicated, that the public authority shall so far as reasonably practicable give effect to that preference.
42. The Commissioner's view is that the obligation imposed by section 11 does not stand alone. The obligation applies only where the University is required to disclose information under the Act, in order to comply with section 1(1)(b).
43. In this case, the University was required to provide one email address and has provided it. One email address cannot constitute a list of email addresses.
44. As the University is not required to disclose any other information under the Act, there is no need to consider in what format the correctly withheld information could be provided.
45. It follows that section 11 imposes no further obligations on the University.

Section 10

46. Section 10(1) provides that public authorities should comply with the requirements of section 1 within twenty working days.
47. The complainant made his request on 26 April 2010. At this time, the Vice-Chancellor's email address was not available on the contact directory, and so was not available to the complainant otherwise than under section 1 of the Act.
48. The University recognised this fact and provided the email address to the complainant on 6 April 2011.
49. The failure to disclose this information in twenty working days constitutes a breach of section 10(1).

The Decision

50. The Commissioner's decision is that the University dealt with the following elements of the request in accordance with the requirements of the Act. In particular:
 - It has correctly applied section 21(1) to withhold 4994 workplace email addresses that were within the scope of the complaint; and
 - It was correct in its interpretation of section 11.
51. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with the Act:
 - It breached section 10(1) because it failed to provide the Vice Chancellor's work email address in twenty working days.

Steps Required

52. The Commissioner requires no steps to be taken.

Right of Appeal

53. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

54. 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.

55. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Dated the 20th day of April 2011

Signed

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) 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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

Section 10 - Time for compliance with request

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

(2) Where the authority has given a fees notice to the applicant and the fee is paid in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.

(3) If, and to the extent that—

(a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or

(b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.

(4) The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with, the regulations.

(5) Regulations under subsection (4) may—

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.

(6) In this section—

- “the date of receipt” means—
 - (a) the day on which the public authority receives the request for information, or
 - (b) if later, the day on which it receives the information referred to in section 1(3);
- “working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the [1971 c. 80.] Banking and Financial Dealings Act 1971 in any part of the United Kingdom

...

Section 11 – Means by which communication can be made

(1) Where, on making his request for information, the applicant expresses a preference for communication by one or more of the following means, namely –

- (a) the provision to the applicant of a copy of the information in permanent form or in another form acceptable to the applicant,
- (b) the provision to the applicant of a reasonable opportunity to inspect a record containing the information, and
- (c) the provision to the applicant of a digest or summary of the information in permanent form or in another form acceptable to the applicant.

The public authority shall so far as is reasonably practicable give effect to that preference.

(2) In determining for the purposes of this section whether it is reasonably practicable to communicate information by a particular means, the public

authority may have regard to all the circumstances, including the cost of doing so.

(3) Where a public authority determines that it is not reasonably practicable to comply with any preference expressed by the applicant in making his request, the authority shall notify the applicant of the reasons for its determination

(4) Subject to subsection (1), a public authority may comply with a request by communicating information by any means which are reasonable in the circumstances."

...

Section 21 - Information accessible to applicant by other means

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.