

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 December 2011

Public Authority: University of Warwick
Address: The Office of the Vice-Chancellor
The University of Warwick
Coventry
CV4 8UW

Decision (including any steps ordered)

1. The complainant has requested that the University of Warwick (the university) provide him with an electronic copy of a file held in its Modern Records Centre. The university refused to provide the information under section 21 of the FOIA (information accessible to applicant by other means).
2. The Information Commissioner's (the Commissioner) decision is that the university has correctly refused the information under section 21(1) of the FOIA as the information is reasonably accessible to the complainant via the university's Modern Records Centre.
3. The Commissioner requires no steps to be taken.

Request and response

4. On 8 August 2011, the complainant wrote to the university and requested a specific file held in the Modern Records Centre. He asked that the file be sent to him in an electronic format.
5. The university responded on 10 August 2011. It stated that it was relying on section 21 of the FOIA and directed the complainant to contact the Modern Records Centre. The university advised that the complainant would need to sign a copyright declaration form, and that the cost of copying the information would be £5.
6. Following an internal review the university wrote to the complainant on 25 August 2011. It upheld its original decision to rely on section 21 to withhold the requested information. It stated that it was clear that the

material was available by other means and therefore accessible to the complainant.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way his request for information had been handled. He asked the Commissioner to consider the application of section 21. He specified that he considered that the information was not reasonably accessible as he wanted an electronic copy (and understood that the university wasn't proposing to send an electronic copy) and was not aware of any precedent which allowed a public authority to insist the individual signs a copyright declaration.
8. The Commissioner considers that, if the information requested is exempt under section 21, the matter of the university's requirement for the complainant to sign a copyright declaration form in order to be provided with a copy of the requested information is outside his remit as this relates to application of the Copyright, Designs and Patents Act 1988 (CDPA). However, under section 16 of the FOIA the Commissioner would expect a public authority to inform a requester, where appropriate, that the information being provided is subject to copyright.

Reasons for decision

Section 21

9. Section 21(1) can be applied when all the relevant requested information is reasonably accessible to the applicant. It is an absolute exemption and so there is no public interest test.
10. The Commissioner's guidance on section 21 explains that charges may be made in two circumstances: where there is a statutory scheme under which information is provided for a fee, or where the information is provided under the public authority's publication scheme and the scheme indicates that a charge may be made.
11. The Commissioner has determined that there is no statutory charging scheme to access the information held by the university in its Modern Records Centre. Therefore, the university may only charge a fee if this is outlined in its publication scheme.
12. In the refusal notice the university stated that the information would be made available to the complainant on the condition that:

- (1) He made a payment of £5 for copying the whole of the requested file; and
 - (2) He signed a copyright declaration.
13. In its correspondence with the Commissioner, the university said that it could provide the complainant with an electronic copy of the requested information and this is why the refusal notice did not request a fee for postage and packaging. The university explained that the charge was for the copying / scanning of documents at 30p per copy / scan.
14. The Commissioner has considered the university's online publication scheme. Provision is made in the scheme for accessing information held in the Modern Records Centre archive. Further to this, there is specific provision in the publication scheme regarding the costs for accessing this information. The publication scheme contains a link to the relevant page of the university's website which details that a charge of 30p per page will be made.
15. The university is providing a public service in the Modern Records Centre and it allows the inspection of the information held there free of charge. It is entitled to charge for the costs of providing a copying service. It is transparent about these charges and refers to them in its publication scheme. Full details are provided on its website. The Commissioner does not consider the charges to be so high that they inhibit public access to the information, particularly as inspection is free.
16. The Commissioner is therefore satisfied that the university's publication scheme is clear that charges may be made for certain services. The university's website is also clear as to the fees that will be charged and it provides a breakdown of how the charges are calculated.
17. With regard to the issue of the university requiring the complainant to sign a copyright declaration, as stated above, it is not for the Commissioner to determine the correct application of this legislation, however, he does not consider it unreasonable for the university to endeavour to avoid breaching copyright legislation. In the circumstances he does not consider that this requirement means that the information requested is not reasonably accessible.
18. The Commissioner therefore concludes that the information the complainant requested is reasonably accessible via other means. The requested information can be inspected for no charge at the university's Modern Records Centre or electronic or hard copies can be provided for a reasonable fee.

Right of appeal

19. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

Gerrard Tracey
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