

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 January 2012

Public Authority: University of Manchester I Limited ('UMI')

Previously: University of Manchester Intellectual Property (UMIP) Limited ('UMIP')

Fully owned by: The University of Manchester ('UoM')

Address: 46 Grafton Road
Manchester
M13 9NT

Decision (including any steps ordered)

1. The complainant has requested all information held by UMIP about him and his company. UMIP processed the request under the Data Protection Act ('DPA') and provided some information and withheld other information. The complainant alleged that there was further relevant recorded information that had not been located by UMIP.
2. The Commissioner's decision is that on the balance of probabilities there is no further relevant recorded information held by UMI (which has taken over the responsibilities of UMIP). He also considers that UMIP was correct that all the relevant recorded information it has found was the complainant's own personal data and was absolutely exempt by virtue of section 40(1), so did not need to be provided under FOIA.
3. However, the Commissioner did find procedural breaches of sections 10(1), 17(1) and 17(1)(b) because UMIP's response was misleading. The Commissioner requires no remedial steps in this case because there is no way to remedy these procedural breaches.

Request and response

4. On 20 June 2011 the complainant requested the following from UMIP:

'I would like to make a formal request for a Company Access Request. Such a Company Access Request made under the direct jurisdiction of UMIP's obligation on to being provided a Notification of information

under the Freedom of Information Act 2000. Under the formal Company Access (aforementioned), then I would like to be provided all forms of data either stored electronically and/or un-stored on to paper-back / work by both UMIP personnel and external affiliates/officers eg [Individual A redacted] – concerning discussion points about [Company redacted] since the 1st day of January 2011.'

5. On 8 July 2011 UMIP issued its response under the DPA. It provided some of the complainant's personal data and withheld other information under some exemptions in the DPA.
6. It also confirmed in a separate email on 11 July 2011 that it held no relevant recorded information that referred to the company. However, it did not make it clear whether it held further information about the complainant that was being considered under FOIA.
7. The complainant requested an internal review of both responses and used the opportunity to broaden his request to cover other names of [company redacted]. On 5 September 2011 UMIP conducted its internal review and confirmed that it held no relevant recorded information about the company.
8. The Commissioner conducted an assessment under his responsibilities as Regulator of the DPA and as a result further information was disclosed to the complainant privately in November 2011.

Scope of the case

9. The complainant contacted the Commissioner to complain about the way his request for information dated 20 June 2011 had been handled.
10. On 14 October 2011 the complainant agreed that the Commissioner would consider whether **further** relevant recorded information was held for this request, if there was such information whether it was suitable for disclosure to the public at large and any procedural issues in compliance.
11. There are five matters that must be addressed at this point. Firstly, it must be noted that the complainant made an earlier request to the UoM and this request is being considered separately in case reference **FS50427699**. The handling of the two requests has caused some confusion for the complainant and it is hoped that the UoM will review its coordination for similar future cases.
12. Secondly, it is essential to explain who the public authority is in this case and how widely it is covered by FOIA. The request was originally

made to UMIP. UMIP has now changed its name to UMI and the old responsibilities UMIP had have been transferred to a division within that new company. UoM fully own both the old and new companies.

13. Section 3 of FOIA explains that publicly owned companies constitute public authorities for the purposes of it. Section 6 then defines publicly owned companies and they include those that are fully owned by a public authority. It follows that UMIP (now UMI) was a public authority in its own right and has responsibility for the information that it holds. As the responsibilities have been transferred to UMI, which is also publicly owned, it is the public authority for this case and has responsibility for the information formerly held by UMIP.
14. It is also helpful to explain UMIP [now UMI]'s role. It is a company that has been set up to deal with the commercialisation of intellectual property arising from UoM. There is a dispute between UoM and the complainant about intellectual property ownership and UMIP's role was to try and find a negotiated solution to it.
15. Thirdly, a substantial part of the request being considered was asking for the complainant's own personal data. The Commissioner has considered the complainant's own personal data in a separate assessment made under section 42 of the DPA. This is a separate legal process from his duty under section 50 of FOIA and this will not be considered further in this Notice.
16. Fourthly, the complainant has many concerns about the conduct of the public authority. For the avoidance of doubt, the Commissioner only has jurisdiction to consider information access matters and the public authority's compliance with FOIA is the **only** thing that can be addressed in a Decision Notice issued under section 50 of FOIA.
17. Finally, it should also be noted that the Commissioner has explained to the complainant that there is no such thing as a 'Company Access request' and the complainant has said that he now understands this point.

Reasons for decision

18. Firstly it should be noted that the Commissioner has considered all the information before him, but will only mention the points that are necessary for his decision in this section.

Was further relevant recorded information held by UMIP?

19. Section 1(1) states 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,

(b) if that is the case, to have that information communicated to him”

20. It should be noted at this stage that FOIA only offers the complainant the right to recorded information that is held at the date of the request (dated 20 June 2011).
21. As noted in paragraph 10 above, the Commissioner is only looking for information that has not already been located by UMIP. In determining whether UMIP holds further relevant recorded information, the Commissioner considers the standard of proof to apply is the civil standard of the balance of probabilities.
22. In deciding where the balance lies in cases such as this one, where the complainant has asked him to consider the public authority's response with regard to whether or not the requested information is held, the Commissioner may look at:
 - the interpretation of the request;
 - the scope, quality, thoroughness and results of any searches undertaken by the UMIP; and
 - any other explanations offered as to why the information is not held.
23. The interpretation of the request is fairly obvious in this case. In summary, it asks for all recorded information held by UMIP about a set company that was generated between 1 January 2011 and the date of the request (20 June 2011).
24. The Commissioner is satisfied that UMIP read the request correctly and conducted its searches on the only objective interpretation of this request. UMIP have evidenced this is so by explaining what the request asked for in its own words and processing the request accordingly.
25. UMIP then explained how it did its searches and what searches that it did. It said that it first contacted the individuals who they thought would have information in this case. UMIP then asked the complainant whether he considered whether other people would hold the information. After receiving no coherent response, UMIP still undertook a second wider

search to ensure that everyone in UMIP who may have interacted with the complainant's company was searched.

26. UMIP also explained that it had checked its internal Legal and IP teams to ensure that those departments held no further information and those searches were also not successful.
27. UMIP also confirmed that it had checked with the individual who was specifically mentioned in the request and he also confirmed that he had no relevant recorded information.
28. UMIP checked both its paper and electronic records. When checking the electronic records, it used many variations of the company's name to be certain that all the information was found. It complemented this search by including all the different references to the company that were contained within its correspondence with the complainant.
29. UMIP also checked for emails that had been deleted in its CEO's account and recovered some which it then provided to the complainant.
30. UMIP also explained that there was no possibility of any further information being on personal computers, because it had a clear policy that no information should be placed on personal computers and it provided all of its members of staff with work computers on which to do their work.
31. UMIP explained that how it generally holds information depends on its relationship with the individual and/or company.
32. For the complainant, it worked out that it held two sets of information:
 1. Information pertaining to an Intellectual Property (IP) disclosure made by the complainant. This information was kept in paper and electronic files in the Engineering and Physical Sciences (EPS) team. This was because the complainant studied in that facility (they checked this file but no correspondence was generated between the dates in question); and
 2. Subsequent correspondence regarding an IP dispute between the complainant and the University. It explained that this dispute had been handled by its CEO. It explained that this included email correspondence and it also ensured that it recovered deleted email correspondence where it could.
33. UMIP explained that it was confident that all the information it held was considered when dealing with the IP dispute. It explained that it was confident that it had found all the recorded information and that it had been considered under the appropriate regime.

34. In relation to his company, UMIP explained that it would only hold recorded information about a company in four situations. The first was when the University had a shareholding in it. The second was where the University had a business relationship with it. The third was when it was supporting it in a competition (or similar) and the final situation was where it had assigned/licensed IP to it. It explained these four situations did not apply to the complainant's company and this itself offered strong support that it held no information about it.
35. UMIP explained that it would retain correspondence when it had an ongoing business relationship with the company. It confirmed that it had no such relationship with the complainant's company. There was no business need for it to keep any information about the complainant's company in the absence of an ongoing relationship.
36. Finally, UMIP explained that the complainant did send a large number of emails to people who were not involved with the dispute. UMIP explained that there were two potential outcomes for these emails. Some would be forwarded to the people who dealt with the main issue (the IP dispute) and the others would be deleted. The ones that were forwarded would be kept on file if they were not irrelevant or duplicates and these had been found. The others would be deleted because it had to ensure that the right people dealt with the issues. The complainant was told of the correct channel of communication, yet still sent emails to a large number of other people. To deal with this matter, UMIP had notified those individuals to delete those emails without responding to them as this was a proportionate approach.
37. The complainant has not offered the Commissioner any convincing arguments about why he considers that further relevant recorded information is held. The Commissioner understands that the complainant has real concerns about UMIP's conduct and would perhaps expect further relevant recorded information to be held to support whatever suspicions he may have.
38. However, the Commissioner considers that UMIP had no business or legal reason to keep any further information in this case. Indeed, UMIP has a restricted remit and clear objectives – to help as many individuals exploit their intellectual property as possible. The Commissioner considers that the complaint about it undertaking its remit would be held because it reflected its aims. However, it would not have any reason to hold any other information when it did not reflect its aims.
39. The Commissioner is convinced that UMIP have conducted full and complete searches of its records and has acted in a reasonable manner throughout its dealing with the request.

40. Overall, the Commissioner considers that UMIP has demonstrated that on the balance of probabilities that it does not hold any further relevant recorded information and upholds UMIP's position in this regard.

Exemption – section 40(1)

41. Although there is no further relevant recorded information held, the complainant repeatedly demanded that his requests were considered under FOIA rather than the DPA alone.
42. In the Commissioner's view this approach was somewhat misguided. The DPA provides the data subject with a private right of access to their personal data. This is different from FOIA which provides a public right of access to relevant recorded information.
43. First party personal data is absolutely exempt from disclosure under FOIA by virtue of section 40(1).
44. Personal data is defined in section 1 of DPA as data 'which relate to a living individual who can be identified—

(a) *from those data, or*

(b) *from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual.'

45. The Commissioner has considered the information that was looked at under the DPA and considers that it all constitutes the complainant's own personal data. That is because it all relates to something of biographical significance to the complainant – how his complaint and other allegations about the treatment of his company were handled. It follows that all the information caught by the request constituted first party personal data and UMIP was right to withhold this information and not disclose it to the public by virtue of the exemption found in section 40(1) of FOIA.
46. However, the Commissioner considers it would have been better for UMIP to more clearly explain in its response that the information was exempt under section 40(1) and that was why it had moved to consider the request under section 7 of the DPA.

Procedural matters

47. Section 10(1) requires that a public authority complies with section 1 of the Act in 20 working days. As noted above, section 1(1)(a) requires that a public authority confirms or denies whether it holds relevant recorded information.
48. UMIP in this case did not correctly confirm or deny whether it had relevant recorded information under the Act in time. It therefore breached section 10(1).
49. In addition, it did not specifically cite the exemption found in section 40(1). Its failure to cite the exemption in 20 working days was a breach of section 17(1) and 17(1)(b).

Right of appeal

50. 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

51. 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.
52. 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

**Pamela Clements
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