

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 June 2014

Public Authority: Oxford University
Address: University Offices
Wellington Square
Oxford
OX1 2JD

Decision (including any steps ordered)

1. The complainant requested information concerning Oxford University's ('the university') entry selection processes.
2. The Commissioner's decision is that by exempting parts of the information under s40(2) FOIA the university did not deal with the request in accordance with the FOIA.
3. The Commissioner requires the university to disclose the information within 35 calendar days of the date of this decision notice.
4. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 11 September 2012 the complainant requested the following information:

"(i) The date of approval for the withdrawal of the UKCAT from the St. Hugh's College admissions process (and for the 10 other Graduate-Entry Medicine Colleges);

(ii) A copy of the minutes of meetings at which (a) it was proposed that the UKCAT be withdrawn, and (b) withdrawal was finalised/approved;

(iii) A copy of your proposal (Paragraph 33 Working Party report) to (a)

the University and (b) the 11 participating Oxford Colleges proposing (i) that the UKCAT be withdrawn and (ii) the BMAT be introduced;

(iv) A copy of your notification to UKCAT Consortium Limited stating that the University of Oxford was withdrawing as a member of the Consortium; and notifying UKCAT Consortium Limited that the University of Oxford was withdrawing from the use of the UKCAT in the admissions processes of 11 Oxford Colleges (including setting out the reasons for withdrawal);

(v) A copy of correspondence from UKCAT Consortium Limited to the University of Oxford pertaining to Oxford's withdrawal from the Consortium;

(vi) A copy of correspondence notifying UCAS (a) that the University of Oxford had removed the UKCAT from the admissions process, and (b) that Oxford Colleges had introduced the BMAT;

(vii) A copy of your request to Cambridge Assessment to allow the University of Oxford to use the BMAT undergraduate admissions test as part of the Oxford 'Graduate-Entry' Medicine admissions process; and copy of the response from Cambridge Assessment."

6. On 11 March 2013 the university supplied the information in relation to item (i).

In relation to items (ii)(a) and (ii)(b) it provided extracts of the requested information.

In relation to item (iii) it provided the information.

In relation to item (iv) it provided the information.

In relation to items (v) and (vi) it informed the complainant that there was no information as requested.

In relation to item (vii) it informed the complainant that the issue was discussed in unminuted meetings. It provided a copy of the correspondence that followed those meetings. The correspondence was redacted under s40 FOIA.

7. The complainant emailed the university in March to advise that with regard to items (ii)(a) and (ii)(b) his request was for minutes of the meetings and not extracts of these. He also said he considered it implausible that notification of the university's withdrawal from UKCAT had comprised only one brief email.

8. On 19 April 2013 the university informed the complainant that it considered his emails of March 2013 constituted a new request. It said that it would not supply the information on grounds that the request was vexatious under s14 FOIA.
9. On 13 May 2013 the complainant requested an internal review of the university's response. As relayed in his March emails he complained that the university had not disclosed complete copies of the two sets of minutes that he had requested in items (ii)(a) and (ii)(b) or the full correspondence in respect of item (v).
10. On 19 July the university informed the complainant that its internal review upheld the view that his emails of March 2013 constituted a new request and that this was vexatious under s14 FOIA. The university said no further information was held in relation to item (v).

Background information

11. The UK Clinical Aptitude Test (UKCAT) is used in the selection process by a consortium of UK university medical and dental schools. The BioMedical Admissions Test (BMAT) is an alternative admissions test for such applicants.

Scope of the case

12. The complainant contacted the Commissioner on 26 July 2013 to complain about the way his request for information had been handled.
13. In December 2013 the Commissioner asked the university for a copy of the minutes that had been requested and for the arguments in support of the s14 exemption that had been applied. He asked for an unredacted copy of the correspondence that had been supplied to the complainant in relation to item (vii). The Commissioner also asked the university to clarify whether it held further information in relation to item (v) as suggested by the complainant.
14. On 27 January 2014 the university informed the Commissioner that it had decided to reverse its application of the s14 exemption and that it was considering what other exemptions might apply to the minutes.
15. On 7 March 2014 the university informed the Commissioner that it had disclosed the withheld minutes (on 5 March) to the complainant. It had redacted names and job titles under s40(2) FOIA.

16. This decision notice addresses the s40 redactions to the minutes requested in items (ii)(a) and (ii)(b) and those to the correspondence requested in item (vii). It also addresses whether further information was held by the university in relation to item (v).

Reasons for decision

Section 40(2) - items (ii)(a), (ii)(b) and (vii)

17. Section 40(2) of the FOIA provides that third party personal data is exempt from disclosure if its release would contravene any of the data protection principles set out in schedule 2 of the Data Protection Act 1998 (DPA).
18. The names of individuals referenced within the information and their job titles constitute personal data. The Commissioner has considered whether its disclosure would contravene the first data protection principle.
19. The first principle requires that personal data is processed fairly and lawfully and that one of the conditions in schedule 2 of the DPA is met. The Commissioner notes that the university informed the complainant of its view that no schedule 2 condition was available to be met.
20. In considering whether disclosure would be fair the Commissioner has taken the following factors into account:
- whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned
 - the individuals' reasonable expectations of what would happen to the information
 - whether the legitimate interests of the public are sufficient to justify any negative impact to the rights and freedoms of the data subjects.
21. The university did not provide any specific arguments as to how or why disclosure of the information would cause unnecessary or unjustified damage or distress to the data subjects.
22. In relation to the individuals' reasonable expectations, the Commissioner considers that it would not be unreasonable or unexpected for the public interest to require full transparency in the matter particularly as disclosure of the minutes and correspondence had already been placed in the public domain by their provision to the complainant.

23. The individuals attending the minuted meetings held senior positions within the university. The Commissioner's guidance on s40 FOIA states that the seniority of individuals should be taken into account when personal data is requested: *"the more senior a person is the less likely it will be that to disclose information about him or her acting in an official capacity would be unfair."* The Commissioner's decision notices regularly confirm that occupants of senior posts will be legitimately exposed to a greater level of scrutiny and accountability than others.
24. The Commissioner's guidance on s40 also differentiates between information concerning an individuals' private and public lives. His guidance requires that information about individuals acting in official or work capacities should be supplied on request unless there is a risk to the individuals concerned. Whilst it is right to take into account any damage or distress that may be caused to a third party by the disclosure of personal information, the focus should be on the damage or distress that may be caused to an individual acting in a personal or private capacity. The exemption should not be used, for instance, as a means of sparing official embarrassment over decisions made.
25. The Commissioner is satisfied in this instance that the information relates to the public life of the individuals concerned. He is mindful of the Information Tribunal's decision in *House of Commons v The Information Commissioner (EA/2006/0015 and A/2006/0016)* which states, *"we find that when assessing the fair processing requirements under the DPA that the consideration given to the interests of data subjects, who are public officials where data are processed for a public function, is no longer first and paramount. Their interests are still important but where data subjects carry out public functions...or spend public funds they must have the expectation that their public actions will be subject to greater scrutiny than would be the case in respect of their private lives."*
26. With regard to the legitimate interests of the public the Commissioner considers that there is a legitimate public interest in the openness and accountability of the university and of those responsible for its admission policies and the selection of entry testing procedures.
27. The Commissioner is satisfied that the legitimate interests of the public are sufficient to justify any negative impact to the rights, freedoms and interests of the individuals that, although not specified, may have been suggested by the university. He therefore considers that disclosure of the information would be fair.
28. Having decided that disclosure of the names and job titles would be fair the Commissioner has gone on to consider whether disclosure would be

lawful. The information is not protected by any duty of confidence or statutory bar and he therefore considers that its disclosure would be lawful.

29. The Commissioner has gone on to consider whether any of the schedule 2 conditions of the DPA are met for disclosure of the information.
30. Schedule 2 condition 6 permits disclosure where it is:
"necessary for the purposes of the legitimate interests pursued by the data controller or by a third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."
31. In order for the condition to be met, the Commissioner considers that disclosure must satisfy a three part test:
 - (i) there must be a legitimate interest in disclosing the information
 - (ii) the disclosure must be necessary for that legitimate interest
 - (iii) even where the disclosure is necessary it must not cause unwarranted interference or harm to the rights, freedoms and legitimate interests of the data subject.
32. The Commissioner has detailed the legitimate interests in disclosure of the information at paragraph 26 of this notice. He considers that disclosure of the information is necessary for these legitimate interests.
33. Having already established that the processing is fair, the Commissioner is also satisfied that release of the information would not cause any unnecessary interference with the rights, freedoms and legitimate interest of the data subjects. He is therefore satisfied that the schedule 2 condition is met.
34. In relation to item (vii) the Commissioner understands that Cambridge Assessment is a not for profit department of Cambridge University. The individuals whose names were redacted from the correspondence hold senior positions. Oxford University wrote to the main recipient of its correspondence in order to seek their views on disclosure but did not receive a reply. The Commissioner considers that the full correspondence should be disclosed apart from the first paragraph of the second email which falls outside the scope of the request.

Whether further information is held – item (v)

35. The Commissioner asked the university to clarify whether or not it held further information in relation to item (v). He requested responses to the following search and retention inquiries:

- What searches were carried out for the information falling within the scope of the request?
 - If searches included electronic data which search terms were used?
 - If the information was held would it be held as manual or electronic records?
 - Was any recorded information ever held relevant to the scope of the complainant's request but deleted/destroyed?
 - If the requested information was held but is held no longer, when did the university cease to retain this information?
 - Does the university have a record of the destruction of any of the requested information/documents?
 - What does the university's formal records management policy say about the retention and deletion of documents of this type? If there is no relevant policy can the university describe the way in which it has handled comparable documents of a similar age?
 - If the information is electronic data which has been deleted might copies have been made and held in other locations?
 - Is there a business purpose for which the requested information should be held? If so what is this purpose?
 - Are there any statutory requirements upon the university to retain the information that has been requested?
 - If further requested information is located as a result of the university's search but is then withheld under FOIA please specify the relevant exemption and provide the university's reasons for not disclosing the information.
 - If such information is withheld please provide a copy in order that we may ascertain the appropriateness of the exemption.
36. After undertaking a further search the university located additional correspondence relating to item (v) between the university and UKCAT. The correspondence comprised seven emails. Three of these were received from UKCAT in response to four from the university. The university considered that the three from UKCAT were within scope of the request and its preliminary view was that they should be disclosed.
37. The Commissioner has considered that for purposes of context and understanding the associated four emails from the university to UKCAT also need to be disclosed. Otherwise the three from UKCAT would be mostly rendered meaningless.
38. For the reasons detailed earlier in this notice he considers that none of the seven emails or their addressees are exempt from disclosure under s40(2) FOIA.
39. In relation to item (v) the Commissioner is satisfied by the responses to his search and retention inquiries that the university holds no further

information in relation to item (v) apart from the seven emails and that already supplied to the complainant.

Section 10

40. As the university did not provide the requested information within 20 working days of the date of request it breached s10 of the FOIA.

Right of appeal

41. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

42. 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.

43. 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

Rachael Cragg
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SK9 5AF