

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 April 2015

Public Authority: University of Leicester
Address: University Road
Leicester
LE1 7RH

Decision (including any steps ordered)

1. The complainant has requested information from the University of Leicester ("the University") relating to a report referred to in the minutes of an audit meeting held on 17 June 2010.
2. The Commissioner's decision is that the University did not hold a copy of the report at the time the request was made. Therefore, the Commissioner does not require the University to take any further steps.

Request and response

3. On 23 July 2014, the complainant wrote to the University and requested information in the following terms:

"1. I wish to make an freedom of information request. I would like a copy of the written report referred to in the minutes of an audit meeting titled: University of Leicester Audit Committee Report of a meeting held on Thursday 17th June 2010. The written report I want a copy of is referred to at 10/M20 and titled Whistleblowing case. I would request a copy of the investigation report (redacted to remove personal information and thus available under an FOI request) which contained recommendations etc and I would like a copy in full. If you refuse I want the decision appealed immediately and the sections used for refusing clearly stated. I believe that as a public organisation the public have a right to know what concerns have been raised.

2. I would also ask what was the role of the person originally/ initially raising concerns i.e a student, a student complaint escalated by a staff

member, a member of staff etc? I am sure you would agree this limited information would fully maintain anonymity for the person (s) raising concerns. What happened to the original source of concerns i.e. was the student removed from the course? If an employee raised concerns did they face disciplinary action etc? I request the information electronically and within 20 working days. I would request acknowledgement of this request."

4. On the 18 August 2014 the University responded to request 1. The University advised the complainant that the report was no longer held as the allegations about the member of staff were found to be without substance and the report was subsequently deleted in accordance with the Employment Practices Data Protection Code¹.
5. The complainant subsequently asked for an internal review on 19 August 2014. In the complainant's internal review request, she expressed dissatisfaction with the University's response. Specifically she was concerned that the report was no longer held. She also pointed out that the University had failed to respond to her request for information relating to the role of the person originally raising the concerns and details of what happened to the original sources of the concerns.
6. The University sent the outcome of its internal review on 16 September 2014. The University maintained its position that it did not hold a copy of the report.
7. With reference to part 2 of the request the University apologised for not responding initially to the request and informed the complainant that it did not hold this information.
8. On 22 September 2014 the complainant contacted the University and expressed dissatisfaction with the internal review response.
9. On the 24 September 2014 the University responded to the complainant's concerns. It advised her that the University had fully met its obligations as required by the FOIA and if she remained dissatisfied with the University's handling of her request, she could submit a complaint to the Information Commissioner.

¹ https://ico.org.uk/media/for-organisations/documents/1066/employment_practice_code_supplementary_guidance.pdf

Scope of the case

10. The complainant contacted the Commissioner on 2 October 2014 to complain about the way her request for information had been handled.
11. The Commissioner wrote to the complainant on 24 November 2014 and set out his understanding of her complaint. He understood that the complainant believed a copy of the report would be held by the University. The complainant did not dispute the Commissioner's understanding of the complaint.
12. The Commissioner has therefore had to consider whether the University holds a copy of the report referred to in the audit meeting held on 17 June 2010.

Reasons for decision

13. Section 1(1) of FOIA 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, and*
 - (b) if that is the case, to have that information communicated to him".*
14. In scenarios where there is some dispute between the amount of information located by a public authority and the amount of information that a complaint believes may be held, the ICO, following the lead of a number of information Tribunal decisions, applies the civil standard of the balance of probabilities.
15. In other words, in order to determine such complaints the ICO must decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
16. The complainant has disputed the University claim that it does not hold a copy of the report. The complainant feels that the minutes of the meeting raised concerns and that the University made changes to its policy and procedures on the outcome of the report.
17. The Commissioner has investigated this complaint by returning to the University and asking it a number of questions in order to determine whether it holds the written report.

18. The Commissioner asked the University to confirm the date in which the report was deleted and whether it had a record of its destruction.
19. In response, the University explained that it did not hold a record of the reports destruction. However, it explained that it was in the process of implementing a Records Management Policy which included a requirement for a record of destroyed records to be maintained.
20. The Commissioner then asked the University to detail the searches it had undertaken to ensure another copy of the report was not held. He also asked the University to confirm whether the report would be held by another organisation and whether there are any statutory requirements upon the University to retain a copy of the report.
21. The University informed the Commissioner that it contacted the Principle Assistant Registrar in the Governance Office. It stated that the Registrar & Secretary would have provided a copy to the Chair of the Audit Committee. However they no longer held a copy.
22. The University went back to the Registrar & Secretary to confirm that it did not hold a copy of the report. He advised the Commissioner that the copy of the report had since been destroyed.
23. The Commissioner was advised that the University had contacted the Deputy Finance Director who had written the report. He informed the Commissioner that he had passed the report on to the Registrar & Secretary and also the Director of Finance. Due to the allegations being without substance the report was consequently destroyed.
24. The University informed the Commissioner that it had contacted the Director of Finance to obtain the report. It informed the Commissioner that the Director at the time of the report had retired in December 2011. The PA to the Director was asked to do searches on behalf of the present Director and the past Director. The searches involved checking all paper and electronic files. This confirmed that no report was held.
25. The University also confirmed to the Commissioner that HR did not hold a copy of the report due to the allegations being unsupported.
26. With regards to any other organisations holding the report, the University responded back to the Commissioner stating due to its sensitivity the report was only circulated to a small group of people.
27. The University confirmed that there are no statutory requirements for the University to hold a copy of the report.
28. The Commissioner acknowledges the complainants arguments. However, based on the submissions provided by the University, the Commissioner

is satisfied that on the balance of probabilities the requested information is not held.

Other matters

29. During the Commissioner's investigation the University informed the Commissioner that it had now obtained a copy of the report. The University explained that the report was obtained by the Deputy Director of Finance from the person who was the subject of the complaint who was holding it in a private capacity. This was done in the spirit of being helpful in responding to the request.
30. The University now holds the report. However, the Commissioner is satisfied that the University did not hold it at the time of the request.

Right of appeal

31. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

32. 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.
33. 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