

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 June 2015

**Public Authority:** University College London  
**Address:** Gower Street  
London  
WC1 6BT

#### Decision (including any steps ordered)

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1. The complainant has requested information from University College London (UCL) relating to the results of a postgraduate course and details of the formula used to calculate results.
2. The Commissioner has determined that UCL was correct to apply section 40(2) of the FOIA to request 2(b).
3. However UCL failed to provide a full response to the request within 20 working days. UCL has therefore breached section 10 of the FOIA.
4. As a full response has now been provided and as the Commissioner upholds UCL position in relation to request 2(b), he requires UCL to take no steps.

#### Request and response

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5. On 7 August 2014, the complainant wrote to UCL and requested information in the following terms:

*1 The details of the formula (2013/14) used to calculate the "Overall Final Mark" for the award of the M.Sc. in Clinical Neuroscience.*

*2 (a) Copy of the marks for the three components (library project; research dissertation; written exams) and (b) the resulting "Final Overall Mark" in each case for the 1998-99 Cohort.*

6. UCL responded on 27 November 2014. It stated that it held no information within the scope of the request.
7. The complainant subsequently asked for an internal review on 16 February 2015. UCL sent the outcome of its internal review on 24 February 2015. After reviewing the handling of the request, UCL considered that it did hold information falling within the scope of request 1. It subsequently provided the complainant with this information. UCL further maintained its previous decision in relation to request 2.
8. Upon receipt of this, the complainant contacted UCL on 25 February 2015. He disagreed with UCL response to request 2. UCL provided the complainant with a revised internal review later the same day. UCL confirmed that it did hold information within the scope of request 2(b). However, it explained that this information was exempt from release under section 40(2) of the FOIA.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 9 April 2015 to complain about the way his request for information had been handled.
10. Specifically he disputed UCL application of section 40(2) of the FOIA to request 2(b).
11. The Commissioner has therefore had to consider whether UCL was correct to apply section 40(2) of the FOIA to request 2(b).

### **Reasons for decision**

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12. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
13. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether UCL was correct to withhold the final marks of the cohort under section 40(2).

### **Is the withheld information personal data?**

14. Personal data is defined by section 1 of the Data Protection Act 1998 ("the 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 data controller or any person in respect of the individual..."*

15. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.

16. The information sought in 2(b) relates solely to the performance of a small number of people that received a Master of Science in Clinical Neuroscience. ULC explained that the cohort consisted of 8 people (excluding the complainant) and due to the small size of the cohort, releasing the information sought in 2(b) could make the individuals in the cohort identifiable.

17. UCL explained:

*"We cannot be certain of what information may already be in possession of the other members of the cohort and they may well have been privy to information relating to the performance of the other students in individual elements of the course but not overall results".*

18. The Commissioner is satisfied that if the information sought in request 2(b) was disclosed, the complainant and/or other individuals in the cohort may have information available to them that could identify which individual achieved a particular result. Therefore he considers that the withheld information is personal data.

### **Would disclosure breach the data protection principles?**

19. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.

20. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations of the data subject**

21. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
22. UCL explained that the data subjects concerned would not expect their final overall marks to be placed into the public domain by UCL. In reaching this view, UCL considered the method by which the results were communicated in 1999. UCL explained that at that time, the results were made available within the department on a printed sheet of names and confirmation of the results. UCL confirmed that this process has long been replaced. It explained that despite the fact the overall result classifications were made available in this way within the confines of the department for a brief period of time, it does not alter its view that the data subjects would not expect their overall marks to be put into the public domain several years later.

### **The consequences of disclosure**

23. UCL did not provide any arguments as to why disclosure of the information sought in 2(b) would cause damage and distress to the data subjects.

### **The legitimate public interest**

24. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms and legitimate interest of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
25. In this case, the Commissioner notes that the information sought in request 2(b) relates to the results of a course dating back over 15 years ago, at a time where the results were published openly within a department.
26. However, the Commissioner acknowledges that UCL has since changed its process regarding how results are published due to concerns raised by students. From this, there is now a reasonable expectation that a data subjects final marks will not be published openly and available to the public.
27. The Commissioner notes that the complainant has an interest in the requested information. However the Commissioner considers that there

is little public interest in the information sought in request 2(b). The Commissioner considers that the results of a postgraduate course from 1998 – 1999 is not information that would be of value to the greater public.

28. On this basis, the Commissioner considers that the disclosure of the information requested in 2(b) would be unfair, and in breach of the first principle of the DPA. The Commissioner is therefore satisfied that UCL correctly applied section 40(2) to the information that falls within the scope of request 2(b).

### **Section 10 – Time for compliance**

29. Section 10 of FOIA states that a public authority must respond to a request promptly and *"not later than the twentieth working day following the date of receipt"*.
30. In this case, the complainant made a request for information on 7 August 2014. UCL did not respond fully until 25 February 2015.
31. Consequently UCL has breached section 10 of the FOIA as it did not respond to the request within 20 working days.
32. As a full response has now been provided to the complainant, the Commissioner requires UCL to take no steps.

## Right of appeal

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33. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

34. 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.
35. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**