

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 March 2015

Public Authority: The Governing Body of Plymouth University

Address: Plymouth University

Drake Circus

Plymouth

PL4 8AA

Decision (including any steps ordered)

1. The complainant requested from Plymouth University ("the University") the conclusions of a report into allegations connected to the former Chairman of its Board of Governors. The University withheld the information under sections 36(2)(b)(ii) and (c), 40(2), 41 and 42.
2. The Commissioner's decision is that the University correctly withheld the requested information under section 40(2). He therefore does not require the University to take any further steps to ensure compliance with the legislation.

Request and response

3. On 19 November 2014, the complainant wrote to the University and requested information in the following terms:

"Please will you release, under Freedom of Information Legislation, the conclusions of the University's barrister-led enquiry that took place this summer into the allegations that were made against Judge William Taylor."

4. The University responded on 19 December 2014. It refused to provide the requested information citing the exemptions in section 36(2)(b)(ii) and (c) and section 41 of the Act.
5. The complainant requested an internal review on 8 January 2015. The University provided the result of its internal review on 21 January 2015. It upheld its original decision.

Scope of the case

6. The complainant contacted the Commissioner on 6 February 2015 to complain about the way his request for information had been handled. In particular, he complained about the University's refusal to disclose the information that he had requested.
7. During the course of the Commissioner's investigation, in addition to sections 36(2)(b)(ii) and (c) and 41, the University also sought to rely on the exemptions in sections 40(2) and 42.
8. The Commissioner considered whether the University was entitled to rely on any of the exemptions that it cited to withhold the requested information.

Reasons for decision

Section 40(2) – Personal information

9. The Commissioner initially considered the University's application of section 40(2) to the withheld information.
10. Section 40(2) provides an exemption for information which is the personal information of an individual other than the complainant and where one of the conditions listed in section 40(3) or 40(4) is satisfied.
11. Section 40(2) provides that –

"Any information to which a request for information relates is also exempt information if-

 - a. *it constitutes personal data which do not fall within subsection (1), and*
 - b. *either the first or the second condition below is satisfied."*
12. Section 40(3) provides that –

"The first condition is-

 - a. *in a case where the information falls within any of paragraphs (a) to (d) of the definition of "data" in section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene-*

19. The Commissioner notes that the withheld information contains details of allegations by named individuals in relation to the former Chairman of the University's Board of Governors. As such he accepts that it constitutes their personal data and does not believe that it would be possible to anonymise the conclusions of the report in such a way as to prevent individuals being identified.
20. However, the fact that information constitutes personal data does not automatically exclude it from disclosure under FOIA. The second element of the test is to determine whether disclosure would contravene any of the data protection principles. The Commissioner therefore went on to consider whether disclosure of the individuals' personal data would breach one of the data protection principles.

(2) Would disclosure breach one of the data protection principles?

21. The University informed the Commissioner that it believed that the first data protection principle would be breached if the withheld information was disclosed.
22. The first data protection principle requires that any disclosure of personal data is fair and lawful and that at least one of the conditions in schedule 2 of the DPA is met.
23. The Commissioner firstly considered whether the disclosure of the withheld information would be fair. In doing so, he took into account the following factors:
 - (i) the individuals' reasonable expectations of what would happen to their personal data;
 - (ii) whether disclosure would cause any unnecessary or unjustified damage or distress to the individuals concerned; and
 - (iii) whether the legitimate interests of the public in disclosure were sufficient to justify any negative impact to the rights and freedoms of the individuals concerned.

(i) Reasonable expectations of the individuals concerned

24. The Commissioner considered the reasonable expectations of the individuals in terms of what would happen to their personal data. These expectations can be shaped by factors such as an individual's general expectation of privacy and also the purpose for which they provided their personal data.
25. When considering what information an individual should expect to have disclosed about them, the Commissioner considers that a distinction

should be drawn between information relating to their public life and information relating to their private life. The Commissioner's view is that information which relates to an individual's private life (i.e. their home, family, social life or finances) will deserve more protection than information about them acting in an official or work capacity (i.e. their public life).

26. The Commissioner notes that the report concerns events which relate to the relevant individuals involvement with the University. The Commissioner therefore accepts that the withheld information concerns individuals connected with the University acting in a work related capacity. In light of this, his view is that the information may not attract the same level of protection as information which relates solely to the same individuals' private lives.
27. However, the Commissioner does not accept that simply because the information relates to individuals' work or duties in the public sector that there is an expectation that information about them should automatically be disclosed. Whether such personal data should be placed in the public domain will depend on the circumstances of each case.
28. The University informed the Commissioner that it believed that significant weight should be given to the fact that the relevant personal data related to an internal investigation of allegations concerning individuals' conduct, which carried a strong expectation of privacy, even among senior staff and governors. It contended that there was a reasonable expectation on the part of those involved in the report that allegations of misconduct and any ensuing action by the University would remain confidential and, accordingly, that the report and its conclusions would not be put into the public domain.
29. The Commissioner considers that employees of public authorities should be open to some degree of scrutiny and accountability and should expect that some personal data about them may be released because their jobs are funded by the public purse. However, he considers that certain types of information should generally not be disclosed, even though such information relates to an individual's professional life and not their personal life. One of these types of information is information that relates to disciplinary/personnel matters. His general view is that this type of information should remain private.
30. The Commissioner therefore considers that those involved in internal investigations into allegations of misconduct within public authorities, whether as the person against whom the allegations are made or as witnesses, would normally have a reasonable expectation prior to participating in the process that the information that they provide will

not be disclosed to the public. The Commissioner believes that such an expectation would still exist in this case despite the seniority of some of those involved. He is therefore satisfied that those involved in the investigation would have had a reasonable expectation that the withheld information, which constitutes their personal data, would not be disclosed to the public at large.

(ii) Consequences of disclosure

31. The Commissioner was informed by the University that it believed that disclosure of the withheld information would cause understandable distress to the individuals concerned and that it could have implications for their health.
32. The Commissioner accepts that disclosure of information provided by those involved in an investigation into allegations of misconduct could potentially cause damage and distress to those individuals, particularly the person against whom the allegations have been made. Any such disclosures could clearly be potentially harmful to them both in a professional and a personal capacity. The Commissioner also accepts that disclosure could cause distress to those involved by reopening matters which they believed had been concluded.

(iii) General principles of accountability and transparency

33. The Commissioner notes that, notwithstanding a data subject's reasonable expectations or any damage or distress caused to them by disclosure, depending on the circumstances of the case, it may still be fair to disclose the withheld information if there is a more compelling public interest in disclosure. In considering this, the Commissioner's view is that such interests can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.
34. The complainant noted that the basic facts surrounding the report had been widely reported locally and to some extent nationally. He argued that there might be an overriding public interest in disclosure if the report found any case to answer as a failure to do so would essentially amount to a cover-up by the University of inappropriate behaviour. He went on to argue that, on the other hand, if there was found to be no case to answer, it was in the interests of justice to the person against whom the allegations were made for that to be reported. He also pointed to well publicised issues over the leadership of the University which he believed enhanced the public interest in disclosure.
35. In the circumstances of this case, the Commissioner accepts that there is a valid public interest in ensuring that the University has investigated

issues related to allegation of misconduct fully. He is obviously not able to provide detailed comments on the nature of the allegations contained in the withheld information. However, he notes that, from the evidence available to him, it appears that the external person responsible for the report carried out a detailed investigation into the allegations that had been made. There is therefore nothing to suggest that the relevant issues were not properly investigated.

36. The Commissioner also notes that, whilst the University has acknowledged that an investigation took place, it has not made any public statements which provide details of the allegations or details of the findings of the investigation.
37. The Commissioner believes that any public interest in disclosure must be weighed against the prejudices to the rights, freedoms and legitimate interests of the individuals who gave evidence for the purpose of the investigation. Taking into account the reasonable expectations of the individuals concerned and the consequences of disclosure for them, discussed above, the Commissioner has concluded that the strength of the legitimate interest in disclosure is not sufficient to supersede the right of the data subjects, the witnesses and the person who was the subject of the allegations, to privacy.
38. The Commissioner has therefore concluded that it would be unfair to disclose the withheld information as this would breach the first data protection principle. In light of this, it has not been necessary for him to go on to consider whether disclosure of this information is lawful or whether one of the conditions in Schedule 2 of the DPA is met. He has therefore decided that the University has correctly applied section 40(2) to the information that it withheld under that section.
39. In light of his decision that the University has correctly applied section 40(2) to the withheld information, the Commissioner has not gone on to consider its application of other exemptions to the same information.

Right of appeal

40. 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

41. 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.
42. 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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