

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2020

Public Authority: University of Westminster
Address: 2nd Floor
Cavendish House
101 New Cavendish Street
London
W1W 6XH

Decision (including any steps ordered)

1. The complainant has requested information relating to named individuals he believes attended the University of Westminster ("the University"). Subject to section 40(5B)(a)(i) of the FOIA, the University neither confirmed nor denied whether it held the requested information, as to do so would disclose the personal data of third parties.
2. The Commissioner's decision is that the University of Westminster has correctly withheld the information in reliance of the exemption at section 40(5B)(a)(i) of the FOIA.
3. The Commissioner does not require the public authority to take any further steps.

Background

4. The Commissioner is aware that the request in this instance concerns information relating to individuals that are reported in the media as being deceased.
5. The Commissioner has therefore considered whether the provisions of the UK data protection regime would still apply to information concerning individuals who are 'reported' to be deceased.
6. In response to the Commissioner's enquiries, the University confirmed that they were not aware that some of the persons named in the request are reported in the media as being deceased.
7. The University also confirmed that they did not seek to confirm or deny whether any of the individuals named in the request had attended the University.
8. The University has argued that the information that has been withheld would constitute personal data as it identifies a living individual. The University explained that this is the approach it would take with any student record that is requested under the FOIA.
9. The Commissioner has previously issued two decision notices where requests for information have been made for an individual which is presumed to be dead but there is no definitive proof¹. In both cases, the Commissioner found that the requested information was personal data for the purposes of the Data Protection Act.
10. In light of the precedent set by her previous decisions in the above cases, the Commissioner is of the view that, without any firm and definite evidence or official confirmation that certain individuals named in the request are deceased, it is correct for the University to err on the side of caution and continue to apply the DPA.

¹ https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624066/fs_50613932.pdf and https://ico.org.uk/media/action-weve-taken/decision-notices/2016/1624340/fs_50624782.pdf

² https://ico.org.uk/media/action-weve-taken/decision-notices/2015/1043399/fs_50537628.pdf

Request and response

11. On 22 May 2019, the complainant wrote to the public authority and requested information in the following terms:

"a) Please supply copies of any internal reports or investigations the university produced about any or all of the following: [names redacted] between 2009-2016 pertaining to [redacted]"

b) How many warnings were received from concerned individuals about these people and confirmation of whether reports were made to [redacted] as a result of those warnings.."

12. The University responded on 6 June 2019 and neither confirmed nor denied that the information requested was held. The University cited section 40(2) in its refusal notice rather than section 40(5B)(a)(i).
13. Following an internal review the public authority wrote to the complainant on 5 August 2019. It maintained its position with regard to the request.

Scope of the case

14. The complainant contacted the Commissioner on 3 September 2019 to complain about the way his request for information had been handled.
15. For the reasons stated below, the Commissioner considers the scope of her investigation to be to establish whether the University has correctly applied the exemption provided by section 40(5B)(a)(i).

Reasons for decision

Section 40 - personal information

16. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether information is held does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the General Data Protection Regulation EU2016/679 ('GDPR') to provide that confirmation or denial.
17. Therefore, for the University to be entitled to rely on section 40(5B) of FOIA to refuse to confirm or deny whether it holds information falling within the scope of the request the following two criteria must be met:

- Confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
- Providing this confirmation or denial would contravene one of the data protection principles.

Would the confirmation or denial that the requested information is held constitute the disclosure of a third party's personal data?

18. Section 3(2) of the DPA 2018 defines personal data as:-

"any information relating to an identified or identifiable living individual".

19. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

20. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.

21. As the complainant is already aware of the identity of the individuals named in his request, confirmation or denial as to whether the University held information specific to these individuals would reveal information that is about them, linked to them, has biographical significance for them or has them as its main focus. The Commissioner therefore considers the complainant in this case to be requesting information relating to individuals which is their personal data.

22. The Commissioner considers that, should the University confirm or deny whether it holds internal reports or investigations relating to these individuals, it would serve to reveal something about those individuals (for example, whether these individuals studied at the University and whether they were the subject of any internal investigations or procedures).

23. The Commissioner notes the complainant's arguments that, due to the nature of the information already available to them in the public domain, there is a legitimate wider public interest in seeking copies of internal reports or investigations relating to these individuals. However, the Commissioner takes the view that there is a need to balance the right to access information with the right to privacy.

24. For the reasons set out above, the Commissioner is satisfied that if the University confirmed or denied whether it held the requested information this would clearly result in the disclosure of a third party's personal data. The first criterion set out above is therefore met.

Right of appeal

25. 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@justice.gov.uk

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

26. 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.
27. 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

Mr Phillip Angell
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF