

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 September 2022

Public Authority: The Governing Body of the University of East London

Address: Governance and Legal Services
University Way
London
E16 2RD

Decision (including any steps ordered)

1. The complainant has requested information from the University of East London ("the University"), in relation to the placement of Social Work students with Practice Educators. The University provided some information to the complainant but refused further information by virtue of section 40(2) of FOIA – personal information.
2. The Commissioner's decision is that the University is entitled to rely on section 40(2) of FOIA to withhold the requested information.
3. The Commissioner does not require the University to take any steps as a result of this decision notice.

Request and response

4. On 20 October 2021, the complainant wrote to the University and requested information in the following terms:

"As an UEL student and alumni, I have occasionally worked with UEL Social Work students as an on-site and off-site Practice Educator (PE). In October 2021, UEL staff did not consider me for supervision of students, although I expressed my wish to supervise students early enough to be taken into account. I believe there were enough spare placement vacancies to place a student with me, especially because

supervision of students is not a highly competitive activity. For this reason, I also feel being discriminated based on my Race because of being an Eastern European and an EU citizen. As the staff UEL did not give me any sensible explanation for not providing me with the opportunity, I would like to find out whether it was possible for UEL to offer me an opportunity to supervise a student as an on-site or an off-site PE in October 2021. Furthermore, I would like to find out whether UEL has a clear and established policies on selection of placement providers and PEs.

Therefore, please provide me with the following information regarding placements of Social Work students who are obtaining their degree at UEL: A. Information about selection of Placement Providers, which are verified by UEL for supervision of Social Work Students on placement. Please note that I am not requesting policies and procedures around verification of placement providers. Please limit your response on the providers which were already verified. 1. Please provide me with relevant UEL Policies and Procedure on how UEL verified Placement Providers are being selected annually for supervision of students on placement. 2. Please provide me with specific guidance for UEL staff on how allocation of students on placement should be completed. 3. Please provide me with a list of matching criteria used by UEL staff to allocate a student to a specific placement provider. 4. Please provide me with the information about how many placement providers which are operating in volunteer sector requested hosting students in October 2021 and how many of them were matched with a student/ students. 5. Please provide me with the information about many students were allocated to each placement provider. If the number of students per provider is not always the same, please provide me with the information about how many students were allocated to each provider. I do not require providers' name or anyone's personal details. However, please differentiate between providers in statutory and volunteer sector. Please also mention the field of Social Work in which the providers operate, for example, adults, children etc. I suggest the format as in the table below. However, please feel free to choose another way to provide me with the requested information if it is more convenient for you.

2. Information about selection of PEs for supervision of Social Work Students on placement. 1. Please provide me with UEL Policies and Procedure on how PEs are being acquired. 2. Please provide me with specific guidance for UEL staff on how PEs are being allocated to particular students. 3. Please provide me with a list of matching criteria used by UEL staff to allocate a PE to a particular student. 4. Please provide me with the information about how many off-site PEs offered to UEL to take on Social Work students for supervision in October 2021 and their ethnic origin. 5. Please provide me with the information about

how many off-site PEs offered to UEL to take on Social Work students for supervision in October 2021 were not provided with the opportunity and their ethnic origin. 6. Please provide me with the information about how many offsite PEs who were offered supervision of Students in October 2021 are current or former permanent staff at UEL. Please also provide me with the information on their ethnic origin. 7. Please provide me with the information about how many students were allocated per each off-site PE. If the numbers of students per PE was not always the same, please provide me with the information about how many students were allocated to each PE. I do not require anyone's personal details. Please however provide me with the information about the ethnic origin of those PEs. I suggest the format as the table below. However, please feel free to choose another way to provide me with the requested information if it is more convenient for you."

5. The University responded on 24 November 2021. It provided some information to the complainant. However, it refused to provide the remainder, citing section 40(2) of FOIA – personal information, as its basis for doing so.
6. Following an internal review the University wrote to the complainant on 30 December 2021. It stated that it maintained its original position.

Scope of the case

7. The complainant contacted the Commissioner on 4 January 2022, to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of the request is to determine if the University has correctly cited section 40(2) of FOIA.

Reasons for decision

Section 40 personal information

9. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.

10. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
11. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
12. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

13. Section 3(2) of the DPA defines personal data as:
"any information relating to an identified or identifiable living individual".
14. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
15. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
16. 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.
17. In the circumstances of this case, having considered the nature of the withheld information, which would consist of the ethnicity of individuals, along with their specific job roles, the Commissioner is satisfied that the information relates to the data subjects. The ethnicity of the individuals is clearly personal data and, due to the small numbers involved in this case, the individuals could be identified. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.

¹ As amended by Schedule 19 Paragraph 58(3) DPA

18. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
19. The most relevant DP principle in this case is principle (a).

Would disclosure contravene principle (a)?

20. Article 5(1)(a) of the UK GDPR states that:

“Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject”.

21. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.
22. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.

Lawful processing: Article 6(1)(f) of the UK GDPR

23. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child”².

24. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-

² Article 6(1) goes on to state that:-

“Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks”.

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

“In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the UK GDPR would be contravened by the disclosure of information, Article 6(1) of the UK GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted”.

i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

25. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interests

26. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of accountability and transparency for their own sakes, as well as case specific interests.

27. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.

28. In this case, the Commissioner is satisfied that the request is motivated by the complainant's own personal interests. However, he understands why the complainant would want such information and how this could be of wider interest for the public.

Is disclosure necessary?

29. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.

30. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms

31. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In

doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.

32. In considering this balancing test, the Commissioner has taken into account the following factors:

- the potential harm or distress that disclosure may cause;
- whether the information is already in the public domain;
- whether the information is already known to some individuals;
- whether the individual expressed concern to the disclosure; and
- the reasonable expectations of the individual.

33. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.

34. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.

35. The University has explained that there are a relatively low number of students on the courses and if the information were to be broken down into the different categories as requested by the complainant, it would become easy for individuals within their cohort to specify individuals and infer their ethnicity.

36. It has also explained that there are a limited number of offsite providers and, therefore, to release the information, it would allow the students allocated to indirectly identify specific individuals they are studying with. It has also advised that it is happy to provide the complainant with aggregated details around ethnic origin, as to do so, anonymises the data.

37. The University has advised that there are only a small number of staff members who would fall within the scope of the request and each of these are in a different ethnic group. As such, to release the information would make it relatively easy to infer a staff member's ethnicity.

38. The Commissioner is satisfied that if the University were to release the information, individuals would be identifiable. The information on its own, would not lead to individuals being identified. However, due to the amount of information requested and the way in which it has been asked for, if this were to be released, it could lead to individuals being identified.
39. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.
40. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that he does not need to go on to separately consider whether disclosure would be fair or transparent.
41. The Commissioner's decision is that the University was correct to apply section 40(2) of FOIA to the withheld information.

Right of appeal

42. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

43. 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.
44. 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

Michael Lea
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