

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 November 2022

Public Authority: Governing body of the University of Oxford
Address: University Offices
Wellington Square
Oxford
OX1 2DJ

Decision

1. The complainant has requested, from the University of Oxford (Kellogg College) (the University), information relating to expenses and student committee members. The University disclosed some information, however the complainant is unhappy that an inquiry report was redacted and that the University's response was late.
2. The Commissioner's decision is that while the University breached sections 10 and 17 of FOIA by failing to disclose information that was disclosable and issue a refusal notice within the statutory time for compliance, the University is entitled to withhold the remaining information under section 40(2) of FOIA (the 'personal information' exemption).
3. The Commissioner does not require any steps to be taken following this decision notice.

Request and response

4. The complainant made the below information request to the University on 11 March 2021:

"A) The relevant dates begin on 1 May 2020 and end on 10 March 2021. The records hereby concern:

1. the dates of any meetings of the relevant bodies;
2. the minutes of any meetings of the relevant bodies;
3. the meeting papers of any meetings of the relevant bodies, where meetings papers are those papers circulated to members of the relevant bodies before or during a meeting for discussion at that meeting; and
4. the composition of the relevant bodies.

The relevant bodies are:

- Kellogg College Governing Body; and
- Kellogg College Finance and Resources Committee.

B) The statutes, regulations, by-laws and policies of Kellogg College, where they differ, extend, or are in addition to the statutes, regulations, by-laws and policies of the University, as available on <https://governance.admin.ox.ac.uk/legislation>, or, if it requires less work to fulfill the request, all of the relevant statutes, regulations, by-laws and policies of Kellogg College.

The request is in regards to [link redacted]. How Kellogg College as a Society of the University deals with potential financial improprieties is of public interest given the status of the University of Oxford as a charity. We have been made aware by Kellogg College that the Governing Body and Finance and Resources Committee have discussed matters surrounding this since May 2020 up until in the most recent meetings."

5. The complainant's wider concern is about expenses in relation to student committee members.
6. The University responded six months later on 1 September 2021 – it apologised for the delay, referring to the coronavirus pandemic and saying it had been necessary to seek advice before responding. The University provided some information and links, but withheld other information under section 40(2) of FOIA. The withheld information comprised meeting minutes and a report produced following an inquiry.
7. The complainant requested a review on 7 September 2021, complaining about the University's "blanket application of 40(2)". They argued that the withheld information is not all personal data but instead relates to

whether college monies have been “embezzled” and steps taken to address issues that were identified. They said the University had failed to provide the “meeting papers” requested, and argued that there is a public interest in transparency and accountability in relation to college monies.

8. The University gave its internal review response on 18 November 2021. It saw the request as comprising four main aspects, and said it had provided in full the information requested in respect of three of those aspects. It acknowledged that a report setting out the results of an investigation should not have been withheld in its entirety under section 40(2) and disclosed a redacted copy.
9. The University upheld its application of section 40(2) in respect of the other information that had been withheld. While it acknowledged a public interest in transparency and accountability around the expenditure of public funds, it said that disclosure of the information in question is not necessary in all the circumstances. To summarise its main points, it argued that there was a relatively small payment that did not involve senior University officials (the matter involved students). The University stressed that it had investigated the payment, produced a report and was working to implement new procedures. It said it had written to the relevant student committee and responded to complainants, summarising its findings and the proposed remediation.
10. The University also said that even if disclosure of the withheld personal data was considered ‘necessary’, it felt that the rights of the data subjects would outweigh any legitimate interests in disclosure – in all the circumstances, disclosure would not reasonably be expected by the students and would cause distress.
11. On the complainant’s point about “meeting papers” not being provided, the University said that the only relevant information held was the investigation report it had now disclosed in redacted form in response to the request.
12. The Commissioner wrote to the University in October 2022 to ask for its full submissions. Subsequently the University disclosed a further redacted copy of the inquiry report to the complainant – this new version removed some of the previous redactions, but it added new ones (still under section 40(2)).

Scope of the case

13. The complainant contacted the Commissioner on 1 February 2022 to complain about the way their request for information had been handled.

14. The complainant has said "the redacted document (inquiry report) should be un-redacted" to reveal the University's recommendations and other information while omitting personal data (the complainant believes that would be possible).
15. The complainant has said "public interest has not been met" by the University in its handling of the matter. The complainant has emphasised the amount of money involved (it is less than £1,000), and is unhappy that a University statement was not shared with all students at the University.
16. The complainant is also unhappy about how long it took the University to respond to the request.
17. The Commissioner will therefore consider whether the University has correctly applied section 40(2) of FOIA to the redacted parts of the inquiry report that the complainant seeks, and whether it has complied with sections 10 ('time for compliance') and 17 ('refusal of request').
18. The Commissioner has seen both versions of the redacted inquiry report – the version disclosed to the complainant at internal review stage and the new version disclosed to the complainant during the Commissioner's investigation, which removed some redactions while adding other ones.
19. The Commissioner will focus on information that has not been disclosed to the complainant, because that information will be the focus of the complainant's concerns. The Commissioner will also consider the redactions that have now been removed and whether the University should have disclosed that information with its previous response(s).

Reasons for decision

Section 40(2)

20. The following analysis explains why the Commissioner is satisfied that the University was entitled to apply section 40(2) to the information that the complainant is seeking.
21. The Commissioner highlights his detailed [guidance](#) on section 40.
22. Section 40(2) of FOIA allows a public authority not to disclose information if it is personal data (information that relates to an identifiable individual or 'data subject') and if one of the conditions listed in section 40(3A), 40(3B) or 40(4A) is satisfied.

23. The Commissioner is satisfied that the withheld information being sought is personal data as it relates to identifiable individuals. Although the complainant wants the University to reveal further information while omitting personal data, the Commissioner emphasises to the complainant that even where information does not directly name an individual it can still 'relate' to them and be their personal data. The Commissioner is not able to give a lot of detail or analysis here about why the information is personal data, because doing so would risk revealing information that has been redacted. However, clearly a report that (as the University told the complainant) sets out the results of the University's investigation will comprise information that is about identifiable student committee members and others, such as the author of the report.
24. The condition at section 40(3A)(a) of FOIA is satisfied, as disclosure would contravene the data protection principle at Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR) – 'lawfulness, fairness and transparency'.
25. The Commissioner has considered whether there is a lawful basis for processing (disclosing) the requested information under Article 6(1)(f) of the UK GDPR.
26. He acknowledges legitimate interests in disclosure. Considerations like accountability and transparency were mentioned by the complainant.
27. However, the University believes that disclosure of personal data is not 'necessary' to satisfy those interests, and the Commissioner agrees with the University. The Commissioner is satisfied that the legitimate interest in ensuring effective oversight of spending has already been met by the disclosure of the redacted version of the report and the procedural improvements that have been identified and implemented. Revealing the personal data (especially when the University is satisfied that there was no fraud involved) would add little to any public debate, and is therefore not necessary.
28. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, it is not necessary to consider whether disclosure would be fair or transparent. Section 40(2) of FOIA is engaged.

Section 10 and section 17

29. 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.”
30. Section 10(1) of FOIA states that a public authority must respond to a request promptly “and in any event not later than the twentieth working day following the date of receipt”.
31. Section 17(1) of FOIA states that:
- “A public authority which, in relation to any request for information, is to any extent relying on a claim that ... information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—
- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.”
32. From the evidence provided to the Commissioner, it is clear that the University did not deal with the request in accordance with sections 10 and 17 of FOIA. The University took around six months to respond to it.
33. In addition the University has conceded that some information was wrongly withheld under section 40(2) at first – namely the report that was initially withheld in its entirety but disclosed in redacted form at internal review stage. Furthermore, some of the redacted information was subsequently disclosed by the University during the Commissioner’s investigation.

Other matters

34. The Commissioner notes that the University took over 40 working days to provide its internal review response – an internal review was requested on 7 September 2021 and the University responded on 18 November 2021. The Commissioner’s website explains that public authorities should ensure that their internal review takes no longer than 20 working days in most cases, or 40 in exceptional circumstances.

Right of appeal

35. 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

36. 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.
37. 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

Daniel Kennedy
Senior Case Officer
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