

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 16 March 2023

Public Authority: Lancaster University
Address: University House
Bailrigg
Lancaster
LA1 4YW

Decision (including any steps ordered)

1. The complainant has submitted a request to Lancaster University ("the University") for information regarding the Senior Learning Group.
2. The Commissioner's decision is that the University is entitled to rely on sections 21 of FOIA with regards to questions two and three and section 40(2) to withhold the requested information in relation to question five. He also considers that, on the balance of probabilities, the University does not hold the information in relation to question six. However, he does not agree with the University that question nine is speculative.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
 - Respond to and disclose any information held falling within the scope of question nine.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 15 June 2022, the complainant wrote to the University and requested information in the following terms:
- “1. What is the formal status of The Lancaster University Continuing Learning Group?
 2. Does the Lancaster University Continuing Learning Group operate under the auspices of C4AR in the Dept of Health and Medicine?
 3. Are [redacted] and [redacted] accredited honorary staff members in C4AR and or the Department of Health and Medicine?
 4. Is [redacted] the Head of Department referred to in [redacted] email dated 12 October 2021? (Copy attached)
 5. What matters or issues did [redacted] present to 'The organising committee' and 'department head' that warranted my exclusion from Lancaster University Senior Learner's Group?
 6. Why was I not accorded access to such matters or issues and denied any option to review or appeal?
 7. What steps did [redacted] take to deal with my letter of complaint to [redacted] dated 26 October 2021 (Copy attached)
 8. Why was there a delay of three (3) months before her final report dated 3 February 2022 to effect that '...the University is not in a position to or has the authority to intervene [on my behalf] in such matters.'? (Copy attached)
 9. Does the Human Rights Act 1989 requirement that any exclusion from education be both 'Reasonable' and 'Proportionate' pertain to a public body offering Adult Education?”
6. The University responded on 4 July 2022, providing information in response to questions one, four and seven. With regards to questions two and three it applied section 21 and stated that questions eight and nine appeared to be speculative questions rather than requests for information. In relation to questions five and six, it stated that it did not hold the information requested.

7. On 2 August 2022, the complainant requested an internal review. The University provided the complainant with its response to the internal review request on 22 August 2022 in which it upheld its response, and in response to question five, the University established that it held the information, and that it was being withheld under sections 38(1)(a), 38(1)(b) and 40(2) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 23 September 2022 to complain about the way their request for information had been handled.
9. The Commissioner has considered the University's handling of the complainant's request, in particular its application of sections 21, 40(2) and whether on the balance of probabilities the University holds any recorded information in relation to question six.
10. Should section 40(2) not apply to the information requested in question five, the Commissioner will go on to consider the application of sections 38(1)(a) and 38(1)(b) to the withheld information.

Reasons for decision

Section 1 (Held/Not Held)

11. 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.

12. In its response to question six the University explained that the Senior Leaders Group is "an autonomous group with no formal affiliation with the University" and that it does not hold any recorded information to enable it to answer the question. The University further explained, to the Commissioner, that whilst it holds information on the reasons for the complainant's exclusion, it does not hold information on why the Senior Leaders Group does not have an appeals process.

13. Looking at questions eight and nine, the Commissioner would agree with the University that question eight would be classed as speculative, rather than a request for recorded information.
14. The Commissioner notes the complainant's comments that labelling items in their request as speculative "might be seen as unnecessarily defensive, suggesting an eagerness to avoid potentially embarrassing matters."
15. Regarding question nine, as it relates to the Human Rights Act, the Commissioner considers this to be a valid request for recorded information.
16. On the balance of probabilities, regarding question six, the Commissioner is satisfied that the University does not hold the information requested. However, in order to fully comply with its obligations under section 1(1) of FOIA, it needs to disclose any information held within the scope of question nine.

Section 21-information accessible to the applicant by other means

17. Section 21(1) of FOIA provides that information is exempt from disclosure under FOIA if the information requested is already reasonably accessible to the requester.
18. In this case, in response to questions two and three, the University stated that the information was reasonably accessible by other means and provided links to where the information could be found.
19. In a telephone conversation, with the Commissioner, the complainant confirmed that the links did provide the information requested.
20. As the information regarding questions two and three is reasonably accessible to the complainant and the University has directed them to where this information can be located, the Commissioner considers that section 21 of FOIA was correctly applied to both questions.

Section 40(2)-personal information

21. Section 40(2) of FOIA provides an exemption for information that is the personal data of an individual other than the requester and where the disclosure of that personal data would be in breach of any of the data protection principles.

22. Section 3(2) of the Data Protection Act 2018 (DPA) defines personal data as:

“any information relating to an identified or identifiable living individual.”

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

24. The Commissioner has seen the withheld information and is satisfied that it is personal data for it relates to the names, email addresses and opinions of individuals who provided evidence for why the requester should be excluded from the group.

25. The University further explained that as these third-party opinions also contained the personal data of the requester, this prompted them to log a subject access request (SAR).

26. In the Commissioner’s guidance¹ it explains that for an opinion to be personal data, it must both identify an individual and relate to them. The Commissioner is therefore satisfied that the request would fall within the definition of ‘personal data’ in section 3(2) of the DPA.

27. The next step is to consider whether disclosure of this personal data would be in breach of any of the data protection principles. The Commissioner has focused here on principle (a) which states:

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

28. 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.

29. When considering whether the disclosure of personal information would be lawful, the Commissioner must consider if there is a legitimate interest in disclosing the information, whether disclosure of the information is necessary, and whether these interests override the rights and freedoms of the individuals whose personal information it is.

¹ <https://ico.org.uk/media/for-organisations/documents/2021/2619040/s40-access-to-information-held-in-complaint-files-final-v-31.pdf>

30. The Commissioner considers that the request is motivated by a private interest, however, he recognises a requester's own interests may be a legitimate interest. In cases where the requester is pursuing a purely private concern unrelated to any broader public interest, this will be taken into account in the balancing test. The Commissioner accepts that disclosure of the requested information is necessary to meet that legitimate interest.
31. The Commissioner notes the complainant's comments that he is already aware of the individuals involved and their contact details. However, in balancing the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms, the Commissioner is mindful that disclosure under FOIA is disclosure 'to the world at large.' So even if the complainant is aware of these details, the individuals involved would not expect confidential information about themselves to be made public.
32. Furthermore, the University has confirmed that it contacted the individuals involved regarding obtaining their consent for the disclosure of their personal data, and no consent was given.
33. 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.
34. The Commissioner finds that section 40(2) of FOIA is engaged in respect of the withheld information in relation to question five.
35. As the Commissioner considers that section 40(2) applies, he has not gone on to consider the other exemption cited.

Right of appeal

36. 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

37. 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.
38. 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

Joanna Marshall
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