

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 February 2023

Public Authority: The Governing Body of Royal Holloway
University of London

Address: Egham Hill
Egham
London TW20 0EX

Decision

1. The Commissioner's decision is that the Royal Holloway University of London is entitled to withhold some of the requested information about its promotion process under section 40(2) of FOIA because it is other people's personal data.

Request and response

2. The complainant made the following information request to the Royal Holloway University of London ('the University') on 27 July 2022:

"... 2) I would like copies of all policies and procedures with regards to the promotion process when staff have a protected characteristic such as disability and what reasonable adjustments were made in those circumstances

3) I would like the training records of all the staff who were sitting on the promotions panel so I can confirm that they had undergone training under the Equality Act and the internal policy and procedures that are noted under 2 above. So I can confirm they were fit and proper persons to make such a decision in my circumstances."
3. Part 1) of the above request was a subject access request that the University handled under the data protection legislation. The University's final position was to withhold some of the information the complainant

has requested that is relevant to parts 2) and 3) under section 40(2) of FOIA.

Reasons for decision

4. This reasoning covers the University's application of section 40(2) to information that falls within scope of the two parts of the complainant's FOIA request.
5. Under section 40(2) of FOIA information is exempt information if it is the personal data of another individual and disclosure would contravene one of the data protection principles.
6. In this case, in part 2) of their request the complainant appears to have requested information on both general procedures and the specific reasonable adjustments the University has made for staff with a protected characteristic who have participated in a promotion process. In part 3), the complainant has requested the training records of staff sitting on the promotion panel on a specific occasion.
7. Regarding part 2), like other universities this university has a closed setting but is smaller than most and has what the University has described as a "close-knit" campus. Within that context, the Commissioner agrees with the University that it would be possible, when pieced together with other information that may already be known or in the public domain, for another member of academic or administrative staff, or even a student, to identify from individuals who have been promoted into certain roles, which individual had a reasonable adjustment and what their reasonable adjustment was, if the requested information was disclosed to the wider world under FOIA. As such, the requested information is those individuals' personal data because they could be identified from it and the information clearly relates to them.
8. Regarding part 3), this request is for the training records of specific panel members on a specific occasion. The Commissioner is satisfied that this information is those panel members' personal data, for the reason given above. With the training records together with information already in the public domain or known, they could be identified from the information – by each other if no one else. And again, the information clearly relates to those panel members.
9. The Commissioner has gone on to consider whether disclosing the requested information – which he has found to be personal data - would contravene a data protection principle.

10. Regarding part 2), information relating to special category personal data is given special status under the UK General Data Protection Regulation (UKGDPR). Article 9 of the UKGDPR defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
11. Having considered the wording of part 2) the Commissioner finds that the requested information does include special category data. He has reached this conclusion on the basis that the requested information is personal data that concerns other people's health.
12. Special category data is particularly sensitive and therefore warrants special protection. As stated above, it can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.
13. The Commissioner considers that the only conditions that could be relevant to a disclosure under FOIA are conditions (a) (explicit consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.
14. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to a FOIA request or that they have deliberately made this data public.
15. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing this special category data would therefore breach principle (a) and so this information is exempt under section 40(2) of FOIA.
16. Regarding part 3), the Commissioner appreciates that, for personal reasons, the complainant has a legitimate interest in this information that would be met through disclosing the information. There is also a wider public interest in ensuring the promotion process is fair and that members of interview panels are appropriately trained.
17. However, the Commissioner considers that the panel members whose personal data has been requested would reasonably expect that their personal data – their training records - would not be disclosed to the world at large under FOIA and that disclosure would therefore cause those individuals harm or distress.

18. The Commissioner considers that the complainant's legitimate interest, and the wider public interest, has been met to an adequate degree through the promotion policies and procedures that the University publishes and to which it directed the complainant.
19. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the panel members' fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information requested in part 3) would be unlawful as it would contravene a data protection principle; that set out under Article 5(1)(a) of the UKGDPR.

Right of appeal

20. 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

21. 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.
22. 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

Cressida Woodall
Senior Case Officer
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Wycliffe House
Water Lane
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Cheshire
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