

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 May 2023

Public Authority: Council of the University of Southampton
Address: University Road
Southampton
SO17 1BJ

Decision (including any steps ordered)

1. The complainant has requested information about a visit from a member of the royal household. The above public authority ("the public authority") provided some information but relied on section 40(2) of FOIA to withhold personal data. The complainant believes further information is held.
2. The Commissioner's decision is that, on the balance of probabilities, the public authority has identified all the information it holds. The Commissioner also considers that section 40(2) of FOIA has been correctly applied.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 15 November 2022, the complainant wrote to the public authority and requested information in the following terms:

"Under FOIA all information relating to the visit on 14th March 2018 by a member of the Royal Household."
5. The public authority responded on 13 December 2022. It provided the information it held, but relied on section 40(2) of FOIA to make redactions.

6. Following an internal review the public authority wrote to the complainant on 17 February 2023. It explained which organisation was corresponding with which in the emails, but maintained that this was the only information that it held.

Scope of the case

7. The complainant contacted the Commissioner on 24 February 2023 to complain about the way his request for information had been handled.
8. The public authority failed to provide its submissions and the withheld information within a reasonable timeframe and the Commissioner was required to issue an information notice compelling a response. The public authority failed to comply with the information notice by the deadline but did subsequently respond.

Reasons for decision

Held/not held

9. Where there is a dispute over the amount of information a public authority holds, the Commissioner is only required to decide whether it is more likely than not that further information is held.
10. The complainant explained, in relation to a separate, similar, visit that, such was the magnitude of the visit (and the visitor – in his opinion) that the public authority would have “recorded the visit in question and/or reported it to colleagues at the University (including the in-house lawyers). The visit would have been recorded in documents (including emails, memos, file notes) and reports “ by the in-house lawyers upwards to the CEO and/or Vice-Chancellor.”¹
11. The complainant’s reasoning for expecting this visit to have generated such a large amount of correspondence was that the visit would have related to ongoing proceedings before the First Tier Tribunal in relation to the Broadlands Archive – and specifically a collection of papers bequeathed by or related to the Earl and Countess Mountbatten of Burma.

¹ <https://ico.org.uk/media/action-weve-taken/decision-notices/2023/4024981/ic-191626-p3x1.pdf>

12. He also noted that one of the emails that had been disclosed refers to two emails that the sender was about to send to the public authority – but only one appeared to have been provided.

13. The public authority explained that:

“Searches were undertaken in both electronic records, such as emails and physical records, such as diary entries etc. Search terms were used to cover the scope of the request such as ‘Royal Household’, ‘14 March 2018’ and/or ‘Visit’. Other key staff were consulted, who searched paper records, with our own Head of Information Governance checking these searches”

The Commissioner’s view

14. Having reviewed the submissions of both parties, the Commissioner is not persuaded that the public authority is likely to hold further information.

15. The information that has already been disclosed to the complainant does not support the implication that the visit in question was of great significance – either to ongoing tribunal proceedings or more generally. Indeed the emails that have been disclosed describe the purpose of the visit as to “assess how much work might be involved.”

16. It is not clear to the Commissioner why the public authority would require droves of in-house lawyers to prepare reports for the vice-chancellor in anticipation of a preliminary visit to scope future work. From his experience of public authorities in general it seems likely that, if it was considered necessary to inform the vice-chancellor at all, this was likely to have happened verbally. Given that the individual who coordinated the visit on the public authority’s behalf had the emails arranging the visit, it is not clear why more extensive records would need to be kept – given the limited nature of the visit.

17. If the visitor’s scoping of the task indicated that a large amount of work was likely to be necessary, it is possible that a future, more involved, visit might have generated the level of correspondence the complainant anticipates – but this request only relates to the visit on 14 March.

18. In relation to the “two emails to follow” point, the Commissioner notes that the email containing this reference anticipated visits to the public authority from both the royal household and the Foreign [Commonwealth and Development] Office. Therefore he considers that, when the author writes “the next two emails you receive from me will be introducing you electronically to the relevant contacts”, they are referring to introducing the public authority, separately, to the royal household contact and to the FCDO contact. Any correspondence

relating to an FCDO visit would have fallen outside the scope of the present request.

19. It is not clear why the author would have needed to send two emails introducing the recipient to the royal household contact and, if they had, they would have been unable to introduce the FCDO contact. Nor would it take two emails if both contacts were being introduced simultaneously. The Commissioner therefore considers that his interpretation of his comment is both reasonable and in line with standard practice. The comment, in context, does not indicate that further information should exist that would fall within the scope of the request.
20. As the Commissioner has noted in his previous decision, given the time that has elapsed since the visit took place, it is possible that some information has been deleted in line with the public authority's retention schedule. However, on the balance of probabilities, he sees no reason to conclude that the public authority holds any additional information within the scope of this request.

Section 40(2) – personal data

21. The public authority has relied on section 40(2) of FOIA to withhold the names of the individuals referred to in the emails – along with their email addresses.
22. Such information clearly identifies the individuals concerned and is thus their personal data.
23. Personal data can only be disclosed under FOIA if there would be a lawful basis under data protection law for publishing it. As none of the individuals appear to have consented, the only lawful basis that would apply would be if publication was necessary to satisfy a legitimate interest.
24. The complainant argued that this was “ridiculous” as the individuals are (or were) “well known.”
25. Disclosure under FOIA is to the world at large, not to the individual requester. Having devoted a considerable amount of time and resources to the Broadlands Archive, the complainant is likely to be familiar with the names of many of the people involved – however, the Commissioner does not consider that the individuals concerned are particularly senior or that they are “well known” to the public at large.
26. Given that, following the internal review, the public authority subsequently confirmed which organisation was corresponding with which in the various emails, the Commissioner does not consider there

is any legitimate interest in disclosing the names to the world at large. The very limited public interest in this visit has already been met by disclosing the contents of the correspondence. Including the names would not aid understanding of the correspondence and therefore there is no legitimate in disclosing the names or contact details.

27. As there is no lawful basis on which the personal data could be processed, disclosure would be unlawful and therefore the public authority was entitled to rely on section 40(2) of FOIA to withhold the information.

Right of appeal

28. 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

29. 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.
30. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
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SK9 5AF