



**First-tier Tribunal
(General Regulatory Chamber)
Information Rights**

Appeal Reference: EA/2017/0139

UNIVERSITY OF SUSSEX

Appellant

and

INFORMATION COMMISSIONER

Respondent

and

MR GABRIEL WEBBER

Second Respondent

DECISION BY CONSENT ORDER

1. By consent, it is ordered:
 - a. The appeal against the Information Commissioner's Office decision notice FS50664373 dated 6 June 2017 is allowed to the extent and for the reasons set out in Annex A.
 - b. The Commissioner's decision notice FS50664373 dated 6 June 2017 is substituted to remove reference to the disclosure of the list of films.
 - c. No further steps are required.

This decision was made by the Tribunal's Registrar. A party is entitled to apply in writing within 14 days of the date this document is sent to them for this decision to be considered afresh by a Judge.

Signed: Mrs R Worth

Tribunal Registrar

Date: 24 October 2017

ANNEX A

Statement of Reasons for Consent Order

1. On 13th December 2016 Mr Gabriel Webber requested the following information from the University of Sussex relating to the University's trial of a video streaming service called Kanopy:
 - (1) *When the trial started*
 - (2) *When the trial ends/ed*
 - (3) *What the trial's conclusions were*
 - (4) *How much the trial cost (broken down by film if possible)*
 - (5) *How many films were watched during the trial*
 - (6) *Which films were watched during the trial*
 - (7) *Which films were available over the Kanopy platform*

2. The University responded to parts (1) – (3) of the request on 12th January 2016. The University confirmed that the trial began on 10th February 2016 and ended on 10th March 2016, and that it had concluded that the collection was one which the University wished to subscribe to. However whilst the University confirmed that it held the information requested in parts (4) – (7), the information was withheld under s.43 FOIA.

3. The Commissioner concluded that the University had correctly applied s.43(2) FOIA in respect of parts (4) – (6) of the request. In relation to part (7) the Commissioner noted that the University had stated it was unable to provide the list of films available during the trial, and concluded that this information was not held. However she did not consider s.43(2) FOIA to be engaged in respect of the list of films which the University had provided to her during her investigation, and determined that the University ought to disclose that list.

4. The University appealed the Commissioner's Decision Notice on 7th July 2017. By its Notice of Appeal, the University challenged the Commissioner's

requirement that it disclose the list of films provided to her during her investigation. The University submitted that the list was not the list of films available during the trial period, and that it was unable to provide a list of the films which were available at the time of the trial.

5. During the course of the appeal the University provided further assurances that it did not hold a copy of the list of films available during the trial, and could not retrospectively access any such list. The University explained that:

"The University did not hold and does not hold the list of titles that were available during the trial period, neither does it hold information which would allow it to retrospectively collate the list of titles which were available during the trial period. The University is not able to access or collate a list of titles which were available at any given date".

"The University did not require and had no reason to obtain a copy of the complete list of titles available during the trial period...the suitability of Kanopy was assessed by using the search function within the webpages to view the content, variety and likely teaching resources with reference to the courses delivered by the University... The full catalogue was not necessary to do that."

"Kanopy have confirmed that they have not provided a complete title list to the University."

6. Having considered the University's submissions the Commissioner and Mr Webber accept that the University does not hold the list of films available during the trial, and that the list of films ordered for disclosure in the Decision Notice is outside the scope of the request.