

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 30 July 2007

Public Authority: University of Cambridge ("the public authority")
Address: The Old Schools
Trinity Lane
Cambridge
CB2 1TT

Summary

The complainant requested information concerning successful applicants to the public authority, broken down by school or college, gender and course. The public authority provided the majority of the information requested, but withheld information showing less than 5 successful applicants to the same course of the same gender and from the same school or college under section 40(2). The Commissioner finds that the information withheld is personal data, but also finds that disclosure of this material would not breach any of the data protection principles. The public authority is required to disclose the information withheld. The Commissioner also finds that the refusal notice did not fulfil the procedural requirements of section 17, but that this breach does not necessitate remedial action.

The Commissioner's Role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

The Request

2. On 13 September 2005, the complainant made the following information request:

"I should be most grateful if you could supply me with the following data for each UK school for which it is recorded that a candidate taking up entry to an undergraduate course at Cambridge University in any of the years 2003, 2004 and 2005 sat his or her qualifying examinations (being A level or any other such examination recognised by Cambridge):

For a school where no candidates took up a place for admission in those years, no data whatsoever;

For a school where fewer than five candidates took up a place for admission in those years, a statement that that was the case and sufficient information to uniquely identify the school (The LEA/ESTAB number used by the DfES, or its equivalent in Scotland, Northern Ireland, the Isle of Man and the Channel Islands would suit very well);

For a school where five or more candidates accepted a place for admission in those years, the numbers of candidates of each gender accepted onto each course (identified by name), and sufficient information to uniquely identify the school ditto.”

3. The public authority responded to this on 11 October 2005. This response included all the information requested in the first two questions of the complainant's information request. This included details of the schools and colleges with fewer than 5 students accepted and details of those with more than 5 students accepted.
4. The third part of the information request was for information broken down by course and gender for those schools that had a total of 5 or more successful applicants in a particular year. Information showing that 5 or more students from a particular school or college and of a particular gender had been admitted onto the same course was disclosed.
5. Information showing that fewer than 5 students of the same school and gender had been admitted onto the same course was withheld. The public authority believed that this information was personal data and its disclosure would breach the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (the "DPA").
6. This response did not specify an exemption from the Act. Neither did this response advise the complainant that he should request an internal review if he was dissatisfied with the handling of his information request or advise the complainant of his right to complain to the Commissioner.
7. The complainant responded to the public authority on 12 October 2005. In this response the complainant specified that he would prefer the format of the information provided to show the 3 years merged. In this reply, the complainant also stated that *"he was happy with the data protection decisions"*.
8. The public authority responded on 9 November 2005. In this response, the public authority stated that it considered the complainant's request for the information requested to be provided with the information for the 3 years merged to be vexatious. This request was refused under section 14(1).
9. The complainant contacted the public authority again on 10 November 2005. The complainant stated that he did not agree with the public authority's assertion that his request was vexatious and asked it to reconsider its decision in this regard.

10. The public authority responded to the complainant on 23 November 2005. In this response the public authority upheld its previous decision to refuse the complainant's request for merged data as vexatious.

The Investigation

Scope of the case

11. The scope of this case has evolved throughout the case handling process. The complainant raised his complaint with the Commissioner on the basis of the refusal of his 12 October 2005 request for merged data. In the correspondence in which that request was made, the complainant had stated that he was satisfied with the decision to withhold information on data protection grounds.
12. Whilst the complainant had cited the refusal of the public authority to provide merged data as the main ground for his complaint, this was because the complainant believed that this was the route via which he would receive the most comprehensive data from the public authority. Early in the case handling process, the Commissioner had noted that the complainant would receive a greater volume of information if the data withheld under section 40(2) was disclosed than would be released if the information was provided with the 3 years merged.
13. This issue was settled when the Commissioner contacted the complainant by e mail dated 19 April 2007. In this e mail, the complainant was asked to confirm if he wished the Commissioner to consider the refusal of his request of 12 October 2005 for merged information, or whether he wished the Commissioner to focus on the withholding of information under section 40(2) in response to his request of 13 September 2005.
14. The complainant responded to this on 19 April 2007. In this response, the complainant indicated that the ground for his complaint was the "*refusal to provide full information*". In response to this, the Commissioner has proceeded on the basis most likely to result in the disclosure of the most comprehensive information to the complainant. Having taken a preliminary view that the refusal under section 40(2) would not be upheld, his approach was to focus on the complainant's request of 13 September 2005.
15. The issue of the complainant's request of 12 October 2005 being refused as vexatious is not considered further in this notice. This is because the focus of this notice is the withholding of information under section 40(2) from the response to the request of 13 September 2005. The Commissioner has formed no conclusion as to whether the request of 12 October 2005 was correctly refused as vexatious.
16. It is important to acknowledge that the complainant did not specifically request information broken down by course and gender where a school had fewer than 5 successful applicants. The Commissioner understands that this was because the complainant accepted the public authority's position that releasing data about fewer than 5 individuals would breach the DPA. Therefore, he deliberately

avoided asking for such detailed information so that the public authority would not cite section 40(2) in response and would instead at least confirm which schools had been successful in getting fewer than 5 individuals accepted.

17. However, the public authority effectively applied section 40(2) in response to the third question in the complainant's request. The complainant requested that, where schools had been successful in getting 5 or more applicants accepted, that information be broken down by gender and course. The effect of asking for a more detailed breakdown is that some of the information within the scope of the request would reveal data relating to fewer than 5 students which the public authority considered would breach the DPA.
18. For example, if a total of 20 successful applicants came from a particular school, the public authority would disclose that fact. It would also be prepared to release information showing that 6 boys from that same school were accepted to study Philosophy. However, if the breakdown showed that 4, or fewer, girls from the same school were accepted to study History, the public authority would withhold this information under section 40(2).

Chronology

19. The Commissioner contacted the public authority initially on 22 January 2007. In this correspondence, the public authority was informed of the complaint and was advised of the grounds for this. The public authority was also informed that this case would focus on the withholding of information on data protection grounds and was asked to respond, providing a copy of the information withheld from the complainant.
20. The public authority responded to this on 25 January 2007. In this response, the public authority raised concerns that, due to the length of time since the events that gave rise to the complaint, its ability to properly investigate this matter may have been prejudiced. The public authority also noted that it did not appear that the complainant had gone through internal review.
21. The Commissioner responded to this on 31 January 2007. In this response, the Commissioner noted that, in the refusal notice of 11 October 2005, the complainant was not advised that he should request an internal review if he was dissatisfied with the handling of the request. The Commissioner also noted that the complainant had been in further correspondence with the public authority following the refusal notice of 11 October 2005 and that it appeared that the public authority had the opportunity to reconsider its response to the complainant's request. The public authority was advised that the complainant would not be required to go through internal review at this stage.
22. The Commissioner also commented on the delay in contacting the public authority, recognising that this delay may cause difficulties in immediately recalling the circumstances surrounding an information request. The Commissioner offered to send the public authority copies of all the relevant correspondence exchanged between the public authority and the complainant that had been supplied to him when the complaint was submitted.

23. The public authority responded on 5 February 2007. With this response, the public authority provided a copy of the information withheld from the complainant.
24. The Commissioner contacted the public authority further on 20 March 2007. The public authority was advised that the Commissioner had come to a preliminary view that the exemption provided by section 40(2) would be unlikely to apply to the information withheld here. The public authority was advised that, whilst the information withheld could be considered personal data, it was not considered that disclosure would breach the data protection principles.
25. It was suggested to the public authority that, given the preliminary conclusions formed; in the interests of resolving this matter informally it may wish to disclose the withheld information to the complainant. The public authority was asked to respond, confirming whether it did now intend to disclose the withheld information to the complainant. If the public authority maintained that the exemption provided by section 40(2) applied here, it was asked to give its reasoning for this.
26. The public authority responded on 18 April 2007. In its response, the public authority confirmed that it maintained that the information withheld was exempt by virtue of section 40(2) and that it did not intend to disclose this to the complainant. The public authority went on to give its reasons for this.
27. Firstly, the public authority stated that when the data subjects were advised of the purposes for which their personal data would be processed, they were given no notification that this could include disclosure in response to requests made under the Act. The public authority considered that disclosure would breach the first data protection principle as the DPA requires, in order that personal data is considered to have been processed fairly, that the data controller inform the data subject of the purposes for which their personal data are intended to be processed (Schedule 1 Part II para.2 DPA.)
28. The public authority went on to state that data subjects are informed that their personal data will be processed only for the following purposes:
 - the public authority may keep a copy of their application and use the information to collect statistics or monitor equal opportunities (or both);
 - the public authority may use or disclose information on the application for research purposes, but no information which could identify them as an individual will be published; and
 - the information provided will normally be treated as confidential between the student, their referee, the public authority, UCAS, their school/college, their parents (where appropriate), the examination board, the student support assessment agency, the Student Loans Company and, in the case of international applicants, the British Council.
29. The public authority cited the example of the National Student Survey. The public authority advised that a privacy statement given to those providing personal data

to this survey advised that the information would be used solely for the purposes of the survey. The public authority felt that, if the line taken by the Commissioner in this case was applied to a case where a request had been made for personal data held by the National Student Survey, this would lead to the contact details of individuals being disclosed.

Findings of fact

30. Recorded information falling within the scope of each part of the complainant's information request is held by the public authority.
31. All the information requested by the complainant in the first 2 parts of his information request has been disclosed.
32. In response to the third part of the complainant's request, information showing that there were 5 or more successful applicants of a particular gender and school to a particular course has been disclosed to the complainant.
33. The public authority considers information showing that there were fewer than 5 successful applicants from a particular school to a particular course, broken down further by gender, is personal data. This has been withheld from the response to the third part of the complainant's information request.

Analysis

Procedural matters

Section 17

34. In failing to specify which exemption from Part II of the Act was considered to apply to the information withheld, the public authority failed to comply with the requirement of section 17(1)(b).
35. In failing to provide particulars of its review procedure, or confirming that it had no such procedure, and in failing to advise the complainant of his right to complain to the Information Commissioner, the public authority failed to comply with the requirements of section 17(7).

Exemption

Section 40(2)

36. In order to determine whether this exemption is engaged, it is necessary firstly to consider whether the information withheld constitutes personal data. The information withheld shows the number of successful applicants to the same course from the same school or college and gender where this number is less than 5. It is not possible to identify any individual from this information in isolation.

37. However, the Commissioner considers that information may constitute personal data where it is possible to identify individuals if there is previous knowledge, or access to knowledge that, combined with the information in consideration, would enable identification of individuals. The Commissioner considered firstly the likelihood of members of the public having existing knowledge of the individuals to whom the information withheld relates (the “data subjects”).
38. Where a successful applicant to the public authority has originated from a small community, there is a high likelihood that many people within this community would be aware of an individual that had applied successfully to the public authority. If the definition of small community was to be expanded to include a school or college as well as a village or small town, it could be said that all the individuals to whom the withheld information relates originated from a small community. The Commissioner is satisfied on this point that, in many cases, there would be a high likelihood of third parties having existing knowledge of the data subjects.
39. Subsequent consideration has been given to whether this existing knowledge could enable identification of the data subjects. If, for example, an individual from a small community had existing knowledge of 1 female from that community who had applied successfully to the public authority, it would be possible for them to identify from the withheld information what course that individual was studying. If the individual from the small community did not have existing knowledge of the course the successful applicant was studying, this would be a disclosure of personal data about the successful applicant. In relation to this point, the Commissioner is satisfied that this existing knowledge could result in disclosure of personal data.
40. The information withheld shows the numbers accepted onto a particular course, broken down by gender and school, up to a maximum of 4 students accepted. It is necessary, therefore, to consider whether information showing 4 students of a particular gender and accepted onto a particular course could be considered personal data. If the decision here was that information relating to 4 students is not personal data, it would be necessary to consider what the maximum number of individuals to whom the information relates is in order for this to be considered personal data.
41. On this point, the Commissioner considers that the ‘small community’ argument can be extended to cover information relating to 4 students. It is reasonable to conclude that, where an individual has existing knowledge about one or more of the data subjects, information showing that there were 4 successful applicants onto a particular course from a particular school and gender could constitute a disclosure of personal data.
42. Having established that the information withheld is personal data and that the exemption is engaged, the Commissioner considered whether the disclosure of this personal data would be in breach of the data protection principles. The Commissioner firstly considered the second data protection principle. On this point the Commissioner does not believe that disclosing the requested

- information would breach the second data protection principle. The public authority argues that releasing data in response to a request under the Act is not compatible with the purposes for which the information was originally obtained. The second data protection principle states that personal data shall be obtained “only for one or more specified and lawful purposes, and shall not be further processed in any manner incompatible with that purpose or those purposes”.
43. As mentioned in paragraph 25 above, the public authority provides students with a notice which sets out the purposes for which their personal data are obtained and processed. The Commissioner notes that one of the purposes includes the collation of statistics. He does not consider the publication of statistics or the disclosure of such material in response to a request under the Act to be incompatible with this purpose. Further, he notes the comments of the Information Tribunal in the case of *The Corporate Officer of the House of Commons v the Information Commissioner* (EA/2006/0015 and 0016) in relation to the second data protection principle. In paragraph 98 of the judgment, the Tribunal noted that “most data controllers comply in part with this data protection principle by notifying the Commissioner of the purposes for processing personal data under broad heads”. The Commissioner has reviewed the public authority’s notification under registration Z6641083 and notes that it does contain broad headings under which personal data will be processed which includes the collation of statistics.
44. Further to the above, the Commissioner does not consider the disclosure of personal data in response to a request made under the Act to be a specific purpose for which such information is processed. In responding to a request made under the Act the public authority is not fulfilling one of its business purposes; it is simply complying with a legal obligation. It would be difficult to argue that, as a rule, compliance with a legal obligation, such as that imposed by the Act, would be incompatible with the other purposes for which personal data may be processed. Therefore the Commissioner rejects the argument that a disclosure in response to a request made under the Act would, in itself, breach the second data protection principle.
45. Notwithstanding the comments above, the Commissioner considers that the primary issue here is whether the disclosure of personal data would, in all the circumstances, be fair. Therefore, the Commissioner’s considerations have focussed on the first data protection principle, which states that personal data shall be processed fairly and lawfully.
46. In order for processing of personal data to be compliant with the first data protection principle, it must fulfil at least one of the conditions for processing set out in Schedule 2 of the DPA. Schedule 2 para.6(1) of the DPA provides that processing of personal data is compliant with the first principle if it is carried out in the legitimate interests of a third party to whom the data is disclosed if this would not prejudice the rights, freedoms or legitimate interests of the data subject. The Commissioner considers that exercising the right to know provided by the Act is in the legitimate interests of the complainant and that the relevant rights, freedoms and legitimate interests of the data subjects in this case would not outweigh the right to know provided by the Act.
47. The Commissioner went on to consider whether the disclosure of information

would be fair. In order to test whether disclosure is fair, one factor to consider is whether there would be an expectation of disclosure on the part of the data subject. As noted above at paragraph 25, students at the public authority are informed of to whom and in what circumstances their personal data will be disclosed. This list is limited and does not include disclosure for the purposes of the Act. It is clear that, on the basis of this notification, the expectation of the data subjects would be only that their personal data would be disclosed in the circumstances advised by the public authority. However, further to the point made above at paragraph 41, the Commissioner does not believe that a specific notification to data subjects that their personal data may be disclosed under the Act is necessary.

48. Despite the expectation of privacy that the notification provided by the public authority may engender, the Commissioner notes that there is often publicity surrounding successful applicants to the public authority. This may be through the school or college which the data subject attended or, for example, through a local newspaper.
49. The Commissioner also notes that there are many circumstances where an individual would disclose details of a course studied at a university. This would include when applying for employment, or where a biography of senior employees appears on an employer's website. Whilst it could be argued that these examples would apply mainly where an individual has graduated from the university and is no longer studying the course, this point contributes to the overall argument about the level of privacy that would be expected in relation to information about the course an individual is studying at university.
50. In this case, the information withheld relates to the data subjects in their capacity as a student at the public authority, rather than in any more personal capacity. Consideration of the nature of the information in question shows that this does not contain details of a personal nature that would clearly have a high expectation of privacy attached.
51. It is also necessary to consider the impact of disclosure on the data subjects, whether negative or otherwise. In this case, the Commissioner does not consider, in the majority of cases, that information about the course studied would be considered sensitive. Neither would the Commissioner expect that the data subjects would have strong concerns about disclosure of the course they are studying on the grounds of any possible detriment that this may cause to them.
52. The Commissioner recognises that there may be some limited circumstances in which the data subjects may consider information about the subject they study to be sensitive. However, it is clear that this could not be said to be the case in a great majority of cases.
53. The potential sensitivity of information relating to certain courses has not been cited by the public authority as an argument in favour of the stance that disclosure of the personal data withheld would be unfair. If the public authority had made this argument and the Commissioner had considered it to have merit it is likely only to have applied to a very small portion of the information. In any event, nothing in

the information supplied to the Commissioner by the public authority leads him to conclude that any harm is likely to arise as a result of the withheld information being disclosed.

54. In response to the example given by the public authority of the National Student Survey, the Commissioner notes that his office has received no cases involving requests for information held for the purposes of the National Student Survey and that no conclusion has been reached concerning whether personal data held for this purpose would be exempted by section 40(2). It is also important to point out that there is no question of the contact details of any individual being disclosed in this case. The Commissioner considers it appropriate to highlight that both he and public authorities must consider complaints and requests on the basis of the particular circumstances of each case and with reference to the specific information sought by the applicant.

Conclusion

55. In the Commissioner's view, disclosing the personal data requested would not breach the second data protection principle. He is satisfied that releasing the statistical data is not incompatible with the purposes listed in the notice given to data subjects to explain how their information will be used. The Commissioner also does not believe that compliance with the second data protection principle requires a specific notification that personal data may be disclosed in response to a request made under the Act.
56. The Commissioner does not consider that disclosure of the personal data withheld by the public authority would breach the first data protection principle. In coming to this conclusion, the Commissioner is firstly satisfied that the condition for processing provided by Schedule 2(6)(1) of the DPA is fulfilled.
57. Secondly, the Commissioner has considered the expectation of privacy that the data subjects may hold. Information disclosing that an individual is studying at the public authority is widely available, particularly to members of a student's 'small community'. This existing knowledge, combined with the information withheld, could result in the disclosure of the details of the course studied by a data subject.
58. The public authority has advised the data subjects of the specific purposes for which their personal data will be processed, including the circumstances in which they may be disclosed. As this notification does not specify disclosure in accordance with the Act, the data subjects would not have a specific expectation of disclosure in this circumstance.
59. However, the Commissioner does not believe that a strong expectation of privacy could be attached to this information. Neither does the Commissioner believe that compliance with the first data protection principle requires a specific notification that personal data may be disclosed in response to a request made under the Act. On this point, the Commissioner concludes that it would not be unfair to disclose information that could potentially result in the disclosure of details of

course studied.

60. Thirdly, the Commissioner has considered whether there could be a detriment caused to any of the data subjects through disclosure. There is no evidence available to the Commissioner that would suggest that disclosure of this information would result in detriment to the data subjects. Neither has any argument on this point, convincing or otherwise, been made to the Commissioner. The Commissioner concludes that no unfairness would result from detriment caused to any individual through disclosure of the information in question.

The Decision

61. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act in that it applied section 40(2) incorrectly. The Commissioner also finds that the public authority did not deal with the request in accordance with the Act in that the refusal notice failed to comply with the requirements of section 17(1)(b) and section 17(7).

Steps Required

62. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:

Disclose to the complainant the information withheld as exempt under section 40(2).

63. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Failure to comply

64. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Right of Appeal

65. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX

Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

66. Any Notice of Appeal should be served on the Tribunal within 28 calendar days of the date on which this Decision Notice is served.

Dated the 30th day of July 2007

Signed

**Graham Smith
Deputy Commissioner**

**Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**