

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 30 January 2012

Public Authority: Liverpool John Moores University

Address: Egerton Court
2 Rodney Street
Liverpool
L3 5UX

Decision (including any steps ordered)

1. The complainant has requested information that led to Liverpool John Moores University ("LJM University") awarding an Honorary Fellowship to a named individual. LJM University provided some information but withheld the identity of the nominator under the personal information of third parties exemption (FOIA section 40(2)).
2. The Commissioner's decision is that LJM University has correctly relied upon the exemption to withhold the outstanding information. He has also decided that no further relevant information is held by LJM University.
3. Therefore the Commissioner does not require LJM University to take any steps.

Request and response

4. On 18 September 2010, the complainant wrote to LJM University and requested information in the following terms:

"All the facts, recommendations, reports, and considerations that led to the University awarding a Fellowship to [a named individual] and to the drafting of the orator's remarks."

5. LJM University responded on 12 November 2010 and advised the complainant how to make an FOI request. Following a second letter from the complainant LJM University responded on 16 December 2010 and

stated that some of the requested information was exempt from disclosure under the personal information of third parties exemption. Specifically it withheld the name of the individual who nominated the named individual for the Honorary Fellowship, together with a section of the nomination letter.

6. The complainant wrote to LJM University on 27 December 2010 and expressed dissatisfaction with its response to his request.
7. Following an internal review LJM University wrote to the complainant on 19 January 2011. It stated that the withheld information was exempt from disclosure under the personal information of third parties exemption.

Scope of the case

8. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
9. The Commissioner considers the scope of this case has been to consider the use of the personal information of third parties exemption to withhold the name of the nominator, together with a section of the nomination letter. He has also considered whether any further information is held by LJM University that falls under the request.

Reasons for decision

Third party information exemption

10. Section 40(2) provides an exemption for information which is the personal data of an individual other than the applicant, and where one of the conditions listed in sections 40(3) or 40(4) is satisfied.
11. In this case the relevant condition is contained in section 40(3)(a)(i), which applies where the disclosure of the information to any member of the public would contravene any of the data protection principles. This is an absolute exemption, and is therefore not subject to a public interest test.
12. In this case LJM University has sought to rely upon this exemption to withhold the identity of the individual who nominated the named individual for an Honorary Fellowship. It has also withheld a small amount of personal information about the nominee (this is the information that was redacted from the nomination letter). It has withheld both these pieces of information on the grounds that the

disclosure of this information under the Act would be unfair and therefore in breach of the first principle of the Data Protection Act 1998 (the "DPA").

13. In order to establish whether this exemption has been correctly applied the Commissioner has first considered whether the withheld information is the personal data of a third party.
14. Section 1 of the DPA defines personal data as data which relate to a living individual, who can be identified:
 - a. from that data, or
 - b. from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.
15. In this case the information in question is the name of the nominator who recommended the named individual for an Honorary Fellowship, and also information of a personal nature about the nominee. Therefore the Commissioner is satisfied that the withheld information is the personal data of third parties.
16. The Commissioner has gone on to consider whether the disclosure of this information would be in breach of the first principle of the DPA.
17. The first principle requires that personal data is:
 - a. processed fairly and lawfully, and
 - b. that one of the conditions in schedule 2 is met.
18. The Commissioner has first considered whether the disclosure of the withheld information would be fair.
19. In considering whether disclosure of this information would be fair the Commissioner has taken the following factors into account:
 - a. whether disclosure would cause any unnecessary or unjustified damage or distress to the individual concerned;
 - b. the individual's reasonable expectations of what would happen to their information; and
 - c. are the legitimate interests of the public sufficient to justify any negative impact to the rights and freedoms of the data subject.
20. In this instance, LJM University has argued that the nomination procedure for an Honorary Fellowship is a confidential process. Once a nomination has been made the nominator's name is then taken out of

the process and even the nominee is not aware of who may have recommended them for the Honorary Fellowship.

21. LJM University has also stated given the tone and content of correspondence from the complainant it was concerned that in releasing the nominator's identity this could result in the complainant contacting the nominator directly to discuss this nomination. Bearing this in mind the Commissioner is satisfied that disclosure could cause unnecessary or unjustified distress to the individual concerned.
22. Although LJM University has provided no arguments as to the reasonable expectations of the individual, the Commissioner notes that the nomination process is confidential and that even the nominees are not informed of the identity of the nominators. Therefore the Commissioner does not consider that this individual would have any reasonable expectation that their name would have been put into the public domain (via disclosure under the FOIA) and that the disclosure of this information would be an invasion of the individual's privacy.
23. Notwithstanding the confidentiality of the nomination process, the third party's reasonable expectations or the distress that may be caused by the disclosure it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in disclosure.
24. The Commissioner considers that there is a public interest in openness and understanding the nomination process for Honorary Fellowships. He considers that there is a public interest in releasing the identity of the nominator to ensure fairness and to challenge any nomination made.
25. However, this has to be balanced against any negative impact to the rights and freedoms of the data subject. Taking into account the confidentiality of the Honorary Fellowship process, the distress that may be caused by the disclosure and the reasonable expectations of the nominator the Commissioner finds the arguments in favour of withholding this information particularly weighty. Furthermore the Commissioner considers that the legitimate interest in the disclosure of this information has been somewhat met by LJM University's decision to release nearly all of the nominator's letter apart from their identity. This would allow the complainant to challenge the reasons for nomination if necessary.
26. Taking all the factors into account the Commissioner considers that the disclosure of this information would be unfair and therefore in breach of the first data protection principle. As such, he considers that this information should be withheld under the personal information of third parties exemption.

27. The Commissioner considers that the personal information about the nominee, which was also withheld by LJM University, is of a personal nature. Given the information provided by LJM University, as outlined in paragraph 21, the Commissioner is satisfied that the disclosure could cause unnecessary or unjustified distress to the individual.
28. Although LJM University has provided no arguments as to the reasonable expectations of the nominee in relation to this information, the Commissioner notes that given the confidentiality of the Honorary Fellowship process there would be no expectation from the individual that this information would be provided. Therefore the Commissioner considers that the disclosure of this information would be an invasion of the nominee's privacy.
29. As regards to the legitimate interests, in relation to this request, this is outlined in paragraph 24 above. However, whilst he is unable to detail the contents of this information, the Commissioner does not consider that it has much relevance to 'the consideration of these legitimate interests.
30. Taking all these factors into account, he considers that the disclosure of this information would be unfair. Therefore this information is also exempt from disclosure under this exemption.

Is any further information held?

31. The standard of proof to apply in determining whether a public authority holds any further information is the civil standard of the balance of probabilities.¹ In deciding where the balance lies, the Commissioner will consider the scope, quality, thoroughness and results of the searches carried out by the public authority as well as considering, where appropriate, any other reasons offered by the public authority to explain why the information is not held. The Commissioner will also consider any evidence that further information is held.
32. The Commissioner has first considered the quality of the searches carried out by LJM University. During the investigation he asked LJM University to detail the searches that it had carried out in order to establish what information it held that fell under the scope of the request.

¹ *Bromley et al v Information Commissioner & Environment Agency* [EA/2006/0072], para's 10 to 13.

33. During the investigation LMJ University provided details of the searches it had carried out. It informed the Commissioner that all nominations for Honorary Fellowships are submitted directly to the Office of the Vice-Chancellor. It also stated that all information in relation to the nomination of Honorary Fellows is contained confidentially within the Vice-Chancellor's Office. Therefore a search to retrieve any information was made within the Vice-Chancellor's Office.
34. Bearing these responses in mind, and in the absence of any evidence that further relevant information is held, the Commissioner is satisfied that it does not hold any further information that would fall under the scope of the request.

Right of appeal

35. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

36. 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.
37. 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

Pamela Clements
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