

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 January 2012

Public Authority: The Governing Body of Liverpool John Moores University

Address: Kingsway House
Hatton Garden
Liverpool
L3 2AJ

Decision (including any steps ordered)

1. The complainant has requested copies of correspondence sent by a former lecturer at Liverpool John Moores University (the "University"), which used the University's heading or email signature and contained the term "Global Warming Policy Foundation" or was clearly about the Global Warming Policy Foundation (GWPF).
2. The Commissioner's decision is that the University does not hold any information covered by the scope of the request. The Commissioner does not therefore require the University to take any steps in response to this notice.

Request and response

3. On 30 August 2010 the complainant wrote to the University and requested information in the following terms:

"I would like a copy of any emails or letters sent by [a former lecturer] using a Liverpool John Moore's letter heading or email signature which has a subject heading or contains in the main body the term "Global Warming Policy Foundation" or is clearly about the Global Warming Policy Foundation."

4. The University responded to the request on 9 September 2010. It stated that the individual in question was no longer employed by the University and his IT network account had been closed. The University confirmed that it did hold 'back-up' tapes of its network but only for a period of

four weeks – the former lecturer had, it noted, left his employment more than four weeks prior to the receipt of the request.

5. The University also clarified that the University did not have, nor has it ever had, an association with the GWPF. Therefore, any work that the former lecturer undertook on behalf of the GWPF was entirely separate from his role with the University.
6. Following an internal review the University wrote to the complainant on 2 February 2011. It claimed that any information that may have been retained on the University systems was not held for the purposes of section 3(2) of FOIA. The University reiterated that this was because the former lecturer's involvement with GWPF was entirely unrelated to his duties with the University.
7. To support this view, the University quoted the Commissioner's guidance in which he advised that "non-official information in possession of public authorities...would not be caught by FOI, provided that the information is not created by a member of staff in the course of their duties."¹ At the request of the complainant, though, the University did point out where its policy entitled "File management and Backup Recovery"² could be viewed.

Scope of the case

8. The complainant has contacted the Commissioner to complain about the way his request for information had been handled. In particular, with regards to the emails sent by the former lecturer, he asked the Commissioner to consider whether information germane to his request could be retrieved or, if not, whether the information had been appropriately deleted by the University.
9. Following the referral of the complaint to the Information Commissioner, the University continued to correspond with the complainant in response to enquiries made that arose out of the original request. On 3 March 2011 it informed the complainant of the following –

¹http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_12_INFO_CAUGHT_BY_FOI_ACT.ashx

² <http://www.livjm.ac.uk/pln/policies/99745.htm>

"Having investigated this matter I am able to inform you that email networks accounts are closed at midnight on the day the member of staff leaves employment. This is an automated process which is triggered by entering the leave date into the Human Resources System. Computing staff subsequently check reports on the system to highlight leavers' accounts before manually deleting them. I am also able to tell you that due to a resource / workload issue [the former lecturer]'s emails are still in the system awaiting deletion. However, this does not alter the response you have received in relation to the information you have requested."

10. The contents of this email account have therefore been instrumental in shaping the Commissioner's decision.

Reasons for decision

11. The Commissioner's investigation has hinged on determining whether the University holds information of the type described by the request.
12. Section 1(1) of FOIA provides a general right of access to information held by public authorities. It states that any person making a request for information to a public authority is entitled (a) to be informed whether the authority holds information of the nature described; and if so (b) to have that information communicated to them.
13. Recalling the comments of the Information Tribunal in *Bromley*³, there can rarely be absolute certainty that requested information does not remain undiscovered somewhere within an authority's records. Therefore, where there is any dispute about the amount of information located by a public authority, the standard of proof that the Commissioner will apply is the civil standard of the balance of probabilities.
14. In deciding where the balance lies, the Commissioner will consider the scope and quality of searches carried out by a public authority, as well as taking into account any other reasons offered by the public authority to explain why the information is not held.
15. The former lecturer was on the staff at the University until mid-way through 2010. As stated at paragraph 9, the University has confirmed that the former lecturer still has a computing account registered on its system. Although the login function associated with the account has

³ <http://www.informationtribunal.gov.uk/DBFiles/Decision/i64/Bromley.pdf>

been disabled, it is still possible to send emails to it which are stored in the "inbox" or "junk" folder.

16. The University has analysed the email account and found that a significant number of messages had been deleted by the former lecturer on or before 31 July 2010. Regarding the remaining emails stored on the account, the University has carried out a search using the term "global warming".
17. The University has found that the search only returned messages in the "inbox" and "draft" folders. The Commissioner observes that the request only asks for copies of emails **sent** by the former lecturer and so he does not consider this information to be subject to the request.
18. In any case, the University has explained that a number of the returned emails received on the "inbox" post-dated the departure of the former lecturer from the University and so he would not be aware of them; the oldest email on the folder only dating from 31 July 2010. In respect of the emails contained in the "draft" folder, the University has confirmed that there is no proof that the emails had actually been sent.
19. On the basis of the findings of the search carried out by the University, the Commissioner considers there are strong grounds for concluding that it does not hold any pertinent information. However, for the avoidance of doubt, the Commissioner has asked for and received copies of the emails stored in the "sent" folder of the former lecturer's account. From his inspection of the information, the Commissioner is satisfied that none of the information is covered by the terms of the request.
20. The Commissioner accepts that the University's reference to the question of whether information relating to GWPF was held for the purposes of FOIA may have been misleading. Instead, the Commissioner has decided on the balance of probabilities that the University does not hold the requested information and, as such, the question relating to the status of the information under FOIA need not be asked in this case.

Other matters

21. Although they do not form part of this decision notice the Commissioner wishes to draw attention to his concern regarding the time taken for the University to complete its internal review.
22. The Commissioner notes that FOIA itself does not stipulate a time limit for completion of an internal review, although the section 45 Code of Practice associated with FOIA states they should be dealt with in a reasonable timeframe. The Commissioner's own view is that a reasonable time for completing an internal review is 20 working days from the date of the request for review. It is evident in this case that the University failed to subscribe to the recommended timeframe.

Right of appeal

23. 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

24. 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.
25. 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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Information Commissioner's Office
Wycliffe House
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