

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 23 January 2013

**Public Authority:** The University of Sussex  
**Address:** Sussex House  
Falmer  
Brighton  
BN1 9RH

### Decision (including any steps ordered)

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1. The complainant has requested from the University of Sussex ("the University") details of how many students enrolled on to different music streams of the Professional Musicianship course at the Brighton Institute for Modern Music (BIMM) and how many of these students were female. This course is validated by the University and BIMM is a partner institution.
2. The University provided some of the requested information, and stated that the rest was not held. The Commissioner's decision is that the outstanding information is not held. He therefore does not require the University to take any steps to comply with the legislation.

### Request and response

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3. On 31 October 2011, the complainant wrote to the University and requested information in the following terms:

*"Re: Brighton Institute of Modern Music (partner institute)*

*Course: BA (Hons) in Professional Musicianship*

*Please provide me with the following information for period (2006 - 2011)*

*1. How many students enrolled onto the BA (Hons) in Professional Musicianship bass stream? How many were female?*

- 2. How many students enrolled onto the BA (Hons) in Professional Musicianship guitar stream? How many were female?*
- 3. How many students enrolled onto the BA (Hons) in Professional Musicianship drum stream? How many were female?*
- 4. How many students enrolled onto the BA (Hons) in Professional Musicianship vocals stream? How many were female?"*
4. The University responded on 28 November 2011. It explained to the complainant that it did not hold the requested information and that it was held by BIMM. It advised that it would request the information on their behalf.
5. An internal review was requested by the complainant on 22 December 2011. The University sent the outcome of its internal review on 7 February 2012 in which it upheld its original position. It advised that it was still seeking the information requested from BIMM but did not hold the information itself.
6. The complainant contacted the University again on several occasions in March 2012 to request an update and received one reply on 20 March 2012 indicating that no information had been received from BIMM.
7. Following the complaint to the Commissioner and further investigations by the University, additional data was provided to the complainant in November 2012 in respect of part of the original request. This information related to the gender of the students on the Professional Musicianship course between 2006/07 and 2011/12 except for Years 2007/08 and 2009/10. The University confirmed it does not hold data as to instrument stream and is not supplied with this data by BIMM.
8. The complainant asked the Commissioner to make further enquiries as she believed that the information requested may be available on copy examination certificates held by the University. She further stated that it would be reasonable to expect that the information should be held by the University and that it could request this information from BIMM.
9. On 19 December 2012 the university confirmed again that it did not hold the information requested as to instrument stream. However, it also stated that it had found additional information for the years 2007/08 and 2009/10 in respect of year 3 only from a list of certificates that it had located. This information was provided to the complainant. In response to a query from the complainant about Year 1 information the University confirmed that the Year 1 component of the course had only been available from 2011/12.

10. The complainant maintained that the requested information is still held by the University either by itself or by BIMM on its behalf. She advised that the information requested could be attached to transcripts attached to the degree certificates issues by the University. The University responded by advising that transcripts attached to the degree certificates were issued by BIMM alone and were not required to be provided to the validating University under their Memorandum of Agreement or Partnership Handbook. The University maintains that it does not hold the information requested as to instrument stream and it is not held on its behalf by its partner institution BIMM.

### **Scope of the case**

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11. The complainant contacted the Commissioner on 16 May 2012 to complain about the way the request for information had been handled. Therefore the scope of this case has been to consider whether the University was correct to inform the complainant that it did not hold the information as requested by the complainant.
12. In particular the Commissioner has considered the nature of the relationship between the University and BIMM and the obligations between the respective parties as far as student data is concerned. He has considered whether information held by BIMM was held by it on behalf of the University.

### **Reasons for decision**

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13. Section 1(1) of the FOIA states that:

*"Any person making a request for information to a public authority is entitled: –*

*(a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and*

*(b) if that is the case, to have that information communicated to him."*

14. Section 3(2) (b) of the FOIA states that:

*"For the purpose of this Act, information is held by a public authority if-*

*(b) it is held by another person on behalf of the authority."*

15. In situations where there is a dispute between a public authority and a complainant about whether the requested information is held, the

Commissioner applies the civil standard of the balance of probabilities. The Commissioner must therefore decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.

16. The University provided the Commissioner with documentation which set out the extent of its relationship with its partner institution, BIMM and the requirements under this arrangement. This included its Memorandum of Agreement ("MoA"), annexes dealing with administrative arrangements and the Partnership Handbook for the relevant time period covered in the request.
17. The Commissioner noted that a provision within the MoA provided that all documentation and other property, including intellectual property, arising from the programmes including validated courses is the sole property of the partner institution or its nominee who may use the same as it considers appropriate. The University also provided the Commissioner with an explanation of the extent to which, if its arrangements with BIMM and the documentation provided confirmed that whilst BIMM were obliged to provide statistical information by course as to gender, it did not require data as to gender by instrument stream within the relevant course.
18. The University advised that the statistical data held by BIMM was collected, controlled and stored by BIMM and that BIMM was responsible for its own student data. It confirmed that it did not assist with storage or management of the data. In relation to the Higher Education Statistics Agency's requirements about the responsibilities for collation of student data, Annex 3 of the MoA provides that BIMM should be responsible for the collation of this information.
19. In general terms, information that is brought to a partnership by one of the partners is regarded as being held by or on behalf of all of the partners. However, in this case the Commissioner is satisfied that the outstanding information is not held by BIMM on behalf of the University as the partnership documents specifically deal with the issue of student data and responsibility for the same.
20. In respect of information held by the University itself, suggestions by the complainant as to where the information may be found were followed up resulting in additional data being provided on two separate occasions during the course of the Commissioner's enquiries. The information provided related to gender breakdown over the relevant years and an explanation by the University as to why the information provided did not cover all year groups.

21. The complainant also suggested the information may be available on transcripts attached to degree certificates. The University relied upon the Partnership Handbook and Annex 3 of the MoA. These provide that the responsibility for transcripts remains with BIMM who retains control of this information and has no obligation to provide it to the University under the existing arrangements.
22. The University maintained it did not hold information of gender breakdown by instrumental stream within the course and that this was held by BIMM alone.
23. Having considered the explanations provided by the University and the further searches carried out, the Commissioner considers that the outstanding information is not held.

### **Other matters**

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24. The Commissioner notes that the internal review requested by the complainant was out of time according to the guidelines provided in the Code of Practice issued under Section 45 of the FOIA. The response provided was limited in its detail and did not advise the complainant of how the review was undertaken, why they were unable to provide the information and her options of complaint to the Information Commissioner. The Commissioner notes the apology given by the University to the complainant and its acknowledgment of its shortcomings in this respect.
25. Whilst the exact information requested by the complainant is not held by the University, the Commissioner notes that some relevant information in relation to the request was provided on two separate occasions. This followed suggestions as to where the information may be held by the complainant. The Commissioner considers that the University could have provided this information at an earlier point.

## Right of appeal

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26. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

27. 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.
28. 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** .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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