

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 25 March 2013

**Public Authority:** University of Birmingham  
**Address:** Edgbaston  
Birmingham  
B15 2TT

#### Decision (including any steps ordered)

---

1. The complainant has requested information relating to the Institute of Archaeology and Antiquity.
2. The Commissioner's decision is that the University of Birmingham has breached section 17 of the FOIA.
3. The Commissioner does not require the public authority to take any steps.

#### Request and response

---

4. On 4 May 2012 the complainant wrote to University of Birmingham (the University) and requested information in the following terms:

*'Request 1: Author of documents Professor Ken Dowden (Head of School – Institute of Archaeology and Antiquity)*

*1) Documents to the Head of College (Prof. Michael Whitby, Arts and Law) from Prof. Ken Dowden (Head of IAA) outlining an assessment of the current state of the Institute of Archaeology and Antiquity and providing recommendations for the future of the IAA and supporting data for these recommendations. The existence of these documents was confirmed to the staff of the IAA prior to the current review.*

*Request 2: Date document written – sometime between the 4<sup>th</sup> April 2012 and Early May 2012*

1) *Document requested under FOI – The Review panels recommendations arising from the current review of the Institute of Archaeology and Antiquity and the associated documentation detailing how these recommendations were reached.'*

5. The University contacted the complainant on 7 June explaining that it was still considering the public interest and would need a further 10 days to do this.

### **Scope of the case**

---

6. On 11 June 2012 the complainant contacted the Commissioner to complain about the way his request for information had been handled. He complained that the University:

- waited until the last day of the 20 working days to reply, stating that it needed a further 10 days to consider the public interest where appropriate
- did not state the exemption it was relying upon
- stated that it would only inform the complainant of the exemptions it was applying after the extra 10 days for considering the public interest
- was using the extra 10 days to consider its application of the exemptions.

7. The Information Commissioner (the Commissioner) contacted the complainant who confirmed that he was not complaining about the application of the exemptions as he accepted that the University could apply them, but was complaining about the points above.

### **Reasons for decision**

---

#### **Section 17**

8. Section 17(1) states:

*'A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which -*

*(a) states that fact,*

*(b) specifies the exemption in question, and*

*(c) states (if that would not otherwise be apparent) why the exemption applies.'*

9. Section 17(2) states:

*'Where–*

*(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim–*

*(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and*

*(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,*

*the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached'.*

11. Public authorities must respond 'promptly' to a request. In this case, the University waited until the twentieth working day to respond to the complainant, citing sections 40(2), 43 and 44. Therefore, it is necessary to investigate the University's actions in preparing its response more closely, in order to determine whether the response was provided 'promptly'.
12. The Commissioner asked the University to explain why it had waited until the twentieth working day to respond to the complainant.
13. The University explained that it had been trying to redact information and apply exemptions to the redacted information and that this was why it decided it needed more time to process the requests. It also confirmed that the delay was primarily because of the exceptional amount of work it had at the time.
14. The University explained that in the period between April – August 2012 it had received 86 freedom of information requests and 20 subject access requests. It also explained that it had a small team consisting of one full-time administrator and part of a solicitor's time allocated to FOIA and Data Protection Act (DPA) requests. The solicitor had since left and the University confirmed that it now had a part-time administrator

to process requests and a solicitor to provide additional support. The University also confirmed that it had managed to process the majority of the requests in a timely manner.

15. The Commissioner notes that the University confirmed to the complainant that he had had most of the information already via an internal consultation process. He also notes that the University has only got a very small team to deal with both FOIA and DPA requests, a member of staff who helped to deal with requests had left and it had experienced an increase in the volume of FOIA requests and SARs between April-August 2012.
16. Taking all of these factors into account, the Commissioner considers the University's initial response was provided 'promptly' and there does not appear to have been undue delay in its handling of the request and therefore complies with section 17(1).
17. However, the Commissioner does not consider that the University has issued a valid refusal notice.
18. The complainant complained that the University had not stated which exemptions it was applying. He explained that this, together with the wording of correspondence to him from the University, might suggest that the University was using the extra time to decide which exemptions it was applying.
20. A public authority must inform the complainant that it is applying exemptions and which specific exemptions it is relying upon. In this case, the University did not do this in its response of 7 June, therefore it has breached section 17(1)(a) and (b).
21. The complainant also complained that the University had informed him that it was still considering the public interest and would notify him of the exemptions used and the reasons why, if or when they had been applied.
22. If a public authority requires extra time to consider the public interest, it should also provide an estimated date by when it will have considered the public interest further. In this case the University did not explain do this.
23. With regard to the extra 10 days, the University explained to the Commissioner that it had needed the extra time as it was trying to redact information and apply exemptions to that redacted information.
24. However, a public authority has to decide which exemptions it is relying upon and also redact the appropriate information within the 20 working day limit. Therefore the University has breached section 17(1)(b).

25. If a public authority does need extra time to consider the public interest test, it must firstly apply the appropriate exemption. It must then inform the applicant that it needs more time to consider the public interest and provide an estimate of the date it expects to have reached its decision by.

## **The Decision**

---

26. The Commissioner's decision is that the public authority dealt with the following aspects of the request for information in accordance with the FOIA.
- Its response of 7 June was provided promptly in accordance with section 17 of the FOIA.
27. However, the Commissioner has also decided that the following elements of the request were not dealt with in accordance with section 17 the Act as the University:
- did not explain which exemptions it was relying upon in its initial response
  - stated that it was still considering the public interest and would notify the complainant of the exemptions used and the reasons why, if or when they had been applied
  - used the extra 10 days to consider its application of the exemptions.

## Right of appeal

---

28. 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)

29. 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.
30. 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 .....**

**Jon Manners  
Group Manager  
Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF**