

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2013

Public Authority: The Governing Body of Manchester Metropolitan University

Address: All Saints Building
All Saints
Manchester
M15 6BH

Decision (including any steps ordered)

1. The complainant made a freedom of information request to Manchester Metropolitan University for a list of the workplace email addresses of all its staff. The University refused the request under the exemption in section 36(2)(c) of FOIA (prejudice to the effective conduct of public affairs).
2. The Commissioner has investigated the complaint and found that section 36(2)(c) is engaged and the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner requires no steps to be taken.

Background

3. The complaint concerns a request made to Manchester Metropolitan University for staff email addresses. The Commissioner would like to highlight at the introduction to this Decision Notice that this is a repeat of a request which the complainant had previously made to this University and other higher education institutions in April 2010. The Commissioner issued a Decision Notice in respect of that earlier request in which he had upheld the University's application of the section 36(2)(c) exemption to withhold the information under case reference

FS50318502¹. The Commissioner also notes that the complainant subsequently appealed against a decision notice involving an identical request to another institution where he had also decided that section 36(2)(c) prevented disclosure. In that case the First Tier Tribunal upheld the Commissioner's decision². The Commissioner considers that the circumstances since the earlier request have not changed and therefore his decision would be the same as in the previous case. The Commissioner does not consider it a good use of his resources to revisit the same arguments in full in this decision notice and has instead outlined the University's reasons for refusing the request and, where appropriate, has referred to his earlier decision for a fuller explanation of the arguments.

Request and response

5. On 15 April 2012 the complainant made a request to the University for the workplace email addresses of all its staff.
6. The University responded on 14 May 2012. It said that it was refusing the request under section 14(2) of the FOIA because it was a repeat of a previous request the complainant had made to the University. It said that it also considered the request to be vexatious and that therefore section 14(1) would also apply.
7. In its response the University noted that the complainant's earlier request had been refused under section 36(2)(c) and that this had been referred to the Commissioner who had upheld the University's application of this exemption. It said that it did not intend to waste public resources by setting out the arguments in respect of this exemption in full but said that were section 14(1) and 14(2) found not to apply it would seek to rely on section 36(2)(c) to refuse the request.
8. The University subsequently carried out an internal review at which point it said that it was no longer seeking to rely on section 14(2). However, it said that it was upholding the decision to refuse the request under section 14(1) and maintained its position that the exemptions used to refuse the earlier request would also apply in this case.

¹ http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50318502.ashx

² [http://www.informationtribunal.gov.uk/DBFiles/Decision/i584/%5b2011%5d_UKFTT_EA20110061_\(GRC\)_2011-10-06.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i584/%5b2011%5d_UKFTT_EA20110061_(GRC)_2011-10-06.pdf)

Scope of the case

9. On 30 July 2012 the complainant contacted the Commissioner to complain about the University's decision to refuse his request.
10. During the course of the Commissioner's investigation the University said that it wished to withdraw its reliance on section 14(1) (vexatious requests). It said that whilst it believed that section 14(1) applied at the time it was felt less burdensome to concentrate its submission on the application of the section 36(2)(c) exemption given that the qualified person considered that the exemption was still valid.

Reasons for decision

11. Section 36(2)(c) provides that information is exempt from disclosure if, in the reasonable opinion of the qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
12. When deciding if the exemption is engaged the Commissioner has to first establish that an opinion was given on the application of the exemption by a proper qualified person. In this case the University explained that the qualified person for the University, the Vice Chancellor Professor John Brooks, was initially consulted on the application of section 36(2)(c) on 14 May 2012 prior to the University issuing its response to the request and again at each stage of its communications with the complainant. The qualified person also provided a written record of his opinion in a letter to the Commissioner on 7 January 2013.
13. In order to determine whether section 36(2)(c) is engaged the Commissioner must then consider:
 - whether the prejudice claimed relates to the specific subsection of section 36(2) that the FSA is relying upon;
 - the nature of the information and the timing of the request; and
 - the qualified person's knowledge of or involvement in the issue.
14. In this case the Commissioner understands that it is the qualified person's opinion that disclosure would be likely to prejudice the effective conduct of public affairs because it would be likely to cause an adverse effect to the University's core functions. This is because disclosing the

information would lead to the University receiving more spam emails which would adversely affect the University through extra time and resources spent dealing with the emails. Also, it was considered likely that disclosure could lead to 'phishing attacks' or scam emails which could cause disruption to services.

15. In order to provide a reasonable opinion the qualified person was provided with copies of the University's correspondence with the complainant including the complainant's arguments on why he believed the exemption was not engaged as well as the Commissioner's guidance on the section 36 exemption. The qualified person also saw a copy of the Decision Notice issued in respect of the complainant's previous request and a copy of the Tribunal Decision in respect of the identical request made to another University, referred to in paragraph 3 above.
16. The Commissioner has recently issued guidance on section 36 of the FOIA. With regard to what can be considered a 'reasonable opinion' it states the following:

"The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is 'In accordance with reason; not irrational or absurd'. If the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable."
17. It is important to note that when considering whether section 36(2)(c) is engaged the Commissioner is making a decision not on whether he agrees with the opinion of the qualified person, but whether it was reasonable for him or her to reach that opinion.
18. Having reviewed all of the information placed before the qualified person the Commissioner is satisfied that only relevant arguments were considered and that the qualified person was not influenced by irrelevant considerations. He is satisfied that it was reasonable to conclude that since disclosure under FOIA is to the world at large it would lead to the University receiving a greater number of unwanted emails which would adversely affect its ability to carry out its core functions.
19. The Commissioner does not intend to consider in detail the arguments for why the exemption is engaged except to say that he finds the opinion a reasonable one. However, he would say that in reaching his decision he has taken the following arguments into account.
 - The University has evidenced the adverse effects of a previous phishing attempt and the likely effects of disclosure would have on the amount of email traffic it receives.

- Email is crucial to the University's core business as all its key services are dependent on it. Disruption to its email service would be very difficult to manage at key times.
- The Commissioner accepts that the University should be entitled to organise itself so that the correct members of staff receive the correct emails to prevent both duplication and wastage of its limited resources.

The complainant's submission

20. Before he goes on to consider the public test the Commissioner should say that he is aware that the reason the complainant has chosen to repeat his request is that since the Commissioner's previous decision he has conducted additional research which has led him to conclude that the previous decision was flawed. Specifically, the complainant has asked a number of higher education institutions who previously disclosed to him a list of their staff email addresses or who already publish a high proportion of staff email addresses, whether they had experienced any prejudice to the effective conduct of public affairs through the publication of this information. The complainant clearly believes that the responses he has received indicate that there is likely to be no prejudice resulting from disclosing the requested information.
21. The Commissioner has considered the evidence provided by the complainant but has seen nothing that would lead him to diverge from his previous position of upholding section 36(2)(c). In particular the Commissioner notes that of the institutions which had disclosed a list of staff email addresses or published a higher proportion of email addresses, the majority did not hold the information he requested and so were unable to say whether they had suffered any prejudice to the effective conduct of public affairs.
22. In any event, the Commissioner is mindful that the focus of his decision is what the effect would be on this particular institution if the information were disclosed, not what prejudice may or not occur at other public authorities where the circumstances will necessarily be different.
23. The Commissioner is satisfied that section 36(2)(c) is engaged and so has gone on to consider the public interest test, balancing the public interest in maintaining the exemption against the public interest in disclosure.

Public interest test

24. The University relied on the same reasons as it had in the previous case for arguing that the public interest in maintaining the exemption outweighed the public interest in disclosure. For his part the complainant focused his submission on why he believed the exemption was not engaged, rather than the public interest test. Therefore, the Commissioner shall refer to the public interest analysis in the previous case. The Commissioner has not reproduced those arguments in full here but has adopted the analysis from that decision when summarising his conclusions below.
25. As outlined in the previous case, the Commissioner has found that the public interest favours maintaining the exemption because disclosure of the list would undermine the channels of communication and lead to a consistent loss of time from the public authority's core functions. Disclosure would also leave the University and its staff more open to phishing attacks and the resulting problems that may be suffered.
26. The Commissioner accepts that disclosure would serve the public interest in terms of greater transparency and accountability but finds that when balanced against what is a fairly severe prejudice, whose extent and frequency would be potentially unlimited, the public interest favours maintaining the exemption.
27. The Commissioner has decided that in all the circumstances of the case the public interest in maintaining the section 36(2)(c) exemption outweighs the public interest in disclosure.

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
Website: 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

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
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