

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 July 2014

Public Authority: The governing body of the University of Ulster
Address: Cromore Road
Coleraine
County Londonderry
BT52 1SA

Decision (including any steps ordered)

1. The complainant made a number of requests to the University of Ulster (the University) for information relating to the selection process for a talented athlete programme. The complaint to the Information Commissioner concerns the University's application of the exemption provided by section 40(2) (third party personal) of FOIA to three of these. The Commissioner's decision is that two of the requests ((1) and (2), 3 July 2013) do engage section 40(2) of FOIA. However, with regard to the third request ((c), 4 October 2013), the Commissioner has found that the request includes non-identifiable information that should be disclosed as it is not covered by the section 40(2) exemption.
2. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

3. The complainant made a series of requests to the University for information relating to its operation of the selection process for a talented athlete programme. The initial set of requests was submitted on 3 July 2013 (split into five parts (1) – (5)) and a follow-up set on 4 October 2013 (split into eight parts (a) – (h)).
4. The complaint is limited to the consideration of the following three requests:
 - 3 July 2013
 - (1) *A list of those successful candidates awarded places on the Gaelic Football programme.*
 - (2) *A record of their achievements which enabled them to be successful.*
 - 4 October 2013
 - (c) *What points were attributed to student applicants aged 18 (first time applicants) at the date of the Course commencement?*
5. The University provided its substantive response to the requests of 3 July 2013 on 26 August 2013. It advised that the names and records of achievements of successful candidates was personal data, the disclosure of which was not permitted under section 40(2) of FOIA. The University's internal review of its handling of the request subsequently upheld this position, the outcome of which was provided to the complainant on 27 September 2013.
6. This led to the complainant making additional requests on 4 October 2013, which were responded to on 4 November 2013. Regarding request (c) the University explained that the total scores attributed to student applicants aged 18, both successful and unsuccessful, ranged from the lowest score of 43 to the highest score of 76. In response to a separate request on the same theme, the University clarified that 57 candidates aged 18 applied for the scheme of which 16 were successful.

Scope of the case

7. The complainant contacted the Commissioner on 10 March 2014 to complain about the University's handling of the three requests quoted above ((1) and (2), 3 July 2013)((c), 4 October 2013).

Reasons for decision

Background

8. The information requests refer to the operation of the selection process for the University's talented athlete scheme. The University's website explains that the scheme is:

...designed to assist talented young sports performers in gaining access to a quality education at the University of Ulster whilst attaining success at the highest levels within their chosen sport.

The Scheme recognises the sacrifice in time, effort and crucially – in examination performance – which may result from taking part in sport at the highest level. Under the Talented Athlete Entry Scheme, the University of Ulster allows a reduction in the points required for entry to full-time undergraduate courses. For the academic year 2013-14 successful applicants to the Talented Athlete Entry Scheme will be offered a reduction in entrance requirements of 40 UCAS Tariff Points or the equivalent in other accepted entrance qualifications.¹

9. A list of eligible sports has been introduced, which includes Gaelic Football, so that successful applicants can represent the University in their chosen sport. To qualify for the scheme, an applicant must be able to demonstrate outstanding sporting achievement. If selected, an individual must maintain satisfactory academic and sporting progress to retain access to the allocated support services.

Section 40(2) – third party personal data

10. The University considers that under section 40(2) of FOIA it is not obliged to provide any information in relation to the requests beyond that which has already been provided. The Commissioner's decision therefore focuses on the application of this exemption.

¹<http://study.ulster.ac.uk/img/TalentedAthleteEntrySchemeInformation&ApplicationForm.pdf>

11. Section 40(2) of FOIA provides an exemption to the rights of members of the public to access recorded information where it is the personal data of any third party. For a public authority to rely on section 40(2) of FOIA it must be satisfied that:

- the requested information represents the personal data of a third party; and if so
- disclosure of this information would contravene a data protection principle contained in the Data Protection Act 1998 (DPA).

12. The Commissioner considers separately below requests (1) and (2) of 3 July 2013 and request (c) of 4 October 2013 in respect of these tests.

Requests (1) and (2) - Is the requested information personal data?

13. For information to constitute *personal* data, it must *relate* to a living individual and that individual must be *identifiable*.

14. In 'Anonymisation: managing data protection risk code of practice'² (page 16) the Commissioner acknowledges that the definition of personal data can be difficult to apply in practice. This is because the concept of 'identity' is not straightforward because individuals can be identified in a number of different ways. This can include direct identification, where someone is explicitly identifiable from a single data source, such as a list including full names, and indirect identification, where two or more data sources can be combined for identification to take place. However, the Commissioner's guidance 'Determining what is personal data'³ states that the fact there is a very slight hypothetical possibility that someone might be able to reconstruct the data in such a way that the data subject is identified is not sufficient to make the individual identifiable for the purposes of the DPA (considered in the context of Recital 26 of the European Data Protection Directive).

15. In this case the requests explicitly ask for categories of records – names together with information of biographical significance – that clearly

²http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Data_Protection/Detailed_specialist_guides/PERSONAL_DATA_FLOWCHART_V1_WITH_PREFACE001.aspx

³http://ico.org.uk/for_organisations/guidance_index/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf

relate to the successful applicants. The Commissioner is therefore satisfied that the information is personal data. He has therefore gone on to consider the second part of the test outlined above, namely the question of whether a disclosure would be in accordance with the data protection principles.

Would disclosure breach a data protection principle?

16. The relevant principle for the purpose of the requests is the first. This requires the fair and lawful processing of personal data. If disclosure would not be fair, then the information is exempt from disclosure. The Commissioner's approach is that if it is decided that placing the personal data would be fair, the next step is to consider whether disclosure would also meet a condition in Schedule 2 of the DPA (and Schedule 3 in the case of sensitive personal data). Only then would the Commissioner consider whether disclosure is lawful.
17. The application of the first data protection principle in respect of fairness involves striking a balance between competing interests – on the one hand, the interest that seeks to protect the right of a data subject to privacy and, on the other, the interest that advocates transparency and accountability. Striking the correct balance will involve the consideration of the following interlinked factors:
 - A data subject's reasonable expectation of what would happen to their personal data.
 - The consequences of disclosure.
 - The relationship between a data subject's rights and freedoms and the public's legitimate interest in disclosure.
18. In the Commissioner's view, a distinction can be drawn between information that relates to an individual's public life and information relating to their private life. It is more likely to be fair to release information that relates to the professional life of the individual. Differently constituted Information Tribunals have observed that an individual carrying out a public function can expect that their public actions will and should attract a greater degree of scrutiny than an individual acting in a private capacity.
19. A prospective student at the University is not carrying out a public function and equally the decision to apply for the talented athlete scheme relates to that individual's private life. Further, there is nothing in the application form or the associated literature that would indicate a successful applicant's name and past achievements could be made public. The Commissioner therefore considers that the data subjects in

question would reasonably expect that their personal data would not be disclosed.

20. The Commissioner recognises that the complainant's purpose for making the requests is to ensure that the selection process carried out in respect of the talented athlete scheme was impartial and based on a proper analysis of the applicants' achievements. However, the Commissioner has not been provided with any evidence that suggests the application process was or is unsound. In any event, a process exists by which candidates can submit a formal appeal where they have been unsuccessful. Insofar as an appeals process is in place that is already designed to correct any outlying decisions, the Commissioner considers there is not a pressing social need for disclosure. Any intrusion into the private lives of the successful applicants could not therefore be justified and accordingly would be unfair.
21. In making this finding, the Commissioner acknowledges that the identities of the applicants could already be known to a significant number of people. The University has explained that members of the Gaelic Athletic Association will frequently live in close knit communities and will be well known to one another. In the Commissioner's view, this possibility is not the same as saying that the identities of the successful have been officially confirmed and made publicly available. Tellingly, the University is not aware that the names of the successful applicants have been placed in the public domain.
22. The question for the Commissioner is to decide whether it is appropriate to make formally accessible the personal data that is not otherwise freely available. For the reasons outlined above, the Commissioner has decided it is not and has therefore found that section 40(2) of FOIA is engaged.

Request (c) – Is the information personal data?

23. The Commissioner has decided that it would be unfair to disclose the personal data of the successful applicants to the talented athlete scheme. He further considers that the principles underlying this finding would also extend to those applicants who were unsuccessful. However, the Commissioner has also found that, in the absence of other identifiable information, the disclosure of the points attributed to student applicants aged 18 would not involve the disclosure of personal data. In other words, the information can be anonymised.
24. The University has agreed to provide the range of scores rather than each of the individual scores. It also separately informed the complainant that 57 candidates aged 18 applied for the scheme, of which 16 were successful. Regarding the decision not to release the

individual scores, the University advised the Commissioner of the following:

The University felt it could provide a range of scores rather than each score as it is felt that applicants would be identified by disclosure of the scores. The score required to be successful has been amended over the years to meet Faculty and Committee demands to manage the number of students entering through the Programme and to ensure that they are of an appropriate standard. If the scores were released in the public domain it could send out the wrong message that a certain score would render an applicant as successful and leave the University open to unwarranted challenges based on incorrect information.

25. The Commissioner considers that the concerns raised by the University do not explain how individuals could be linked to each of the scores. Nor are they arguments that have any particular weight when deciding whether disclosure would breach a data protection principle.
26. Nevertheless, the Commissioner observes that the pool of individuals to which the scores relates is not particularly large (16). However, in the Commissioner's view neither is it sufficiently small to allow an individual to take steps to link an individual with a score.
27. When considering whether an individual could be linked to information about them, the Commissioner suggests in his Anonymisation Code of Practice that a useful test involves considering whether a 'motivated intruder' would be able to achieve identification. The Code of Practice assumes that the 'motivated intruder' is reasonably competent, has access to resources such as the internet, libraries, and all public documents, and would employ investigative techniques such as making enquiries of people who may have additional knowledge of the identity of the data subject or advertising for anyone with information to come forward.
28. The University has explained that the identities of the successful applicants have not been placed in the public domain. In the absence of this information, the Commissioner considers it is reasonable to find that a motivated intruder would not be able to link a score with a particular individual. In saying this, the Commissioner appreciates there is a risk that someone with particular personal knowledge could form such a link. However, returning to the approach advocated in the Code of Practice, the Commissioner considers that the privacy risk posed is likely to be low where one individual would already require access to so much information about the other individual for identification to take place.

29. In the circumstances the Commissioner has decided that the requested scores do not constitute personal data and therefore section 40(2) of FOIA cannot be engaged. The University is therefore required to disclose the information in question.

Right of appeal

30. 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: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

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