

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 June 2015

Public Authority: University of Sussex

Address: Sussex House
Falmer
Brighton
BN1 9RH

Decision (including any steps ordered)

1. The complainant has requested the university to disclose the results of four complaints investigations undertaken by the Office of the Independent Adjudicator for High Education (OIA) relating to the disciplinary of four students at the university.
2. The university refused the request citing sections 36(2)(b) and (c) and 40(2) of the FOIA.
3. The Commissioner's decision is that the university appropriately withheld the requested information under section 40(2) of the FOIA. He therefore requires no further action to be taken.

Request and response

4. On 21 January 2015, the complainant wrote to the university and requested information in the following terms:

"Please provide me with an electronic copy of the OIA determination(s) referred to here:

<http://www.theguardian.com/education/2015/jan/21/university-of-sussex-to-offer-apologyandcompensation-to-student-protestors?view=mobile>"

5. The university responded on 18 February 2015. It stated that it was unwilling to disclose the requested information as it considered it was

exempt from disclosure under sections 36(2)(b) and (c) and 40(2) of the FOIA.

6. The complainant requested an internal review on 18 February 2015.
7. The university carried out an internal review and notified the complainant of its findings on 18 March 2015. It informed the complainant that it remained of the opinion that the requested information as exempt from disclosure under sections 36(2)(b) and (c) and 40(2) of the FOIA.

Scope of the case

8. The complainant contacted the Commissioner on 18 March 2015 to complain about the way his request for information had been handled. The complainant stated that he considers the requested information should be disclosed under the FOIA and the university has acted inappropriately by refusing his request under sections 36(2)(b) and (c) 40(2).
9. The withheld information consists of four complaint outcomes following an investigation undertaken by the OIA into the disciplinary action taken against four students at the university. The four determinations have been withheld by the university in their entirety under sections 36(2)(b) and (c) and 40(2) of the FOIA.
10. The Commissioner has already considered a very similar request for the complainant under case reference FS50534401. The Commissioner's decision notice for this case can be accessed via the following link:

<http://search.ico.org.uk/ico/search/decisionnotice?keywords=534401>
11. In case reference FS50534401 the Commissioner considered the university's application of section 40(2) of the FOIA to the evidence packs given to all four students during the disciplinary process. The Commissioner ruled that section 40(2) of the FOIA applied to this information.
12. As the Commissioner considers the request the subject of this notice is very similar, he will first consider whether section 40(2) of the FOIA applies in this case. The Commissioner will only go on to consider the university's application of section 36(2)(b) and (c) and the FOIA if he finds that section 40(2) of the FOIA does not apply to some or all the withheld information.

Reasons for decision

13. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and disclosure of that data would be in breach of any of the data protection principles outlined in the Data Protection Act (DPA).
14. Personal data is defined as:

..."data which relate to a living individual who can be identified-

(a) from those data, or

(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,

And includes any expression of opinion about that individual and any indication of the intentions of the data controller or any other person in respect of the individual..."
15. The Commissioner considers the first data protection principle is most relevant in this case. The first data protection principle states -

"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -

(a) at least one of the conditions in Schedule 2 is met, and

(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."
16. The Commissioner must first consider whether the requested information is personal data. If he is satisfied that it is, he then needs to consider whether disclosure of this information would be unfair and/or unlawful. If he finds that disclosure would be unfair and/or unlawful the information should not be disclosed and the consideration of section 40 of the FOIA ends here. However, if he decides that disclosure would be fair and lawful on the data subjects (the students involved and witnesses that gave evidence) concerned, the Commissioner then needs to go on to consider whether any of the conditions listed in schedule 2 and 3 (sensitive personal data) if appropriate are also met.

Is the requested information personal data?

17. The Commissioner has reviewed the withheld information in this case. He notes that the contents of each OIA determination refer to the relevant student by name, discuss each element of the complaint made by that student, the disciplinary issues and actions taken the university

and the OIA's decision. In some cases, the determinations discuss the health of the students and the impact the disciplinary action has had on them. Each determination contains information from which the students concerned can be identified either by their name or from a description of events and other information that may otherwise be available to the public.

18. For these reasons the Commissioner is satisfied that the requested information in its entirety constitutes personal data, as defined by the DPA.
19. The Commissioner notes that the complainant does not agree that the requested information in its entirety constitutes personal data. The complainant has stated that he is aware that some elements of the determinations discuss historical information relating to events leading up to disciplinary action and other elements discuss the actions of the university and whether its own procedures were followed and appropriate. The complainant also makes reference to the fact that some university staff are referred to as Professor A or B and so elements of the determinations have already been anonymised. The complainant is aware of these facts because he has already been supplied with one of the determinations by one of the students concerned.
20. The Commissioner does not agree with the complainant here. Considering the publicity these four disciplinary cases have received as a result of the complainant himself, the students concerned and press releases they have made, the Commissioner considers the determinations in their entirety constitute the personal data of each student concerned. Due to the information already available to the public in relation to these cases and the press interest surrounding them, the Commissioner considers it would be possible for the students concerned to be identified from all elements of the reports. Redaction would therefore be meaningless and the reports in their entirety constitute personal data.
21. The Commissioner will now go on to consider whether disclosure of this information would be unfair and/or unlawful.

Would disclosure be unfair and/or unlawful?

22. The university stated that due to the nature of information contained in OIA determinations students will reasonably expect that the contents of such determinations will remain private and confidential. It stated that this has generally been the approach of the Commissioner and the First-tier Tribunal in similar cases. It referred to the First-tier Tribunal hearing of *Rob Waugh v Information Commissioner & Doncaster College*

(EA/200/0038) and in particular the following statement the tribunal made:

"...there is a recognised expectation that the internal disciplinary matters of an individual will be private."

23. The university confirmed that it understood the OIA publishes a summary of cases it considers. However, it noted that these were only brief summaries and the OIA does not publish its full determinations for any type of case.
24. The university drew attention to the fact that these determinations are given to the students concerned and/or can be accessed by them via the Data Protection Act. It acknowledged that it appears one student has provided a copy of their determination to the complainant and all four students are free to share this information as they wish. However, the university stressed that this is very different to the potential disclosure of such information under the FOIA and to the world at large. The university does not consider it would be appropriate for it to disclose such information in response to a FOIA request due to what disclosure under the FOIA effectively means. It constitutes public disclosure and once the information is out in the public domain there is little control over it and the effects it can have on the rights and freedoms of the student concerned at the present day and in the future.
25. It stated for the above reasons that disclosure would be unfair on the four students concerned and so section 40(2) of the FOIA applies.
26. The Commissioner has given the matter detailed consideration. It is the Commissioner's view that the withheld information in its entirety is exempt from disclosure under section 40(2) of the FOIA in this case and he will now explain why.
27. It is generally the Commissioner's opinion that such disciplinary matters take place in closed session and OIA investigations are conducted in a similar manner and remain private and confidential. It is acknowledged that the OIA publish a high level summary of each case but this is a brief account of the issues addressed and the outcome unlike the requested information here which is a detailed assessment of the issues presented to the OIA by each student.
28. In similar cases the Commissioner has considered, he has generally ruled that the data subjects themselves have the expectation that their personal data relating to disciplinary matters will remain private and confidential and will not be more widely published. In the majority of cases, the data subjects themselves would object to disclosure due to the private and sensitive nature of such issues and the implications that

wider public disclosure could have on their private lives and careers going forward.

29. As stated previously disclosure under the FOIA is to the world at large and once the information is in the public domain there is little control over how it will be used for and how long. The Commissioner considers there could be long lasting implications for the students concerned if public disclosure under the FOIA took place.
30. Generally it is accepted that disclosure of this type of information would cause the data subjects concerned considerable distress and upset and therefore disclosure would be unfair.
31. The Commissioner considers there is a legitimate public interest in transparency and accountability and in disclosing information which enables members of the public to satisfy themselves that appropriate procedures have been followed in such cases and a fair and balanced outcome has been reached. However, the Commissioner considers the public disclosure of the university's own disciplinary procedures and the independent adjudication of bodies such as the OIA satisfies such legitimate interests. The Commissioner considers the disclosure of such personal information would not add anything further to the public interest in such matters and would not warrant the obvious distress and upset disclosure could cause to the data subjects concerned and the likely prejudice to their rights and freedoms.
32. As the university has corrected stated the requested information is in the hands of the students themselves and they are free to disclose this information and publicise in any manner they see fit. It would be inappropriate for the university to make the requested information publically available and it would clearly be in breach of the first data protection principle outlined in the DPA if it was to do so.
33. For the above reasons the Commissioner is satisfied that the requested information is exempt from disclosure under section 40(2) of the FOIA.

Right of appeal

34. 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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

35. 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.
36. 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
Cheshire
SK9 5AF