

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 December 2015

Public Authority: Queen's University Belfast
Address: University Road
Belfast
BT7 1NN

Decision (including any steps ordered)

1. The complainant has requested information relating to the appointment of the new Chancellor at Queen's University Belfast ("the University"). The University disclosed some information in response to the complainant's request, however it refused to disclose the remainder ("the withheld information.") The University applied sections 40(2) and 41(1)(a) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the University has correctly applied section 41(1)(a) of FOIA and that it is applicable to the entirety of the withheld information.
3. The Commissioner therefore requires no steps to be taken.

Request and response

4. On 22 April 2015, the complainant wrote to the University and requested information in the following terms:
 - 1) The names of the following members of the 'Special Committee' involved in the appointment of the new Chancellor:-
 - (a) The two lay members of Senate
 - (b) The one staff member of Senate

- (2) The names of the persons nominated for Chancellor by the closing date of Monday 20th October 2014.
 - (3) The number of nominations for each of these persons and the names of those nominating them on Monday 20th October 2014.
 - (4) The names of the nominations shortlisted for further consideration by the 'Special Committee'.
 - (5) The name or names of the nominations finally considered for appointment by the 'Special Committee'.
 - (6) Did the 'Special Committee' finally decide by a majority vote (of the seven members) or was it a unanimous decision appointment?
 - (7) How many times, including dates, did the 'Special Committee' meet to discuss and assess the candidates nominated before making their final decision?
 - (8) Has the new Chancellor made any financial contributions or donations to QUB in the past or promised any financial help or donations to QUB in the future?
5. The University responded to the complainant on 28 April 2015. It provided information in relation to parts 1, 6 and 7 of the complainant's request and refused to disclose information in relation to parts 2-5 of that request, citing the exemptions as set out in sections 40(2) and 41 of the FOIA as a basis for non-disclosure. It also refused to disclose information in relation to part 8 of the request, however no exemption was cited as a basis for non-disclosure.
6. The complainant requested an internal review of the University's decision in relation to parts 2 to 5 on 29 April 2015 and amended part 3 of his request to read:
- "The number of nominations for each of these persons on Monday 20 October 2014."
7. The result of that internal review was communicated to him on 20 May 2015. That internal review upheld the original decision in relation to parts 2, 4 and 5 of the complainant's request ("the withheld information"), however the reviewer provided the complainant with information in relation to the amended part 3 of his request.

Scope of the case

8. The complainant contacted the Commissioner on 30 June 2015 to complain about the way his request for information had been handled, specifically in relation to parts 2, 4 and 5 of his request.
9. The Commissioner has considered whether the University has correctly applied the exemptions as set out in sections 40(2) and 41 of the FOIA.

Reasons for decision

10. Section 41(1) states:

"Information is exempt information if –

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person."

11. In considering whether disclosure of information constitutes an actionable breach of confidence the Commissioner will consider the following:

- Whether the information has the necessary quality of confidence;
- Whether the information was imparted in circumstances importing an obligation of confidence; and
- Whether disclosure would be an unauthorised use of the information and to the detriment of the confider.

12. The University explained to the Commissioner that the nomination process for Chancellor was publicised as a confidential process and, as such, the names of all candidates were provided to the University in confidence by those who nominated them. The name of the successful candidate is obviously known in the public domain and the individual is now clearly aware of having been nominated, however the names of those who were not successful would be expected to remain in confidence.

13. The Commissioner finds that information will have the necessary quality of confidence if it is not otherwise accessible, and if it is more than trivial. In this case the information is clearly information obtained

from a third party, i.e those who nominated the individuals for Chancellor, and is clearly not otherwise accessible.

14. The Commissioner has next gone on to consider whether the information is more than trivial and therefore has the necessary quality of confidence. The information in question was provided to the University as part of its nomination process for Chancellor, a role for which, in the context of the University's global ambitions, international standing, networks and recognition, it is particularly important that a suitable person is selected. As the information relates to the selection of such a key role, the Commissioner does not consider this to be trivial and therefore it has the necessary quality of confidence.
15. The Commissioner has gone on to consider whether the information was imparted in circumstances importing an obligation of confidence. As the nomination process for Chancellor is a confidential process whereby the names of the nominees are submitted to the University in confidence, and those nominated do not know that they have been nominated, unless they are successful, the Commissioner accepts that the information was imparted in circumstances importing an obligation of confidence.
16. The Commissioner has gone on to consider whether disclosure of the information would be to the detriment of the confider. The University has argued that information provided by individuals for the purpose of nominating people for the role of Chancellor should not be disclosed as it would breach the confidentiality under which this information is expected to be held. The detriment that would be caused by unauthorised disclosure would therefore be a loss of privacy to the nominees.
17. The loss of privacy as a detriment in its own right has previously been confirmed by the Information Tribunal² and the Commissioner therefore considers that as the information in this case is of a personal nature there is no need for there to be any detriment to the confider, in terms of tangible loss, in order for it to be protected by the law of confidence.
18. Following this argument through, the Commissioner recognises that if disclosure would be contrary to the reasonable expectations of those nominated of maintaining confidentiality in respect of their private information, the absence of detriment would not mean that there could not still be an actionable breach of confidence.
19. The Commissioner has considered these arguments in the context of this complaint and does accept that there is the potential for an actionable breach of confidence. The Commissioner recognises that the

- University has a responsibility to take confidentiality seriously, particularly in relation to information it receives confidentially from individuals as part of an important process such as the selection of a Chancellor. As such it would be improper to disclose the information unless there is a public interest defence for a breach of confidence. In the Commissioner's view disclosure will not constitute an actionable breach of confidence if there is a public interest in disclosure which outweighs the public interest in keeping the information confidential.
20. The Commissioner recognises that the Courts have taken a view that the grounds for breaching confidentiality must be valid and very strong since the duty of confidence is not one which should be overridden lightly. As the decisions taken by courts have shown, very serious public interest matters must be present in order to override the strong public interest in maintaining confidentiality, such as where the information concerns misconduct or illegality.
 21. The Commissioner recognises that there is always some public interest in the disclosure of information. He also recognises that there is interest to certain members of the public, for example in this case those who submitted nominations. In determining whether there is a public interest defence to an actionable breach of confidence, the Commissioner has taken into account all the circumstances of the case and has considered the inherent public interest in the preservation of the principle of confidentiality. The Commissioner considers it important to protect the integrity and trust inherent in confidential processes and there is an expectation by the public that these confidences will be upheld by institutions such as the University.
 22. The Commissioner does not consider that there are any strong public interest arguments for the disclosure of this information and he does not consider that disclosure of information detailing who was nominated and shortlisted for the role of Chancellor of the University to the world at large would meet any wider public interest in increasing transparency or accountability.
 23. On this basis, and taking into account the strong public interest in preserving the principle of confidentiality, the Commissioner considers that the University would not have a public interest defence for breaching its duty of confidence. Therefore, the Commissioner finds that the withheld information is exempt under section 41(1)(a) of FOIA and that the Trust has correctly withheld it.
 24. The University has explained to the Commissioner that, although the process is confidential, and it is requested that those nominated for Chancellor are not told of this by those who have nominated them,

there are invariably some individuals who will make it known to certain nominees that they have nominated them. In this case, the University stated to the Commissioner that it has reason to believe that certain individuals have been told of their nominations.

25. The University therefore sought to apply section 41(1) of FOIA to the withheld information insofar as it constituted the names of those nominated who were unaware of their nominations and sought to apply section 40(2) of FOIA to the withheld information insofar as it constituted the names of those nominees who had been made aware of this (with the exception obviously of the individual who was successful).
26. The Commissioner has considered the University's position and has concluded that, even if certain unsuccessful individuals have been told that they were nominated, their information would still have been provided to the University in confidence and there would still be an expectation that the confidentiality of the process would be maintained, therefore it would still be information imparted in circumstances giving rise to an obligation of confidence. If there was an unauthorised disclosure of the information, this would reveal to the wider world that these nominees were unsuccessful, which would constitute a loss of privacy.
27. Having considered the University's arguments, the Commissioner considers that the entirety of the withheld information is exempt from disclosure under section 41(1)(a) of FOIA. It is likely that it would also fall under section 40(2) of FOIA, however the Commissioner has not gone on to consider the University's application of that exemption.

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: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

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

Deirdre Collins
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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