

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 10 March 2016

**Public Authority:** Queen Mary University of London  
**Address:** Mile End Road  
London  
E1 4NS

#### Decision (including any steps ordered)

---

1. The complainant has requested information from Queen Mary University of London (the 'University') copies of all correspondence sent and/or received by the University from a named individual since a specific date.
2. The Commissioner's decision is that the University has correctly applied the exemption for personal data at section 40(2) of the FOIA. Therefore the Commissioner does not require the University to take any steps.

#### Request and response

---

3. On 5 October 2015 the complainant wrote to the University and requested information in the following terms:

*"Please provide me with electronic copies of all of the content contained in all correspondence whether in paper or electronic form sent and/or received by QMUL/Barts to/from the following since 1<sup>st</sup> January 2013:*

- [name redacted], and
  - anyone acting on behalf of [name redacted] e.g. a lawyer."
4. On 14 October 2015 the University responded and stated that it neither confirmed nor denied that it holds the information requested as it considers it to be the personal data of a third party.

5. Following an internal review the University wrote to the complainant on 10 November 2015. It withheld the requested information under section 40(2) of the FOIA as it considers section 40(3)(a)(i) applies.

### Scope of the case

---

6. The complainant contacted the Commissioner on 10 November 2015 to complain about the way his request for information had been handled.
7. The Commissioner considers the scope of the case is to determine whether the University was correct to apply the exemption for personal data at section 40(2) of the FOIA to the requested information.

### Reasons for decision

---

#### Section 40(2) – personal information

8. Section 40(2) of the FOIA states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the Data Protection Act 1998 (the "DPA").
9. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data as follows:  
  
*"personal data"* means 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 the individual and any indication of the intentions of the data controller or any other person in respect of the individual."
10. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the data protection principles under the DPA. The Commissioner notes in this case that, the University considers that disclosure would breach the first data protection principle.

11. The University considers that section 40(2) of the FOIA applies to the entirety of the information by virtue of section 40(3)(i) and that the information is personal data of the named individual.

**Does the disclosure of the information contravene any of the data protection principles?**

12. The University considers that the disclosure of the information would contravene the first data protection principle. This states that:

*"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".*

13. In deciding whether disclosure of this information would be unfair, the Commissioner has taken into account the nature of the information, the reasonable expectations of the data subject also the consequences of disclosure on the data subject and balanced the rights and freedoms of the data subjects with the legitimate interests in disclosure.
14. The University said that it did not claim that any of the information is sensitive personal data. It explained how it had originally applied section 40(5) to this information as it considered that even confirming it was held could breach the privacy of the named individual.
15. The University argued that the named individual had knowingly corresponded with a public authority and confirming that fact would not be unfair, but that the refusal to disclose the content of the correspondence should be upheld under section 40(2) of the FOIA.
16. The University reported that the request for information names an individual who is an external third party. It stated that this request is from a member of the public naming another member of the public and asking for correspondence from/to them for a 33 month period.
17. The University argued that the withheld information consists of personal correspondence and that any disclosure under FOIA is a disclosure to the world at large without limits. As a private member of the public, the individual named would have a reasonable expectation that the University would not disclose to the world the full exchange of correspondence.
18. The University said that it would argue that this information is *"nobody's business"* but the named individual's. It also argued that the information

cannot be anonymised as the request actually names the named individual which would be in the public domain.

### **Is the information personal data?**

19. The University considers that the fact that the named individual (or a representative) had sent correspondence to a public authority and received correspondence from it, it is personal information on its own. The University added that as the individual is named in both the request and in all of the information, it relates to a living, identifiable individual.
20. The University confirmed that the information requested relates to the private life of a member of the public. The named individual had no previous connection to or correspondence with the University before sending their initial letter to the University and the information is not connected to their work.
21. The University considers that anyone writing to the University on such a matter would have a high expectation that their personal data would only be disclosed to those who need to know it and would not be disclosed into the public domain. In particular in this case, the named individual's email and home addresses and copy of their driving licence. The University added that this applies equally to the contents of their correspondence involving personal opinions on matters.
22. Having seen the information, the Commissioner is satisfied that it constitutes the personal data of the individual named in the request.

### **Consequences of disclosure**

23. In order to assess the impact of the consequence of disclosure on whether disclosure would be fair, it is necessary to consider whether disclosure of the information would cause unwarranted damage or distress to the data subject.
24. In this case, the University reported that the information related to the named individual and concerns a private matter. It considered that the release of this could lead to unwarranted damage or distress by way of facilitating identity theft to the named individual's detriment.
25. The University stated that there had been no consent by the named individual to disclose the information. The individual had not been asked for any consent as the University believed that it was clear from the tone and content of the correspondence that they would not be willing to consent to the disclosure of their personal data to the world at large.
26. It argued that the contents of this information could lead the named individual to suffer distress if it was released. The University said that

this is based on the named individual's correspondence, some of which is of a sensitive nature. Consequently, the University is of the view that it would be unfair to disclose the information requested.

27. The Commissioner considers that the consequence of disclosing the information would be a negative impact on the data subject. At the least it would be an infringement of the data subject's privacy which could cause distress. He draws attention to the fact that disclosure under the FOIA is akin to disclosure to the public at large rather than to the requester alone.

### **Anonymising the information**

28. The complainant states that the information could be made fair to disclose *"by removing the name but leaving the rest of the information"*. He argued that he never expected to receive any personal data from the University and that he had specifically asked for the University to anonymise data and release the information in anonymised form.
29. The University argued that just removing the individual's name cannot anonymise this information. It said that it is not realistically possible to redact the information to leave anything of value comprehensible, especially since the complainant had not described the information he is seeking but had asked for *"all of the content contained in all correspondence..."* Therefore, the University does not consider anonymising the information feasible in this instance.
30. The Commissioner considers that the complainant's claim regarding anonymising the information is misguided. The Commissioner considers that in this case, the data subject is clearly identifiable because the complainant has named the individual and asked for information which relates to them and nothing else. It would be apparent to anyone, who the sender and the receiver are as that is the sole focus of the request.

### **Legitimate interests in disclosure**

31. The Commissioner considers that the public's legitimate interests must be weighed against any prejudice to the rights of freedoms and legitimate interests of the individuals concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interest of the complainant) accessing the withheld information.
32. The University said that it cannot identify any legitimate interests in the public having access to the information requested which in its view overrides the named individual's rights to privacy and to prevent damage or distress. The University considered it to be for the

complainant's own private interests that he has requested this information.

33. It said that there is no obvious public interest since the information does not concern some issue of public consequence and there is no question of anything inappropriate.
34. The Commissioner has considered the context and background to the correspondence and he is satisfied that the named individual would not expect the information to be released into the public domain and that this would prejudice their rights.
35. It would not serve any public interest to release the requested information in this case as the information concerns a private matter and unnecessary distress could be caused.

### **Conclusion**

36. The Commissioner is satisfied that there is no wider public interest in the disclosure of the information which is sufficient to outweigh the rights of the individual concerned.
37. The Commissioner's view is that the named individual would hold a reasonable expectation that this information would not be disclosed. Having considered all the circumstances of this case, and the withheld information, the Commissioner's decision is that the disclosure of the information would be unfair and in breach of the first data protection principle. Therefore, the Commissioner finds that the information was correctly withheld under section 40(2) of the FOIA.

## Right of appeal

---

38. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. 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**