

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 7 September 2016

Public Authority: University of South Wales
Address: Llantwit Road
Treforest Pontypridd
Mid Glamorgan
CF37 1DL

Decision (including any steps ordered)

1. The complainant has requested information from the University of South Wales ("the University") relating to a complaint made to the University by a named individual regarding the copying/misappropriation/plagiarism of work/ideas by another named individual.
2. The University would neither confirm nor deny holding any information citing section 40(5)(b)(i) of the FOIA.
3. The Commissioner's decision is that the University correctly applied section 40(5)(b)(i) and requires the University to take no steps.

Request and response

4. On 25 March 2016, the complainant requested the following information:

"I am raising in accordance with the Freedom of Information Act, a request under this act i.e. an FOI for information held by the University of Newport and University of South Wales, and all permutations of the same for information regarding a complaint made by [name redacted] a current Phd student at USW regarding the copying/ misappropriation / plagiarism of her work / ideas /concepts for her PhD by [name redacted]. This information will be held on file as a complaint.

[Name redacted] *is registered as a PhD student in the department of [identifiers removed] the University of South Wales.*

[Name redacted] *raised a concern / complaint regarding [name redacted] and the use of her i.e. [name redacted] PhD research ideas concepts.*

I would like as a FOI request all documents, to include notes, minutes, memos and any evidence as permutations of the previous regarding the issues raised by [name redacted] related to this incidence and complaint of her work being copied / plagiarised / misappropriated and realised by [name redacted]. I request all permutations reasonably understood of the previous information."

5. The University responded to the complainant's request on 13 April 2016, and refused to either confirm or deny if the information she had requested was held under section 40(5)(b)(i).
6. On 25 April 2016 the complainant requested an internal review as she believed the public interest in disclosure outweighed other considerations.
7. On 20 May 2016 the complainant received a response to her request for an internal review from the University, which stated that it upheld its original response.

Scope of the case

8. The complainant contacted the Commissioner on 22 April 2016 to complain about the way her request for information had been handled. Specifically she felt that there was significant public interest in the disclosure of the information she had requested.
9. The Commissioner has therefore had to consider whether the University has correctly applied section 40(5)(b)(i) of the FOIA, and whether it has adequately considered the legitimate interest.

Reasons for decision

10. The consequence of section 40(5)(b)(i) is that if a public authority receives a request for information which, if it were held, would be the personal data of a third party (or parties), then it can rely on section 40(5)(b)(i), to refuse to confirm or deny whether or not it holds the requested information – if to do so would breach one of the data protection principles.

11. Section 1 of the FOIA provides two distinct, but related rights of access to information that impose corresponding duties on public authorities:
 - a. the duty to inform the applicant whether or not requested information is held and, if so
 - b. the duty to communicate that information to the applicant.
12. However, in relation to personal information, section 40(5)(b)(i) of the FOIA says that a public authority is not obliged to confirm or deny that it holds information if, by confirming or denying that it is held, the authority would breach one of the data protection principles.
13. This subsection is about the consequences of confirming or denying whether the information is held, and not about the content of the information. The criterion for engaging it is not whether disclosing the information (if held) would contravene data protection principles, but whether the simple action of confirming or denying whether it is held would do so.
14. The Commissioner's guidance on section 40(5) explains how there may be circumstances, for example requests for information about criminal investigations or disciplinary records, in which simply to confirm whether or not a public authority holds that information about an individual can itself reveal something about that individual. To either confirm or deny that the information is held could indicate that a person is or is not the subject of a criminal investigation or a disciplinary process.
15. For the University to have correctly relied on section 40(5)(b)(i) the following conditions must be met:
 - confirming or denying whether information is held would reveal personal data of a third party; and
 - confirming or denying whether information is held would contravene one of the data protection principles.
16. In order to reach a view regarding the application of this exemption, the Commissioner has first considered if confirming or denying whether the requested information exists does, in itself, constitute personal data as defined by the Data Protection Act 1998 (the "DPA").

Is the information personal data?

17. The DPA defines personal data 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 the individual and any indication of the intention of the data controller or any other person in respect of the individual."

18. The two main elements of personal data are that the information must 'relate' to a living person and that the person must be identifiable. Information will relate to a person if it is about them, linked to them, has some biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The information sought in the request relates to a possible complaint made by one individual, who is alleged to be a student at the University, against another individual on the issue of plagiarism. The University considered this to be the personal data of the named individuals. Further, it stated that even confirming or denying whether this information was held would disclose the personal data of the named individuals.
20. Taking this into account the Commissioner is satisfied that, if this information were held, this information would fall within the definition of personal data as set out in the DPA.
21. Having accepted that the request is for personal data of living individuals the Commissioner must go on to consider whether confirming or denying if the information is held would contravene any of the data protection principles.

Would disclosure breach the data protection principles?

22. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
23. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner must balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.
24. The University has explained that even confirming or denying whether the information was held would disclose personal data about the named individuals.
25. Further, the information requested relates to complaints and accusations of plagiarism and these could cause considerable damage and distress if

either confirmed or denied. These individuals would have a reasonable expectation that any personal data related to the existence or non-existence of such data would be processed confidentially and in line with the DPA.

26. Therefore, the Commissioner considers that disclosure in this case could lead to an intrusion into the private lives of the individuals concerned and the consequences of any disclosure could cause damage and distress to any party concerned.

The legitimate public interest

27. Notwithstanding a data subject's reasonable expectations or any damage or distress caused, it may still be fair to disclose information, or in this case confirm or deny if information is held, if there is a more compelling legitimate public interest in doing so. Therefore the Commissioner will carry out a balancing exercise, balancing the rights and freedoms of the data subject against the legitimate public interest in confirming or denying if the information is held.
28. The Commissioner would stress that this is a different balancing exercise than the normal public interest test carried out in relation to exemptions listed under section 2(3) of the FOIA. The public interest in confirming if information is held must outweigh the public interest in protecting the rights and freedoms of the data subject if providing confirmation or denial is to be considered fair.
29. In her letter to the University on 20 May 2016 the complainant put forward the following argument in favour of a legitimate public interest in disclosing the information:

"My request was made for access to this information, in terms of public interest due to the large sums of money provided as a grant to [name redacted] and the [name redacted], for the [details redacted]. I understand to be in the region of [amount redacted] awarded from the [organisation redacted]."
30. The complainant believes that any allegations of plagiarism against the named individual are therefore a matter of public interest, as this individual has received a large sum of public money as a grant.
31. The Commissioner acknowledges that there is a general public interest in scrutinising grants of public money given to individuals, and in ensuring that there is transparency in these processes in order to reassure members of the public. However in this circumstance the Commissioner does not believe that the public interest outweighs the individual's right to privacy.

32. The Commissioner is therefore satisfied that the University confirming or denying whether it holds the requested information would be unfair to the individuals named in the request and that the University was entitled to apply section 40(5) on that basis.

Right of appeal

33. 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

34. 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.
35. 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