

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2017

Public Authority: University of Bolton
Address: Deane Road
Bolton
BL3 5AB

Decision (including any steps ordered)

1. The complainant requested confirmation that the Chair of the Board of Governors "signed off" on all financial arrangements between the University of Bolton and the Vice Chancellor during his period of office.
2. The University confirmed that it does not hold information in a recorded form which provides a direct response to the complainant's question. The University's position is that it has provided all recorded information which falls broadly within the scope of the request. The Commissioner's decision is that she is satisfied that the University has provided the complainant with all recorded information held which falls within the scope of the request.
3. The Commissioner does not require the University to take any steps.

Background to the request

4. The claimant's request, the subject of this decision notice, is dated 25 May 2015. The University initially refused to respond to the request on the basis that it was considered to be vexatious. The Commissioner issued a decision notice on 6 January 2016 upholding the University's decision:

https://ico.org.uk/media/action-weve-taken/decision-notice/2016/1560452/fs_50596077.pdf
5. The complainant appealed the Commissioner's decision and the matter was considered by the First-Tier Tribunal on 4 July 2016, when it was decided that the request was not vexatious. The Tribunal issued a

substituted decision notice requiring the University to provide a response within 35 days of the Tribunal decision:

<https://tinyurl.com/j84mdsl>

6. The University provided a further response on 17 August 2016 and it is in relation to this response that this decision notice has been issued.

Request and response

7. On 25 May 2015, the complainant wrote to the University of Bolton ("the University") and requested information in the following terms:

Please can the Chair of Board of Governors, [name redacted] confirm that he "signed off" on all financial arrangements between the University of Bolton and Vice Chancellor [name redacted], during his period of office?

8. The University responded on 17 August 2016. It stated that it did not hold the information:

The request for information is a question and the University is not required to answer a question if the relevant information is not held in a recorded form. The University does not hold this information.

It went on to explain:

The requester should be aware that the Governing Body has collective responsibility for the University as a higher education corporation and exempt charity, and its structure of governance is laid down in the instrument and articles of government (as published on its website). The Governing body is collectively responsible for the:

- *The determination of the educational character and mission of the University and for oversight of its activities;*
- *The effective and efficient use of resources, the solvency of the University and the Corporation and for safeguarding their assets;*
- *Approving annual estimates of income and expenditure;*
- *The appointment, assignment, grading, appraisal, suspension, dismissal, and determination of the pay and conditions of service of the Designated Senior Post Holders; and*
- *Setting a framework for the pay and conditions of service of all other staff.*

The Governing Body collectively approves policies, procedures and regulations which, whilst subordinate to the University's instrument and articles of government, provide Governors with an assurance framework over the running of the University. University staff including the Vice Chancellor, are required by virtue of their employment to act in accordance with the policies, procedures and regulations approved by the Governing body. The University's internal and external audit functions provide further external scrutiny and assurance to the Governing Body on financial and other matters.

The role of the Chair does not include responsibility for the sign off on any financial arrangements between the University of Bolton and Vice Chancellor George Holmes.

9. Following an internal review the University wrote to the complainant on 26 September 2016. It confirmed that the information requested was not held by the University.

Scope of the case

10. The complainant contacted the Commissioner on 27 September 2016 to complain about the way his request for information had been handled and asked the Commissioner to encourage the University to respond to his request fully, arguing that:

The University refuse to acknowledge that The Chair of Governors, signed off, the loan of £960,000 to the Vice Chancellor, arguing that any decision is a collective decision, from the Board of governors.

11. During the course of the Commissioner's investigation, the University reviewed the original request however maintained that it had responded appropriately.
12. The complainant's request takes the form of a closed question to which the answer can only be either in the affirmative or negative.
13. The FOIA does not oblige a public authority to respond to a question if the answer to that question is not held in recorded form. The University is not required to investigate the information it holds in order to formulate an answer to a question if the answer is not in recorded form, nor is it obliged to provide explanations.
14. The Commissioner considers that the scope of the case is limited to ascertaining what information the University holds (or held at the time

of the request) having regard to the specific wording of the request, and whether section 1 of the FOIA was applied correctly by the University.

Reasons for decision

15. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled to be informed in writing by the public authority whether it holds information within the scope of the request, and if so, to have that information communicated to him.
16. Where there is some dispute between the amount of information identified by a public authority and the amount of information that a complainant believes may be held, the Commissioner, following the lead of a number of First-Tier Tribunal decisions, applies the civil standard of the balance of probabilities.
17. In other words, in order to determine such complaints the Commissioner must decide whether, on the balance of probabilities, a public authority holds any information which falls within the scope of the request (or was held at the time of the request).
18. In his complaint to the Commissioner the complainant stated he accepted the collective responsibility of the Board of Governors, however made reference to the Good Practice Guide for the Board of Governors and the unconfirmed minutes of the Board of Governors meeting held on 1 October 2014. He considered that the former makes provision for the Governing Body to grant delegated authority to the Chair to act on its behalf.
19. As is the practice in a case such as this, the Commissioner asked the University a number of questions to confirm/establish if further information is held.
20. In particular, on 29 November 2016, the Commissioner discussed the matter with the University to ascertain if the University held any information in response to the request. The University informed the Commissioner that it had provided a full and final response to the complainant and was unable to provide the complainant with anything further.
21. The Commissioner then wrote to the University on 5 December 2016, asking a number of questions to establish whether it held any information which could be interpreted to broadly relate to the scope of the request. The University responded on 8 December 2016 informing the Commissioner that:

Information relating to the role of the Board of Governors, Chair of the Board of Governors and relationship with the Vice Chancellor is in the public domain on the University website via the web link below - this also provides the governing documents that relate to the operation of the Board of Governors.

<http://www.bolton.ac.uk/Governance/GoverningBody.aspx>

The financial arrangements of the University are recorded in the University's annual financial statements which are audited by the University's external auditor, Scott-Moncrief and submitted to HEFCE for review, and again are disclosed in the public domain at:

<http://www.bolton.ac.uk/Finance/Home.aspx>

The 2015-16 Financial Statement incorporates an annual strategic report, the statement of corporate governance and internal control and the audited accounts. The statement of corporate governance and internal control details the governance arrangement at the University, including for remuneration of the Vice Chancellor by way of the Remuneration Committee, the terms of reference of which are also in the public domain on the University governance website, as provided above.

This information is readily accessible to any member of staff, student or member of the public should they have a genuine interest in the governance and financial arrangements of the University.

22. The complainant commented on the above response on 12 December 2016 as follows:

[name redacted] was Chair of Governors at University of Bolton, at the time when, a selected sub group of the Governors loaned £960,000, from University funds, to enable the Vice Chancellor [name redacted] [name redacted], to buy a house in Bolton.

The reason for my question is clear and reasonable. As chairperson of the university's Governing Body, [name redacted], chaired the sub group where the loan was agreed. [name redacted] signature would have been required for the minutes of this meeting. Therefore, did [name redacted], formally agree the minutes of that meeting where that loan was approved, that is "signing off" the financial arrangements between the University and The Vice Chancellor, [name redacted]?

If the university are now suggesting, that information is not available, why did they strongly argue my FOI request was vexatious and go to considerable University funds in legal fees to challenge my FOI in court.

23. The University states that the answer to the complainant's specific question is not held in recorded form. The University has provided the complainant with information which it does hold and which is publically available on it's website. Whilst the Commissioner is of the view that this information does not provide a definitive answer to the complainant's request, it does in her view broadly relate to the scope of the request.
24. The complainant has focussed in his communications with the Commissioner, on a particular loan which he alleges was made by the University to the Vice Chancellor. However, when making this determination the Commissioner has paid specific regard to the wording of the request itself and not any underlying motive on the part of the complainant.
25. Having considered the University's responses to the Commissioner's questions, the Commissioner is satisfied that, on the balance of probabilities, the University has provided the complainant with all recorded information within the scope of the request.
26. The Commissioner understands the reasons why the complainant considers further information may be held, but the Commissioner can only consider what is held falling within the scope of the specific wording of the original request. The Commissioner considers the complainant's request for information relating to a specific loan and how this was authorised is not what he initially requested and is not an objective interpretation of the original request.
27. As the Commissioner's decision is that on the balance of probabilities the University has now provided the complainant with all the recorded information which falls within the scope of his original request, she does not require the University to take any further steps.

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

Rachael Cragg
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