

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 July 2017

Public Authority: University of Huddersfield
Address: Queensgate
Huddersfield
West Yorkshire
HD1 3DH

Decision (including any steps ordered)

1. The complainant has requested information relating to a Visiting Professorship. The University of Huddersfield (the University) refused to provide the requested information citing the exemptions under section 40(2) and 41 of the FOIA as its basis for doing so.
2. The Commissioner's decision is that the University has correctly applied section 40(2) of FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

Request and response

4. On 10 January 2017 the complainant made a request for information following a similar request which ended in the decision notice FS50648429 (<https://ico.org.uk/media/action-weve-taken/decision-notice/2017/1625655/fs50648429.pdf>):

'Please note that I am only interested in information which relates to the period 22 July 2015 to 22 July 2016.

Could you please provide...

1...All correspondence and communications including emails between the University and the Duchess of York which in any way relates to the decision to award her a Visiting professorship. Some of this correspondence and communications including emails will pre date the

announcement of the appointment and some of it will have occurred afterwards. Please note that I am interested in receiving both sides of the correspondence and communications.

2...All correspondence and communications including emails between the University and His Royal Highness Prince Andrew which relate to the decision to award the Duchess a Visiting Professorship. Some of this correspondence and communications will have pre dated the announcement of the appointment and some of it will have occurred afterwards. Please note that I am interested in receiving both sides of the correspondence and communications.

3...Could you please provide copies of all documentation held by the University which in any way relates to the decision to award the Duchess a Visiting Professorship and or the subsequent award of the honour. Some of this correspondence and communications will have pre dated the announcements of the appointment and some of it will have occurred afterwards.

4...Is the decision to award the Duchess of York a Visiting Professorship connected with any offer of a donation to the University. If the answer is yes can you please name the donor and state the relevant amount. Please provide details irrespective of whether the donation was accepted and or refused. Please provide details even if the donation has not been accepted yet.'

On 6 February 2017 the University responded to Q2 and Q3 of the request that it did not hold any information:

'Q2 – the University does not hold any communications with HRH The Duke of York relating to the decision to award the Duchess of York a Visiting Professorship.'

Q3 The University disclosed extracts from a draft Q&A sheet compiled by the University's PR Department (which was ultimately not used). *'Other than the press release already provided to you in response to your earlier request dated 22 July 2016, the University does not hold any further information relating to the decision to award the Duchess of York a Visiting Professorship.'*

5. Although the University answered Q4 of the request, it cited section 14(2) to refuse to provide the requested information in Q4 as it repeated the Q4 in the previous request that was answered on 24 August 2016 (see decision notice FS50648429). The University confirmed that:

'Q4 – the decision to appoint the Duchess of York as a Visiting Professor was not in any way connected to an offer of a donation to the

University, either prior, subsequently or in anticipation of any promise of a future donation.'

6. The University confirmed that it held information in a recorded format for Q1 but applied sections 40 and 41 to refuse to provide the requested information in Q1.
7. On 9 February 2017, the complainant requested an internal review into the handling of the request as he was *'unhappy with the University's failure to disclose information it clearly holds'* and *'I do not believe the exemptions apply.'*
8. On 27 February 2017 the University provided the outcome of the internal review.

'In response to your concern that the University has failed to disclose information that it clearly holds, I can confirm that the only information that the University holds relating to your request, and which has not already been disclosed to you, is correspondence passing between the Duchess of York (or others acting on her behalf) and the Vice-Chancellor, which relates to the decision to award her a Visiting Professorship and in respect of which the University applied the exemptions...'

9. The University provided arguments to support the application of the exemptions at section 40 (personal data) and section 41 (supplied in confidence) to Q1.

Scope of the case

10. The complainant contacted the Commissioner on 26 April 2017 to complain about the way his request for information had been handled. He argued that he did not *'believe that disclosure would constitute a breach of data protection. The Duchess has after all accepted a public role with a publicly funded institution'*.
11. The Commissioner understands that the only outstanding issue is the withheld information for the part of the request at Q1.
12. As part of its submissions to the Commissioner, the University also relied on section 36(2)(b)(ii) on the basis that in the reasonable opinion of its qualified person, disclosure of the withheld Information would be likely to inhibit the free and frank exchange of views for the purposes of deliberation.

13. Therefore, the Commissioner considers the scope of this case to be to determine if the University has correctly applied the exemptions it has cited. The Commissioner will first look at the application of section 40(2). Only if that exemption is not engaged will she consider the remaining exemptions at section 41 and 36.

Reasons for decision

Section 40(2) – Third party personal data

14. This exemption provides that any third party personal data is exempt if its disclosure would contravene any of the Data Protection Principles set out in Schedule 1 of the Data Protection Act (DPA).

Is the withheld information personal data

15. Personal data is defined by the DPA as any information relating to a living and identifiable individual.
16. 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, has them as its main focus or impacts on them in any way.
17. The University considers that the withheld information (the correspondence between the Duchess of York and the Vice-Chancellor) is primarily their personal data and therefore exempt from disclosure. There are two other individuals named in the correspondence and the University considers that it is also their personal data.
18. The Commissioner is satisfied that the information withheld under section 40(2) is information from which living data subjects would be identifiable.

Would disclosure breach the Data Protection Principles?

19. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
20. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individuals, the potential consequences

of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

Reasonable expectations

21. Whether an individual might reasonably expect to have their personal data released depends on a number of factors. These include whether the information relates to an employee in their professional role or to them as individuals, the individual's seniority or whether they are in a public facing role.
22. The University has argued that the information in this case concerns the personal information of named individuals and there is no expectation from these individuals that their personal information would be made publicly available:
 - This appointment (Visiting Professor at the University) is not a public role or relevant to any public duties - it is an unpaid role which relates to the Duchess of York acting in her personal and private capacity.
 - That neither the Duchess of York nor the Vice-Chancellor of the University would expect their personal data to be disclosed in respect of a role undertaken by the Duchess of York in her personal and private capacity, above the level of information that is currently publicly available ... We consider this also to be true in respect of the other individuals mentioned in the Withheld information, albeit in passing.
 - Given that the Duchess of York was corresponding with the University about a personal role, it is certain that she would not have expected the contents of that private correspondence to be disclosed.
23. The University explained that it has a significant number of Visiting Professor appointments and does not disclose any similar details of such appointments:
 - The terms of those appointments are confidential, individually negotiated and agreed between the University and those relevant individual(s) involved.
 - ...the decision to appoint an individual as a Visiting Professor is taken by the University alone and therefore any individual with which the University corresponds subsequently would have no expectation that their personal data in respect of an appointment, including whether or not the appointment was accepted and the

terms under which it may have been accepted, would later be disclosed.

24. The University confirmed that neither the Duchess of York nor the Vice-Chancellor of the University have consented to their personal data being disclosed. The other two named individuals have not been approached for this purpose, but the University's view is that they would not expect this personal data about them to be disclosed.
25. The Commissioner understands that the University would not routinely make public such information.

Consequences of disclosure/Damage and distress

26. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the named individuals.
27. The University has argued that:
 - Disclosure of the Withheld Information will inevitably result in significant damage and distress to the Duchess of York... This would have a knock on effect on the relationship between the Duchess of York, the Vice-Chancellor and the wider University.
28. The University has also explained that there is some information relating to the fact of this appointment in the public domain but the personal data that constitutes the withheld information is not in the public domain.
29. Upon viewing the contents of the withheld information, the Commissioner is satisfied that the information is not in the public domain and accepts that disclosure could be distressing for the named individuals.

Balancing the rights and freedoms of the individuals with the legitimate interests in disclosure

30. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individuals. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
31. The complainant has argued that '*the Duchess has after all accepted a public role with a publicly funded institution*'.

32. The University recognises the inherent public interest in disclosure, including transparency in the process by which Visiting Professors are appointed, and therefore the nature of the role and certain details relating to it are available in the public domain.
33. However, the University argues that there is an inherent and greater public interest in protecting the personal data rights of individuals and:
 - in the University having the necessary safe space to consult and negotiate with any third parties and to have open and frank discussions about such appointments;
 - disclosure would undermine the integrity of the process by which individuals are considered for and offered appointments as Visiting Professors.
34. In this case, the Commissioner is not convinced that the specific information requested is of sufficient wider public interest to warrant overriding the protection of the third party personal data of those concerned.
35. Having considered the University's submission and the views of the complainant the Commissioner is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that the University has put forward for protecting the individuals' personal data, namely:
 - the individuals' likely expectation about how their personal data will be managed.
 - the individuals' lack of consent to its release; and
 - the possible negative consequences to the individuals of releasing the information.
36. The Commissioner is satisfied that on balance, the legitimate public interest would not outweigh the interests of the individuals named within the correspondence and that it would not be fair to disclose the requested information in this case.

Conclusions

37. The Commissioner is satisfied that the withheld information is personal data and that disclosure would breach the first data protection principle as it would be unfair to the individuals concerned. The Commissioner upholds the University's application of the exemption provided at section 40(2) of the FOIA and has not gone on to consider the other exemptions cited by the University.

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

Website: 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

Pamela Clements
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