

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 6 December 2017

Public Authority: The University of Manchester
Address: Oxford Road
Manchester
M13 9PL

Decision (including any steps ordered)

1. The complainant has requested information relating to a position they applied for and why their application was unsuccessful. The university confirmed that questions 1, 2, 3, 4, 5 and 8 are requests for information which would constitute the complainant's own personal data and so should be considered as a subject access request under the Data Protection Act (DPA). With regards to the remaining questions, the university provided a response.
2. The complainant remained dissatisfied with the university's handling of questions 1, 2, 3, 4, 5, 6 and 8. With regards to questions 1, 2, 3, 4, 5 and 8, the Commissioner has decided that section 40(1) of the FOIA applies. With regards to question 6, the Commissioner has decided that the university has now complied with the requirements of section 1 of the FOIA and confirmed that the requested information is not held.
3. The Commissioner considers the university breached section 1 of the FOIA by failing to confirm, specifically, that the information is not held within 20 working days of the request. But as this was later rectified and the university confirmed that the requested information is not held, the Commissioner does not require any further action to be taken.

Request and response

4. On 11 July 2017, the complainant wrote to the university and requested information in the following terms:

"1. In Dr [name redacted]'s email to me dated and timed 6 June 2015 5.32 PM she states, "having reviewed your submitted application I'm afraid that I don't feel you meet all the essential criteria for the post."

What were the essential criteria which [name redacted] feels I did not meet?

2. The Redeployment Policy states, "The key objective is to establish whether or not a ring-fenced employee meets or can be trained in a reasonable period to meet the essential criteria in the job's person specification. A candidate may not meet the full specification of the job but with a reasonable amount of training, development and support, and within a reasonable period would be able to carry out the role. The recruiting manager will be responsible for providing feedback to the individual" – what feedback did the recruiting manager ([name redacted]) provide to me to demonstrate that with a reasonable amount of training, development and support, and within a reasonable period that I would be able or unable to carry out the role?

3. [Name redacted] claims in her email dated and timed 06 June 2017 5:32 PM, "Having reviewed your submitted application I'm afraid that I don't feel you meet all the essential criteria for the post" – what reasonable amount of training, development and support, and within a reasonable period would enable me to carry out the role?

4. When did [name redacted] answer my email to her dated 07 June 2017 3:22 PM?

5. When did [name redacted] ever provide an answer to the query in the email dated 07 June 2017 3:22 PM, stating, "Please may I kindly ask which of the essential criteria you feel I do not meet?"

6. The Redeployment Policy states, "All vacancies will initially be advertised for 5 working days as, ring-fenced to applications from staff on the Redeployment register" – on which 5 working days dates was post S&E-09999 advertised for 5 working days as, ring-fenced to applications from staff on the Redeployment register?

7. The Redeployment Policy states, "In the event of a member of staff becoming eligible for redeployment after the post has been opened up to

internal and/or external candidates, the recruiting manager must give due consideration to the redeployee's application and arrange to interview them as soon as possible if they are considered suitable for the role" – if [name redacted] interviewed redeployees, on what date(s) did she do so?

8. I identified myself as a Disabled applicant for post S&E-09999- what measures did [name redacted] take to ensure I was not discriminated against on grounds of disability when she arrived at her decision detailed in her email dated and timed 06 June 2017 5:32 PM stating "Having reviewed your submitted application I'm afraid that I don't feel you meet all the essential criteria for the post"?

9. How many applicants were shortlisted for interview for this post?

10. Of those applicants who were shortlisted for interview for this post, how many were redeployees?

11. Of those applicants who were shortlisted for interview for this post, how many were female?"

5. The university responded on 17 July 2017. It stated that questions 1, 2, 3, 4, 5 and 8 relate to the complainant's own personal data and therefore should be processed as a subject access request under the DPA. It asked the complainant to pay the fee of £10 and provide proof of ID. In relation to questions 6, 7, 9, 10 and 11, the university confirmed that these would be processed under the FOIA and a response would be provided in due course.
6. The complainant replied on 18 July 2017, advising the university that they do not agree questions 1, 2, 3, 4, 5 and 8 are outside the remit of the FOIA and therefore requested a review of this decision.
7. The university responded the same day; 18 July 2017. It stated that the complainant was correct that the request does come under the remit of the FOIA. However, section 40(1) of the FOIA provides an exemption from disclosing the personal data of the data subject/applicant. It confirmed again that to request such data, these questions must be processed as a subject access request under the DPA and the relevant fee and ID is required before this can begin. It then provided the details of its appeals process.
8. The university issued a further response on 10 August 2017, addressing questions 6, 7, 9, 10 and 11. It provided a response to each question.

9. The complainant requested an internal review on 16 August 2017 in relation to question 6. The complainant stated that the university had not answered this question appropriately.
10. The university carried out an internal review and notified the complainant of its finding on 30 August 2017. It provided a further response to question 6 of the request.

Scope of the case

11. The complainant contacted the Commissioner on 12 September 2017 to complain about the way their request for information had been handled. The complainant confirmed that they remained dissatisfied with the university's response to questions 1, 2, 3, 4, 5, 6 and 8.
12. In relation to questions 1, 2, 3, 4, 5 and 8, the complainant disagrees that the information constitutes their own personal data and therefore with the university's application of section 40(1) of the FOIA.
13. In relation to question 6, the complainant initially requested the Commissioner to compel the university to make specific statements, using their wording, to satisfy this element of the request. The Commissioner confirmed during her investigation that she has no powers to compel a public authority to make specific statements. Under the FOIA she can only compel a public authority to comply with its obligations under section 1 of the FOIA subject to any exemptions that may apply.
14. The complainant then stated that their complaint was that the university had not issued a response that has said "the information is not held". Instead the complainant believes:

"The University has purposely chosen to confound the statement that the requested information is not held with superfluous information, "The post was advertised for more than 5 working days and ring-fenced to applications from staff on the Redeployment register. **THEREFORE** the information requested is not held".

The sentence, "**THEREFORE** the information requested is not held" does *not* mean, "The information requested is not held".
15. The Commissioner has no powers to compel a public authority to draft its responses under the FOIA in a particular way. In relation to question 6, she can only consider whether the university has met its obligations under section 1 of the FOIA.

Reasons for decision

Questions 1, 2, 3, 4, 5 and 8

16. Section 40(1) of the FOIA states that any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.
17. So, in other words, if the Commissioner is satisfied that questions 1, 2, 3, 4, 5 and 8 are requests for information which relate to the applicant and it constitutes their own personal data, it will be exempt from disclosure under the FOIA by virtue of section 40(1). This is because such requests should be considered as a subject access request under the DPA.
18. The complainant disputes the application of section 40(1) of the FOIA on two grounds:
 - (1) "The requested information will not necessarily be identifiable from a DPA request. One specimen reason is that the information may be handwritten."
 - (2) "I choose to exercise my right to seek the information under the FOIA and not the DPA."

In addition the complainant stated that questions 4 and 5 do not involve personal data and questions 1, 2, 3 and 8 seek anonymised answers and therefore would not be information from which they could be identified.

19. The Commissioner considers data will constitute personal data if the data subject can be identified from it or from it and other information that is available. The Commissioner is also of the view that data which *relates* to the data subject will constitute their personal data. Data that is processed to record something about an individual will constitute that individual's personal data.
20. The Commissioner considers the complainant is the focus of these questions and the questions are basically asking for information which will enable them to understand more closely why their job application was not successful. The records that will be held will be about the complainant and will have been created and processed as a result of employment matter at the centre of this request. These questions are therefore for information which relates to the complainant and the complainant will be identifiable from much of it whether from this information alone or a combination of this information and other information that is held by the university.

21. The Commissioner is therefore satisfied that the questions are requests for the complainant's own personal data and therefore they are exempt from disclosure under section 40(1) of the FOIA.

Question 6

22. Section 1 of the FOIA states that any person making a request for information to a public authority is entitled –
 - (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
 - (b) if that is the case, to have that information communicated to them.
23. This question was specifically worded to request "on which 5 working days dates was post S&E-09999 advertised for 5 working days as, ring-fenced to applications from staff on the Redeployment register".
24. The university initially responded to this question with explanations and various statements about the mechanism of ring-fencing and how many days the position was advertised for and to whom.
25. The complainant remained dissatisfied with these responses, referring the matter to the Commissioner and initially asking that the university is compelled to make specific statements using the wording they proposed. Following the Commissioner's correspondence, which pointed out that the Commissioner cannot compel a public authority to make specific statements of this nature, the complainant then confirmed that they simply seek a response from the university that the information is not held without any explanation or "confounding" information. Examples they provided were:
 - (a) "The requested information is not held."
 - (b) "We do not hold the information."
26. The Commissioner now has to decide whether the university has complied with its obligations under section 1 of the FOIA.
27. Initially, the university did not confirm in specific words whether it holds the requested information. Instead it provided explanations, information and statements detailing the process of ring-fencing and how the position in question was advertised.
28. However, during the Commissioner's investigation the university issued a further response which, amongst other things, confirmed that the requested information is not held.

29. The Commissioner has therefore decided in this case that the university has now met its obligations under the FOIA and confirmed in accordance with section 1 that it does not hold the requested information. She does not consider that it is in her remit to compel it to issue yet a further response which essentially says the same thing but which does not contain any further explanations or "confounding information". This would essentially be compelling the university to issue its response in a particular manner and be compelling the university to structure its response in a particular format and she does not consider that she has the powers under the FOIA to do this.
30. The Commissioner considers the most important issue here is that the university confirms whether or not it holds the requested information and it has done that.
31. Arguably, the university did not confirm within 20 working days of receipt of the request that it did not hold the requested information and so strictly speaking the university has breached section 1 of the FOIA in this case. A breach will indeed be recorded but because the university has now complied with the requirements of section 1 of the FOIA no further action is required.

Right of appeal

32. 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

33. 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.
34. 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

Samantha Coward
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