

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 13 August 2021

**Public Authority:** The Governing Body of the University of Plymouth

**Address:** Drake Circus  
Plymouth  
PL4 8AA

#### **Decision (including any steps ordered)**

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1. The complainant has requested information about trainee clinical psychologists. The University of Plymouth ('the University') has released some relevant information and advised that it does not hold the remaining information. The complainant considers that the University holds the information requested in part 5 of his request, has not released the information he requested in part 4.5 and cannot rely on section 40(2) of the FOIA (personal data) to refuse to release the specific information he has requested in the remainder of part 4.
2. The Commissioner's decision is as follows:
  - On the balance of probabilities, the University has released all the information it holds that is relevant to part 5 of the request and holds no further information within scope of part 4.5 of the request. As such the University has complied with section 1(1) of the FOIA in relation to those parts of the request.
  - The information requested in part 4.1 to 4.4 of the request cannot be categorised as personal data and so this information does not engage section 40(2) of the FOIA.
3. The Commissioner requires the University to take the following step to ensure compliance with the legislation:

- Disclose the information requested in part 4.1 to 4.4 of the complainant's request.
4. The University must take this step within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 3 July 2020 the complainant wrote to the University and requested information in the following terms:

“(1) Full true copy/copies of the contract/contracts between the University of Plymouth and Health Education England in respect of the recruitment, selection, employment and training of Trainee Clinical Psychologists employed by Somerset NHS Foundation Trust (formerly Taunton and Somerset NHS Foundation Trust) covering years 2017-2020.

(2) Full true copy/copies of the contract/contracts between the University of Plymouth and Somerset NHS Foundation Trust (formerly Taunton and Somerset NHS Foundation Trust) in respect of the recruitment, selection, employment and training of Trainee Clinical Psychologists employed by Somerset NHS Foundation Trust (formerly Taunton and Somerset NHS Foundation Trust) covering years 2017-2020.

(3) Full true copies of all contracts between the University of Plymouth and the 'Clearing House for Postgraduate Courses in Clinical Psychology' covering the years 2016-2020.

(4) Details of the demographics (numbers per item for each year below) of Trainee Clinical Psychologists whose employment commenced (i) 2017, (ii) 2018, (iii) 2019, (iv) 2020:

(4.1) Male? Female?

(4.2) Age at commencement of employment:

20-30?

31-40?

41-50?

51-60?

60 and above?

(4.3) Disability declared?

(4.4) Nationality:

UK?

Non-UK

(4.5) Qualifications:

Undergraduate degree classification?

Highest qualification held?

(5) Full true copy/copies of the contract/contracts between the University of Plymouth and University of Exeter in respect of the recruitment, selection, employment and training of Trainee Clinical Psychologists employed by Somerset NHS Foundation Trust (formerly Taunton and Somerset NHS Foundation Trust) covering years 2017-2020"

6. The University responded on 4 August 2020. It advised that it did not hold information requested in parts 1 to 3, that the information requested in part 4 was exempt from disclosure under section 40(2) of the FOIA and that a different public authority had already provided the complainant with the information requested in part 5.
7. Following an internal review the University wrote to the complainant on 14 October 2020. It upheld its original response.
8. In the course of the Commissioner's investigation, on 23 June 2021 the University provided the complainant with a fresh response to his request. It confirmed that it does not hold the information requested in parts 1, 2 and 3 of the request.
9. With regard to part 4.1 to 4.4 of the request, the University aggregated the numbers involved for the four years covered by the request ie it released the total numbers. It considered that the numbers involved for each separate year were so small that releasing these small numbers would effectively release the personal data of third persons and so this information was exempt under section 40(2) of the FOIA. The University addressed part 4.5, explaining that trainees need to have achieved a 2:1 in their psychology degrees.
10. The University released a copy of an agreement between the University and the University of Exeter, in response to part 5 of the request.

## Scope of the case

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11. The complainant first contacted the Commissioner on 14 October 2020 to complain about the way his request for information had been handled.
12. In correspondence to the University on 24 June 2021, which he copied to the Commissioner, the complainant confirmed that he remained dissatisfied following the University's fresh response of 23 June 2021. He was not satisfied for the following reasons:
  - He had not been provided with the information requested in part 5 of the request.
  - The University had aggregated the numbers associated with parts 4.1 to 4.4 of his request.
  - He had not been provided the specific information requested in part 4.5.
13. The Commissioner has considered whether the University holds the information requested in part 5 and part 4.5 of the request and whether it can rely on section 40(2) of the FOIA to withhold the specific information requested in parts 4.1 to 4.4 of the request.

## Reasons for decision

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### **Section 1 – general right of access to information held by public authorities**

14. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b), to have the information communicated to them if it is held and is not exempt information.
15. The complainant is not satisfied with the University's response to part 5 of the request because he considers it has not released the information he has requested.
16. Part 5 of the request is for the contract between the University and the University of Exeter associated with the recruitment, selection and training of trainee clinical psychologists employed by Somerset NHS Foundation Trust for the period 2017 to 2020.
17. In its response to the complainant of 23 June 2021, the University provided a copy of a Memorandum of Understanding (MOU) between it

and the University of Exeter. It had explained that the Universities of Exeter and Plymouth entered into a MOU which sets out the terms of agreement reached between them for the joint delivery of the Doctorate in Clinical Psychology programmes across the southwest.

18. In its submission to the Commissioner, the University has explained that the postgraduate Clinical Psychology programme, which is the focus of the request, is funded by the NHS and is governed by a contract between the South West Strategic Health Authority (or its successor body, Health Education England) and the University of Exeter. The University is not party to that contract. The Universities of Exeter and Plymouth subsequently entered into a MOU which sets out the terms of the agreement reached between them for the joint delivery of the Doctorate in Clinical Psychology programmes across the southwest. The University has told the Commissioner that it has carried out a search for the information requested in part 5 and that, given the legal framework through which the programme runs, there are no contracts between the University and the other parties listed in the request, apart from the MOU with the University of Exeter.
19. The University has confirmed that it considers that the MOU has been correctly disclosed in relation to part 5 because it relates to the recruitment and training of students who are also employed by Somerset NHS Foundation Trust. The University advised that it does not consider comments the complainant made in his correspondence of 24 June 2021 about the lawfulness or otherwise of the contract[MOU], or the terms contained within it, to be relevant to its obligations under FOIA.
20. The University is correct that the FOIA concerns only the information a public authority holds that is relevant to a request. In this case the University has advised the Commissioner that it does not hold a particular contract, as such, between itself and the University of Exeter. What it holds is a MOU that includes contractually binding and legally enforceable terms between the two parties, and it has released this to the complainant. The Commissioner considers that the University is best placed to know whether or not it holds a contract with the University of Exeter, and she is not concerned with the legality or otherwise of the relevant document it does hold and which it has released. As such, and because of the legal framework the University has described, the Commissioner has decided, on the balance of probabilities, that the University has released all the information it holds that is relevant to part 5 of the request, namely the MOU, and has complied with section 1(1) of the FOIA in respect of this part.
21. In part 4.5 of his request, the complainant has requested the undergraduate degree classification and highest qualification held for the

intake of trainee clinical psychologists across four years. The University had explained to the complainant that all cohorts will have needed a 2:1 or above undergraduate degree in Psychology for their application to have been shortlisted.

22. In its initial submission to the Commissioner, the University confirmed that it does not hold the specific information the complainant has requested. This is because that information would not be needed as it is not relevant to the trainees' applications, in light of the above entry requirements. The University subsequently clarified that it had addressed one element of part 4.5 of the request, namely the request for the undergraduate degree classification. The University had advised the complainant that all cohorts would have needed an undergraduate degree in Psychology at 2.1 (or above) for their application to have been shortlisted. It had provided the relevant number achieving the minimum qualification in its fresh response of 23 June 2021. The University has explained to the Commissioner that the information that it does not hold is the category of "highest qualification held". It says that a student's highest qualification could be their undergraduate degree, or they could have a postgraduate or other qualification. However, this is not something the University records on the student records system because it is not necessary or relevant to the application process.
23. The Commissioner accepts the University's explanation. On the balance of probabilities, she is satisfied that it does not hold further information that is relevant to part 4.5 of the request. The Commissioner therefore finds that the University has also complied with section 1(1) of the FOIA in respect of that part.

#### **Section 40 personal information**

24. Section 40(2) of the FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
25. In this case the relevant condition is contained in section 40(3A)(a)<sup>1</sup>. This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the General Data Protection Regulation ('GDPR').

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<sup>1</sup> As amended by Schedule 19 Paragraph 58(3) DPA.

26. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data, then section 40 of the FOIA cannot apply.
27. Second, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the DP principles.

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

28. Section 3(2) of the DPA defines personal data as:

*"any information relating to an identified or identifiable living individual".*

29. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
30. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
31. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
32. In this case, the information in question is a numerical breakdown by year of the (1) sex (2) age (3) declared disability and (4) nationality of trainee clinical psychologists whose employment began in 2017, 2018, 2019 and 2020. The University has released aggregated numbers for these parts ie the total number for the four years in question. It has provided the Commissioner with the actual numbers for each of the questions for each of the years.
33. In its correspondence to the complainant the University had advised that the intake on to the programme each year was small and, as such, it was not able to release the separate numbers for each year as this would risk individuals being identified. The University said that this information was therefore exempt from disclosure under section 40(2) of the FOIA.
34. In its submission to the Commissioner, the University has confirmed that the cohort of trainees for each year is small and, when broken down to give the specific information the complainant has requested, are even smaller. The University has gone on to explain how it considers a

specific individual or individuals could be identified if the small numbers were released.

35. First, the complainant could be considered to be a "motivated intruder" who is prepared to spend some time using other available resources to build up a picture in order to identify the individual students. The University says that the complainant is already aware that students on the programme in question are employed by Taunton and Somerset NHS Trust in the role of trainee clinical psychologist. Other contacts with the complainant have indicated that he regularly uses information obtained from various sources to establish a profile or case to use in litigation, and this has included against individuals. Additionally, the complainant regularly uses FOIA, the University says, to obtain information from many other public authorities and this may have included information from Taunton and Somerset NHS Trust. The University considers that the complainant could use any such information in combination with information disclosed by the University to identify specific people. The Commissioner notes that, even if the complainant himself does not wish to misuse the data, the nature of the disclosure means that the University could no longer keep it out of the hands of someone who might wish to misuse it.
36. Second, a search of Google for "trainee clinical psychologists Somerset University of Plymouth" returns Linked-In and Facebook pages of former and current University students which includes their image and other personal details – even when the person searching is not logged into those platforms. The brief information provided would indicate their years of study and therefore which cohort they fall within.
37. Third, a search of Twitter shows a number of hashtags which can be searched to identify individuals studying on the programme. These include #DClinPsy, as well as those students following and identified via the programme's official Twitter account @PlyDClinPsy. Online identifiers and other information such as a Twitter handle can be combined with available information to create a profile of individual students.
38. Fourth, whilst search results do not directly identify all the individuals, it does mean that given the small numbers in each cohort they (by which the Commissioner understands the University to mean a 'motivated intruder') can reduce the remaining numbers further. The University says that in certain of the groupings such small numbers are returned that it would be possible to identify individuals through social media, where such personal data is confirmed, and this could in turn lead to them being directly identified from the data set the complainant has requested.



39. The University also noted the Commissioner's decisions in IC-50501-L9X5<sup>2</sup> and IC-62319-P3G5<sup>3</sup>. These concerned almost identical requests for information about trainee clinical psychologists, which the complainant had submitted to the University of Exeter and the University of Bath respectively, also on 3 July 2020. In those decisions the Commissioner found that the two Universities had not made a compelling case that individuals could be identified from the small numbers involved. She found that the information requested in part 4.1, 4.2, 4.3 and 4.5 of the request was not exempt information under section 40(2) of the FOIA and ordered disclosure.
40. The Commissioner had noted that small numbers carry a greater risk of identification than larger ones – but that that does not mean that every small number identifies any individual. Whether individuals can be identified will depend on the particular facts, such as the size of the overall dataset, the number of data points that have been requested and the information, already in the public domain, that could potentially be cross-referenced with the disclosed information. It is not sufficient for there to be only a hypothetical risk of identification. If there is no realistic route to identification, the information is not personal data, regardless of its sensitivity. This was consistent with the binding Upper Tribunal ruling in *Information Commissioner v Miller* [2018] UKUT 229 (AAC).
41. Discussing the matter of a motivated intruder, the Commissioner had posited a hypothetical drinks party attended by every person within the dataset – for example the 11 people who successfully obtained traineeships at one of the universities in 2017. If a person was provided with a copy of the specific information being withheld, how would they go about matching the various trainees with the withheld information?
42. The University in this case argues that at the hypothetical drinks party a person could use their mobile phone to identify individuals through Google and social media searches, in combination with the dataset information. As individuals are identified (for example because their profile includes a photo or other identifying information) the resulting grouping becomes even smaller. The University acknowledges that this may seem to require a substantial effort but argues that a motivated intruder is, as the term suggests, motivated and, as such, would be willing to devote a considerable amount of time and resources to the

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619623/ic-50501-l9x5.pdf>

<sup>3</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2021/2619624/ic-62319-p3g5.pdf>

process of identification. The University has referred to paragraph 4 of the IC-62319-P3G5 decision in in that regard.

43. Finally, the University has confirmed its view that, whilst the requested information in and of itself would not enable the complainant [or anyone else] to identify individuals, the University is concerned about other data which maybe available to the complainant [and others] – either online or, in the case of the complainant, which they may have received from other organisations.
44. The Commissioner has reviewed her reasoning in those two earlier cases. She considered then that the information could not be categorised as personal data because: having access to certain information would not make any particular individual any more identifiable; visual characteristics were not an accurate method of identification; and the way that the request had been structured did not allow a person to compare the various breakdowns to deduce other information. Furthermore, the Commissioner did not consider that the two universities had made a convincing case that the small numbers involved was personal data which would identify specific individuals.
45. The University here has put forward a stronger case than the universities in the two separate cases. It is concerned that the complainant could spend a lot of time trawling social media to identify trainees. The Commissioner agrees that he could. However, being provided with the withheld data would not make a difference to what he could find out via social media. And anything he was able to find out would be based on personal data that the data subjects (the trainees) voluntarily placed into the public domain themselves.
46. The complainant can (if he is so inclined) already carry out searches for female students who started in, for example, 2018 on a psychology course at the University without knowing how many female students are on the course. Having the number does not make the complainant's search any easier than it would already be – if he wished to carry out such a search.
47. The University has not demonstrated that if the complainant were given the number of, for example, female trainees, he could use that to work out which trainees (if any) had a disability. The Commissioner agrees that that would be their personal data. But the way the requested data is broken down does not allow it to be cross-referenced in that way. The only way it is possible for someone to work out who each individual is, and what personal data the University holds about those individuals, is if they already know who an individual is and what their personal data is. Having the numbers does not help the motivated intruder in any meaningful way

48. As such, the Commissioner is not persuaded that the information requested in parts 4.1 to 4.4 either relates to or identifies any specific individuals. This information therefore does not fall within the definition of 'personal data' in section 3(2) of the DPA and so it cannot engage the exemption under section 40(2) of the FOIA. It is therefore not necessary to go on to consider whether disclosure would contravene any of the data protection principles.

## Right of appeal

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49. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

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

50. 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.
51. 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

**Cressida Woodall**  
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**Information Commissioner's Office**  
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**Water Lane**  
**Wilmslow**  
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**SK9 5AF**