

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2021

Public Authority: The University Council (University College London)

Address: University College London
Gower Street
London
WC1E 6BT

Decision (including any steps ordered)

1. The complainant has requested information regarding the number of Russian nationals that were applicants and those that were offered a place on the mathematical computation course in the academic year 2020/21 at University College London (UCL) and other related matters. UCL disclosed some information but withheld the exact number of Russian applicants/offerees for the course, restricting its response to "*five or less*". UCL considered that providing the exact number would disclose personal information and breach section 40(2) of the FOIA.
2. The Commissioner's decision is that UCL has incorrectly cited section 40(2) as she considers that the withheld information is not personal data. UCL has also breached section 10(1) of the FOIA in failing to respond to the request within the statutory timeframe.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

- Disclose the exact numbers that have been withheld under section 40(2).
- 4. The public authority must take these steps 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

- 5. On 20 August 2020 the complainant made a request for information regarding UCL's mathematical computation course that included the following -

*"... How many applicants were Russian nationals?
How many offerees were Russian?"*

The entire request is not included because it contains personal data amongst the FOIA elements. The relevant part that is the subject of this decision notice is quoted above.

- 6. UCL responded on 14 October 2020 answering all the questions but withholding exact numbers regarding the Russian applicants/offerees, citing section 40(2)(personal information) FOIA as its reasons for not doing so. UCL's answer to both of the questions was, *"five or less"*.
- 7. The complainant made a request for an internal review on 19 November 2020. UCL provided an internal review on 7 December 2020 in which it maintained its original position.

Scope of the case

- 8. The complainant contacted the Commissioner on 19 November 2020 to complain about the way the request for information had been handled.
- 9. The Commissioner considers that the scope of this case is UCL's citing of section 40(2) – personal information. She will also consider any procedural matters that occurred.

Reasons for decision

Section 40 personal information

10. 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.
11. In this case the relevant condition is contained in section 40(3A)(a)¹. 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').
12. 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.
13. Secondly, 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?

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

"any information relating to an identified or identifiable living individual".
15. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.
16. 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.
17. 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.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

18. UCL argued that it is entitled to rely on Section 40(2) on the basis that the disclosure of exact numbers of Russian applicants/offerees for a course with a small number of students is likely to result in the disclosure of the personal data of these Russian applicants/offerees. UCL says that it is concerned that, given the relatively small Russian student community in London and the use of social media, the numbers could readily be translated to identify the individuals who made applications and those offered or rejected and therefore will be the applicants'/offerees' personal data.
19. The complainant argues that the refusal to provide these figures is unacceptable. Only numbers were sought and no other information that could identify these individuals, such as their name. In the view of the complainant, the information the complainant sought was not special category data and there was a legitimate reason for asking in the interests of public transparency. Additionally, the complainant's opinion is that, given the numbers of potential Russian applicants around the world, their identity would not be disclosed.
20. The Commissioner's guidance states:-

"Your starting point might be to look at what means are available to identify an individual and the extent to which these are readily available. For example, if searching a public register or reverse directory would enable you to identify an individual from an address or telephone number, and you are likely to use this resource for this purpose, you should consider that the address or telephone number data is capable of identifying an individual.

*You should assume that you are not looking just at the means reasonably likely to be used by an ordinary person, but also by a determined person with a particular reason to want to identify individuals. For example, investigative journalists, estranged partners, stalkers, or industrial spies."*²

21. UCL has not provided the complainant with specific figures for the Russian applicants/offerees for 2020/21 for a specific named course due to the possibility of identification. UCL's argument about the size

² <https://ico.org.uk/for-organisations/guide-to-data-protection/guide-to-the-general-data-protection-regulation-gdpr/what-is-personal-data/can-we-identify-an-individual-indirectly/>

of the Russian community in London is not persuasive as the Commissioner considers it possible that Russian students could have applied from various places in the world. The Commissioner has reached the conclusion that this is not personal data because UCL has not demonstrated how it would realistically be possible to identify the individuals concerned by the means suggested.

22. UCL has argued that there would be a risk of identification of individuals if it published the exact numbers rather than "five or less". In the Information Commissioner v Miller UKUT [2018] 229 (AAC) GIA/2044/2017 which concluded that data concerning five or fewer individuals was not exempt from disclosure under the FOIA:-

"...the chance of a member of the public being able to identify the household and its members from the data is so remote as to be negligible".³

The Commissioner notes that the data under consideration was several years old, however the Commissioner has reached the conclusion that the risk of identifying the Russian applicants/offerees is similarly negligible. Small numbers in themselves are not a reason to suppress figures. She does not accept that individuals are identifiable by determined persons in this instance, even supposing that there is the motivation to do so. The Commissioner also does not accept that the exact figure would aid them any more than suppressing the exact number by stating "five or less".

23. In the circumstances of this case, having considered the withheld information, the Commissioner is not satisfied that the information relates to an identified or identifiable living individual. This information therefore does not fall within the definition of 'personal data' in section 3(2) of the DPA. Therefore the exemption is not engaged.

Section 10 – time for compliance

24. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.

³ <https://www.bailii.org/uk/cases/UKUT/AAC/2018/229.html>

25. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and, in any event, not later than 20 working days following the date that a request was received.
26. The complainant made the request on 20 August 2020. UCL did not respond until 14 October 2020. UCL was clearly late in providing a response and consequently breached section 10(1) of the FOIA.

Right of appeal

27. 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@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

28. 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.
29. 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
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF