

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

### **Decision notice**

**Date:** 17 November 2021

**Public Authority:** The Council of the University of Central Lancashire

**Address:** Adelphi Building  
Fylde Road  
Preston  
PR1 2HE

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

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1. The complainant has requested information from the University of Central Lancashire ("the University") regarding graduation ceremony programmes for engineering disciplines from 1997 and 1998.
2. The Commissioner's decision is that the University has appropriately applied the exemption at section 40(2) of the FOIA to some of the requested information. However, as the complainant's request was for the whole brochure, section 40(2) is not applicable to all parts and therefore the University should disclose the remainder of the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation:
  - Provide the complainant with the information not considered personal data.
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**

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5. On 1 June 2020, the complainant wrote to the University and requested information in the following terms:

*"I request copies of graduation brochures, in particular list of graduates for engineering disciplines for 1997 and 1998."*

6. The University responded on 26 June 2020. It stated that it held information in relation to the request. However, it cited section 40(2) of the FOIA – personal information.
7. Following an internal review the University wrote to the complainant on 4 November 2020. It stated that it upheld its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 10 December 2020 to complain about the way their request for information had been handled.
9. The Commissioner considers the scope of her investigation is to establish whether the public authority is entitled to withhold the names of those who graduated, along with any other named individuals under section 40(2) of the FOIA.

## **Reasons for decision**

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### **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.
18. In the circumstances of this case, having considered the withheld information, the Commissioner is satisfied that the information relates to the data subjects. The names of individuals, alongside their graduate qualification, quite obviously is information that both relates to and identifies those concerned. This information therefore falls within the definition of 'personal data' in section 3(2) of the DPA.
19. The fact that information constitutes the personal data of an identifiable living individual does not automatically exclude it from disclosure under the FOIA. The second element of the test is to determine whether disclosure would contravene any of the DP principles.
20. The most relevant DP principle in this case is principle (a).

***Would disclosure contravene principle (a)?***

21. Article 5(1)(a) of the GDPR states that:

*"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".*

22. In the case of a FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if to do so would be lawful, fair and transparent.

23. In order to be lawful, one of the lawful bases listed in Article 6(1) of the GDPR must apply to the processing. It must also be generally lawful.

***Lawful processing: Article 6(1)(f) of the GDPR***

24. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

*"processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data, in particular where the data subject is a child"<sup>1</sup>.*

25. In considering the application of Article 6(1)(f) of the GDPR in the context of a request for information under the FOIA, it is necessary to consider the following three-part test:-
- i) **Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;
  - ii) **Necessity test:** Whether disclosure of the information is necessary to meet the legitimate interest in question;
  - iii) **Balancing test:** Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.
26. The Commissioner considers that the test of 'necessity' under stage (ii) must be met before the balancing test under stage (iii) is applied.

*Legitimate interests*

27. In considering any legitimate interest(s) in the disclosure of the requested information under the FOIA, the Commissioner recognises that such interest(s) can include broad general principles of

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<sup>1</sup> Article 6(1) goes on to state that:-

*"Point (f) of the first subparagraph shall not apply to processing carried out by public authorities in the performance of their tasks".*

However, section 40(8) FOIA (as amended by Schedule 19 Paragraph 58(8) DPA) provides that:-

*"In determining for the purposes of this section whether the lawfulness principle in Article 5(1)(a) of the GDPR would be contravened by the disclosure of information, Article 6(1) of the GDPR (lawfulness) is to be read as if the second sub-paragraph (dis-applying the legitimate interests gateway in relation to public authorities) were omitted".*

accountability and transparency for their own sakes, as well as case specific interests.

28. Further, a wide range of interests may be legitimate interests. They can be the requester's own interests or the interests of third parties, and commercial interests as well as wider societal benefits. They may be compelling or trivial, but trivial interests may be more easily overridden in the balancing test.
29. The complainant has explained to the Commissioner that they want replacement copies of the graduation brochures for ceremonies that they attended in 1997 and 1998, for sentimental purposes
30. In this case, the Commissioner considers that the legitimate interest is only that of the complainant's own interest and, as such, there is very limited legitimate interest in disclosure of the information.

*Is disclosure necessary?*

31. 'Necessary' means more than desirable but less than indispensable or absolute necessity. Accordingly, the test is one of reasonable necessity and involves consideration of alternative measures which may make disclosure of the requested information unnecessary. Disclosure under the FOIA must therefore be the least intrusive means of achieving the legitimate aim in question.
32. The Commissioner is satisfied in this case that there are no less intrusive means of achieving the legitimate aims identified.

*Balance between legitimate interests and the data subject's interests or fundamental rights and freedoms*

33. It is necessary to balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms. In doing so, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under the FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
34. In considering this balancing test, the Commissioner has taken into account the following factors:
  - the potential harm or distress that disclosure may cause;
  - whether the information is already in the public domain;
  - whether the information is already known to some individuals;

- whether the individual expressed concern to the disclosure; and
  - the reasonable expectations of the individual.
35. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose for which they provided their personal data.
  36. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
  37. The Commissioner is mindful that disclosure under the FOIA is disclosure to the world at large and not just to the requester. It is the equivalent of the University publishing the information on its website.
  38. The complainant has explained that they want to replace copies of the brochures that they obtained at the graduation ceremonies they attended in 1997 and 1998.
  39. The University has provided copies of the withheld information to the Commissioner, which contains the names of all graduates from the two ceremonies stated, along with the names of those presenting the graduation certificates. The Commissioner is satisfied that the information is personal data, which relates to all the data subjects named, along with the qualification that they achieved. As such, it is personal information and to disclose it through the FOIA would be a breach of the GDPR.
  40. During the Commissioner's investigation, she asked the University to provide the remainder of the brochures to the complainant, as they had originally asked for this information. The University advised the Commissioner that they would contact the complainant to ask if they wanted the brochures, without including the information that is classed as personal data, as it did not want to spend time preparing the information if the complainant did not want it. This is due to the time it would take to locate and scan the graduation brochures. It considered it would be unlikely to exceed the 18-hour-limit as determined under section 12 of the FOIA, but stated that "...does not seem a practical use of the University's time to compile information that the requester does not actually want."
  41. The Commissioner understands the University's position. However, the complainant did originally request for all of the brochures and when asked by the Commissioner, they confirmed that this is the information they required. The Commissioner contacted the University again on 19

October 2021, as she had not been provided with an update to advise if the complainant had informed the University that they wanted the information in full. The University explained that it had contacted the complainant, but not received the response.

42. Due to the delays, the Commissioner contacted the complainant herself and was advised that they had not recently received any contact from the University regarding the graduation brochures.
43. The Commissioner asked the University to contact the complainant again to see if this information was required. The University did this and also provided evidence of the email sent on 7 October 2021.
44. The Commissioner noted in one of the complainant's emails to her, they advised that they want the information unredacted.
45. Whilst the Commissioner understands the complainant's reasoning for wanting to receive this information, she must consider the impact of disclosure to the world at large, rather than only to an interested party. She therefore finds that disclosure could cause unwarranted damage or distress to those named within the programme.
46. The Commissioner notes that the complainant has advised that they want the information for sentimental reasons and that they consider that the information was released previously for the graduation ceremonies. Whilst this is the case, the brochures were not issued publicly and were only provided to those who attended the ceremonies. As such, it would be different to publicly release this information to the world at large.
47. The Commissioner has not seen any evidence to suggest that the individuals involved would have a reasonable expectation that their personal data would be disclosed in response to an information request. The Commissioner therefore considers that disclosure of this information would be disproportionately intrusive to the data subjects as it would reveal information about the data subjects which is not otherwise in the public domain.
48. The Commissioner also considers that it would be a disproportionate burden for the University to contact each graduate to ask for consent for the information to be released.
49. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms. The Commissioner therefore considers that there is no Article 6 basis for processing and so the disclosure of the information would not be lawful.

50. Given the above conclusion that disclosure would be unlawful, the Commissioner considers that she does not need to go on to separately consider whether disclosure would be fair or transparent.
51. The Commissioner has therefore decided that the University was entitled to withhold the names of the graduates and other named individuals under section 40(2), by way of section 40(3A)(a).



## Right of appeal

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52. 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)

53. 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.
54. 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 .....**

**Michael Lea**  
**Team Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**