

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 July 2022

Public Authority: The Governing Body of the University of Brighton

Address: University of Brighton
Mithras House
Lewes Road
Brighton
BN2 4AT

Decision (including any steps ordered)

1. The complainant has requested information associated with 'Sea Change Sussex', a 'not-for-profit' economic development company. The University of Brighton ('the University') has said it does not hold the requested information.
2. The Commissioner's decision is as follows:
 - On the balance of probabilities the University does not hold the information the complainant has requested and has complied with section 1(1)(a) of FOIA.
3. The Commissioner does not require the University to take any corrective steps.

Request and response

4. On 16 February 2021 the complainant wrote to the University and requested information in the following terms:

"Please confirm who was the (Member C) UoB signatory on the written appointment of [redacted] as a Director of SeaChange Sussex on 03 February 2016?"

5. The University responded on the same day. It advised it does not hold the requested information.
6. The complainant requested an internal review on 17 February 2021.
7. On 17 February 2021 the University directed the complainant to Companies House advising that it was possible to see from information published there that the authorising person is not named and therefore it does not hold the information the complainant has requested.
8. In correspondence dated 18 March 2021 the University advised the complainant that it was not able to locate any relevant paperwork about Sea Change. This was primarily because relevant staff were not able to enter its campus [because of the ongoing Coronavirus pandemic] and undertake a search themselves. The University noted that other staff had searched on their behalf and it was conceivable that the paperwork was there but had not been located.
9. However, on 6 April 2021 the University confirmed that staff had carried out a search in both the Finance and the Vice-Chancellor's offices and that no record has been located. On 24 May 2021, the University confirmed that it had no record of the information ever having existed. It confirmed that the staff most likely to have dealt with the matter are either deceased or no longer employed by the University.

Scope of the case

10. The complainant first contacted the Commissioner on 15 September 2021 to complain about the way an associated request for information had been handled. Having discussed that request with the Commissioner, on 24 June 2022 the complainant confirmed that their focus is the request that is the subject of this notice.
11. The Commissioner's investigation has focussed on whether, on the balance of probabilities, the University holds the information the complainant has requested.

Reasons for decision

12. Section 1(1) of FOIA says that 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.

13. In its submission to the Commissioner, the University has said that in response to this investigation it carried out a further search and could confirm that it does not hold the requested information.
14. The University has told the Commissioner that the request was first made in November 2020. Its initial response to that request had been to apply the exemption under section 21 of FOIA (information already accessible to the applicant). It had directed the complainant to Companies House, which publishes company documentation online.
15. There followed a series of emails and on 16 February 2021 the University received the current request which it treated as an extension of the original request. By this point, the University says, it knew that it did not hold the information requested as it had established in 2020 that it did not hold that information.
16. In the University's view, at the point of its correspondence to the complainant on 18 March 2021, it had already carried out a reasonable search for the requested information and was not able to conduct an additional search at that time because of the Coronavirus lockdown in force.
17. The University has explained that the request arises out of its membership of a local development company informally known as 'Sea Change'. It says that not only did the University resign its membership of the company some time ago, but the original director died in 2019. The other director referred to in the request has also left the employ of the University.
18. The University has advised the Commissioner that it cannot confirm who the signatory was "on the written appointment of [redacted]" and it cannot confirm whether this appointment was made in writing or not. The University said that, to assist the complainant, it obtained and shared with them information which was submitted to Companies House. It says that this "is the only extant formality relating to that appointment".
19. The complainant has told the Commissioner that the University "must" hold the information they have requested in order to comply legally with the FOIA Section 46 Code of Practice and "Company Law" requirements "to hold adequate corporate records for business, regulatory, legal and accountability purposes relating to the University's beneficial ownership and control of the expenditure of c.£30 million of public money by Sea

Change Sussex...". The Commissioner explained to the complainant that the FOIA Code of Practice is just that, a code of practice. It is a voluntary code and public authorities are not legally obliged to follow it. The Code of Practice does not go into the specifics of what information a public authority must hold, in any case.

20. Although it has not gone into detail as to the specific searches it carried out, the Commissioner accepts that the University has considered more than once whether it holds the information and it has searched for the information more than once in appropriate locations – the Finance and Vice-Chancellor's office. In addition the University has gone as far as obtaining Companies House information of some relevance [that presumably it had not originally held itself] and provided this to the complainant in order to assist them. Finally, the Commissioner notes that the University's involvement with Sea Change ended "some time ago" and that individuals who may (or may not) have been able to identify relevant information (if held) are either deceased or no longer work for the University. This reduced 'corporate memory' decreases the likelihood of the University being able to identify whether or not the information is or had been held, or if it had ever existed.
21. The Commissioner has considered all the circumstances of this case and he is satisfied that, on the balance of probabilities, the University does not hold the information the complainant has requested and has complied with section 1(1)(a) of FOIA.

Right of appeal

22. 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

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

23. 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.
24. 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
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF