

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

### **Decision notice**

**Date:** 21 November 2022

**Public Authority:** University Council  
The University of York  
Heslington  
York  
YO10 5DD

#### **Decision**

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1. The complainant requested, from the University of York (the University), information relating to student committee meetings and correspondence about a student committee member.
2. The Commissioner's decision is that the University was correct to withhold information within scope of points 1 and 6 of the request under section 40(2) of FOIA.
3. The Commissioner does not require any steps to be taken as a result of this decision notice.

#### **Request and response**

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4. The complainant requested the following information from the University on 2 December 2021:
  - "1. Minutes from all Alcuin College CSAC [College Student Association Committee] meetings in [term dates redacted]
  2. Any and all contracts between Alcuin College and [company name redacted]

3. The amount paid to [company name redacted] by Alcuin College for [term dates redacted]
  4. The amount recorded as being received by [the student committee member] as a result of students' use of affiliate links for [company name redacted]
  5. All correspondence including Alcuin College staff relating to [company name redacted]
  6. All correspondence including Alcuin College staff relating to an alleged conflict of interest regarding [company name redacted] and [the student committee member]".
5. The final position of the University was expressed in its internal review of 3 February 2022 and the associated new responses it issued to all points of the request except point 5 (which had not been complained about). To summarise, the University reconsidered the first four points of the request because it said it had been wrong to claim initially that Alcuin College CSAC was a third party – it went on to disclose information for points 1 and 3, although the meeting minutes that were disclosed in response to point 1 contained some redactions under section 40(2) of FOIA. Regarding point 6, the University confirmed "Information held", although it said that the information is exempt from disclosure under section 40(2) with 40(3).

### **Scope of the case**

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6. The complainant contacted the Commissioner on 9 February 2022 to complain about the way their request for information had been handled.
7. The complaint focuses on the University's decision to withhold information within scope of points 1 and 6 of the request, under section 40(2).
8. Regarding point 1, the complainant said four pages have been deleted from the meeting minutes that were disclosed following the University's internal review.
9. In terms of point 6, the complainant wants "disclosure of the discussions of staff and [the student committee]" about the committee member.
10. The Commissioner has considered the University's application of section 40(2) to the withheld information.

## Reasons for decision

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11. The following analysis explains why the Commissioner is satisfied that the University was entitled to apply section 40(2) to the information that the complainant is seeking.
12. The Commissioner highlights his detailed [guidance](#) on section 40.
13. Section 40(2) of FOIA allows a public authority not to disclose information if it is personal data (information that relates to an identified/identifiable individual, or 'data subject') and if one of the conditions listed in section 40(3A), 40(3B) or 40(4A) is satisfied.
14. The Commissioner is satisfied that the withheld information is personal data. The complainant wants to see what was said about the committee member, and although the complainant argued that "The data is about a person in their capacity as part of the University (not a personal capacity)", the Commissioner emphasises to the complainant that it is still personal data because the committee member is identified/identifiable and the information relates to/concerns them. It is also the personal data of the people who made comments about the committee member, as it shows what those people have said about that individual.
15. Regarding the complainant's concern that some information was deleted from the meeting minutes disclosed in response to point 1 of the request, the University has confirmed to the Commissioner that four pages were removed in full. It also informed the Commissioner that it has already told the complainant that those four pages were removed because the content was exempt in its entirety. The Commissioner is satisfied that the information is personal data, for the reasons stated at paragraph 14 above.
16. The condition at section 40(3A)(a) of FOIA is satisfied, as disclosure would contravene the data protection principle at Article 5(1)(a) of the UK General Data Protection Regulation (UK GDPR) – 'lawfulness, fairness and transparency'.
17. The Commissioner has considered whether there is a lawful basis for processing (disclosing) the requested information under Article 6(1)(f) of the UK GDPR. He has determined that although there are legitimate interests in disclosure (the complainant has made reference to accountability and transparency), and disclosure of personal data would be necessary to satisfy those interests, here the legitimate interests in disclosure are overridden by the interests/fundamental rights and freedoms of the data subject(s) requiring protection of personal data.

18. The Commissioner has determined this by balancing the legitimate interests in disclosure against the fact that the individuals concerned would have a reasonable expectation that their information would not be disclosed 'to the world' under FOIA. Such a disclosure would be likely to cause distress to the individuals. The University emphasised that the committee members were University students not University employees.
19. As the Commissioner has concluded that disclosure would not be lawful under Article 6(1)(f) of the UK GDPR, it is not necessary for him to go on to consider separately whether disclosure would be fair or transparent.

## Right of appeal

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20. 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](mailto:grc@justice.gov.uk)

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

21. 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.
22. 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 .....**

**Daniel Kennedy**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**