

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 9 February 2023

Public Authority: University of Sheffield

Address: Western Bank
Sheffield
S10 2TN

Decision (including any steps ordered)

1. The complainant has requested information from the University of Sheffield ("the University") relating to communications sent via e-mail to and from certain groups. The University treated part of the complainant's request as a Subject Access Request and refused to disclose some of the remaining information ("the withheld information") citing section 40(5B)(a)(i) of FOIA as a basis for non-disclosure. In relation to the information requested in part 3 of the complainant's request, as outlined in paragraph 5 below, the University stated that it did not hold such information.
2. The Commissioner's decision is that the University has incorrectly applied section 40(5B)(a)(i) of FOIA to the withheld information, however in relation to part 3 his decision is that, on the balance of probabilities, the University does not hold information within the scope of that part of the complainant's request.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
 - Provide a fresh response to the complainant's request which deals with the withheld information without relying upon section 40(5B)(a)(i) of FOIA.

4. The University 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. On 20 July 2021 the complainant made the following request for information:
 1. Who is the owner(s) of the Senate list/google group senate@sheffield.ac.uk ?
 2. If the email address(es) that own the senate@sheffield.ac.uk list/google group are not identified individuals, who are the individuals that have admin rights to this/these address(es)?
 3. What changes have been made to the senate@sheffield.ac.uk list/google group settings for posting since the Senate meeting of the 23rd June 2021 and when did these take place (please provide dates and if possible the times of the changes)?
 4. As I now know the Senate list/google group is currently "can post but will be held for moderation". Who "moderated" the email I sent on Wednesday 30th June 2021 to the senate@sheffield.ac.uk list and who made the decision not to allow it to be sent?
 5. Provide copies of all emails sent to and/or from the governance team (i.e. the following email addresses governance-admin@sheffield.ac.uk; university.secretary@sheffield.ac.uk ; [address redacted] in the following time periods
 - a. 11:34am on the 25th June 2021 until 11:33 on Saturday 26th June 2021
 - b. 17:44 on the 30th June 2021 until 17:43 on the 1st July 2021
- that: 1) make reference to any email I have sent;

2) make any reference to communication with senators; 3) make any reference to the management of the senate@sheffield.ac.uk list/google group or moderation of any email sent to this list.

6. The subject headings of all emails sent from the same email addresses (i.e. governance-admin@sheffield.ac.uk; university.secretary@sheffield.ac.uk; [address redacted]) over the same 24 hour period. i.e. :

- a. 11:34am on the 25th June 2021 until 11:33 on Saturday 26th June 2021
- b. 17:44 on the 30th June 2021 until 17:43 on the 1st July 2021

7. The email log for these addresses over the same time period. I.e.:

- c. 11:34am on the 25th June 2021 until 11:33 on Saturday 26th June 2021
- d. 17:44 on the 30th June 2021 until 17:43 on the 1st July 2021

- 6. The University responded on 6 August 2021 and stated that it was applying section 14 of the FOIA to the request. It also stated that some of the information requested was the complainant's own personal data and would be dealt with separately under the complainant's Subject Access Request.
- 7. The University also stated that section 40(2) of the FOIA applied to parts 5 and 6 of the complainant's request.
- 8. The University provided an internal review on 10 September 2021 in which it revised its position to state that it was now applying section 40(5) of the FOIA and refusing to confirm or deny whether it held information within the scope of questions 1,2,4,5,6 and 7 of the complainant's request. It also stated that no recorded information was held by the University in relation to question 3 of the complainant's request.

Scope of the case

9. The complainant contacted the Commissioner on 18 October 2021 to complain about the way their request for information had been handled.
10. The Commissioner has considered the University's handling of the complainant's request.
11. The University has informed the Commissioner that part of the information requested in questions 5, 6 and 7 of the complainant's request were dealt with by way of Subject Access request, so the University has applied section 40(5) of FOIA to the remaining parts of those questions and also to questions 1, 2 and 4 of the request.

Reasons for decision

Section 40 – personal data

12. Under section 1(1)(a) of the FOIA anyone who requests information from a public authority is entitled to be told whether or not the authority holds the information – this is known as 'the duty to confirm or deny'.
13. Section 40(5B)(a)(i) of FOIA provides that the duty to confirm or deny whether the authority holds the information does not arise if it would contravene any of the principles relating to the processing of personal data set out in Article 5 of the UK General Data Protection Regulation EU2016/679 ('UK GDPR') to provide that confirmation or denial.
14. For the University to be entitled to rely on section 40(5B)(a)(i) the following two criteria must be met:
 - confirming or denying whether the requested information is held would constitute the disclosure of a third party's personal data; and
 - providing this confirmation or denial would contravene one of the data protection principles.

Would confirming or denying that the requested information is held constitute the disclosure of a third party's personal data?

15. Section 3(2) of the Data Protection Act 2018 defines personal data as "any information relating to an identified or identifiable living individual".
16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

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. The University considers that confirming or denying if the requested information is held would disclose to the world at large information which would constitute the personal data of individual University staff.
19. The Commissioner is not convinced, from reviewing the request, that if the University were to either confirm or deny it held the information, it would involve the disclosure of personal data.
20. The Commissioner's guidance on NCND in relation to personal data states that disclosure means that it is the case that simply confirming or denying whether information within the scope of the request is held would disclose personal data. It is not about the content of the information. The criterion for engaging section 40(5) is not whether disclosing the information would contravene principle (a) but rather whether confirming or denying that it is held would do so.
21. The University's submissions to the Commissioner have focused on the content of the information itself and the potential effects of disclosure of that information. However, it has not demonstrated that confirming or denying whether the information is held would either disclose personal data or contravene any of the data protection principles.
22. For the reasons set out above the Commissioner has concluded that if the University confirmed whether or not it held the requested information this could not result in the disclosure of a third party's personal data. Therefore, the first criterion set out above is not met and the University cannot rely on section 40(5B) of FOIA in the circumstances of this case to refuse to confirm or deny whether the requested information is held.

Information not held

Section 1 - General right of access

23. Section 1(1) of FOIA states: "Any person making a request for information to a public authority is entitled- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him."

24. The Commissioner asked the University a number of questions as to whether it held recorded information within the scope of Part 3 of the complainant's request.
25. The complainant had previously stated that she was of the understanding that the time/date of any changes made to the relevant settings were logged and would therefore be recorded information.
26. Having reviewed Part 3 of the request and checked its records, the University confirmed that it does not hold that information and did not hold it at the time of the complainant's request. It confirmed that such information is not recorded.
27. Taking all the above into account, the Commissioner's decision is that, on the balance of probabilities, the University does not hold the information requested in Part 3 of the complainant's request. He is therefore satisfied that the University complied with its obligations under section 1 of FOIA.

Other matters

28. The Commissioner's investigation letter was sent to the University on 14 April 2022. The University responded on 12 August 2022 with detailed submissions regarding section 40(5) of FOIA. However, it failed to address the Commissioner's queries regarding part 3 of the complainant's request.
29. It was necessary for the Commissioner to issue an Information Notice in order to finally receive a response regarding part 3. The Commissioner would like to remind the University of its obligations under FOIA in relation to both requests and complaints.

Right of appeal

30. 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

31. 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.
32. 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

Deirdre Collins
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