

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 17 January 2023

Public Authority: Council of the University of Kent
Address: The Registry
Canterbury
Kent
CT2 7NZ

Decision (including any steps ordered)

1. The complainant has requested a copy of an investigation report and copies of emails sent to students. The above public authority ("the public authority") relied on section 31 of FOIA (law enforcement) to withhold the investigation report and section 40(2) of FOIA (third party personal data) to withhold part of the emails.
2. The Commissioner's decision is that the investigation report engages section 31 of FOIA and the balance of the public interest favours maintaining this exemption. He considers that the public authority should have relied on section 40(5B) of FOIA and refused to confirm or deny that it held any emails.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 8 September 2022, the complainant wrote to the public authority and requested information in the following terms:

"I would like to access the following:

- 1- A copy from the JISC report regarding the cyber security incident happened in the school of engineering in March 2022.

- 2- A copy from the emails sent to [redacted] and [redacted] from CEMS_PGR regarding their staff status and the appointment of an independent observer.”
5. The public authority responded on 3 October 2022. It disclosed the emails but redacted the dates on which they were sent, relying on section 40(2) of FOIA in order to do so. It withheld the investigation report in its entirety, relying on section 31 of FOIA.
 6. Following an internal review the public authority wrote to the complainant on 24 November 2022. It upheld its original position.

Reasons for decision

The investigation report

7. Section 31 of FOIA allows public authorities to withhold any information that might make it easier for someone to commit a crime, or make it harder for a law enforcement agency to detect that a crime had been committed and by whom.
8. The Commissioner has viewed a copy of the withheld information. It is a very detailed account of how a cyber attack was launched against the public authority. It details not only the precise methods used by the attacker, but the precise counter-measures deployed by the public authority to defend itself and how effective these were.
9. Whilst the Commissioner would expect the public authority to have reviewed its processes and procedures since the attack, he recognises that, such is the detail within the report (especially in respect of counter-measures), it is likely to be of use to anyone who wished to carry out a further attack. It would enable such a person to evaluate the methods used by the attacker and also the effectiveness of the counter-measures that were deployed, so as to design their own attack.
10. The Commissioner would note that there is no suggestion that the complainant himself is likely to be such a person – only that, once the information is disclosed, it is disclosed to the world at large and the public authority has no power to prevent it from reaching such a person.
11. Turning to the public interest test, the complainant (who appears to have a connection to the public authority) wanted a copy of the report as he seems to have lost access to some of his work whilst the investigation was ongoing and wished to understand why this was.

12. The Commissioner can confirm that the questions which the complainant posed in his request for an internal review are simply not answered in the report. The report relates solely to the way that the attack was carried out – which the complainant has confirmed is not of interest.
13. The Commissioner is satisfied that, in the circumstances of this case, any public interest in understanding how the public authority dealt with this cyber attack is easily outweighed by the potential harm that would result from releasing such detailed information into the public domain.

The emails

14. The public authority initially disclosed copies of the emails but with dates redacted. It stated that this particular information was the personal data of identifiable individuals and therefore should not be disclosed.
15. Section 40(5B) of FOIA allows a public authority to refuse to confirm or deny whether it holds particular information if the mere act of confirming whether or not information was held would itself disclose the personal data of an identifiable third party.
16. In this case, the request not only names the recipients of the emails the public authority sent, it also specifies the broad subject matter of those emails. Therefore, in merely confirming that this information was held, the public authority has confirmed that emails on a specific topic were sent to two identifiable individuals. That information, in itself, is their personal data, as it relates to their interactions with the public authority.
17. The Commissioner recognises that the complainant may have some private interest in establishing whether such emails were sent. However he (the Commissioner) does not consider that confirming (or denying) this fact to the world at large is the least intrusive means of achieving this interest. He has identified no wider public interest in confirming or denying that the information is held.
18. The individuals involved do not appear to have consented to the public authority confirming that their personal data is held – and he notes that the public authority is under no obligation to seek such consent.
19. The Commissioner accepts that the public authority was probably attempting to comply with the spirit of the legislation. Whilst he is not aware of the precise relationship the complainant has with either the public authority or the individuals concerned, the Commissioner also recognises that the complainant may already have been aware of the existence of the emails. However, the public authority must remember that, when it is responding under FOIA, it is responding to the world at large. The fact that the complainant may know that certain information exists does not necessarily mean that this is more widely known.

20. The Commissioner is satisfied that issuing a confirmation or a denial under FOIA cannot be achieved without disclosing personal data relating to identifiable individuals. As there is no lawful basis for such a disclosure, it follows that a disclosure would be unlawful and therefore the public authority should have relied on section 40(5B) of FOIA to refuse to confirm or deny that the information was held.

Right of appeal

21. 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

22. 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.
23. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
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Wilmslow
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SK9 5AF