

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2023

Public Authority: The Governing Body of the University of Bolton

Address: University of Bolton
Deane Road
Bolton
BL3 5AB

Decision (including any steps ordered)

1. The complainant has requested information relating to a student complaint made to the University of Bolton (the University). The University relied on section 40(2) (third party personal data) to withhold the requested information.
2. The Commissioner's decision is that the University is entitled to rely on section 40(2) to withhold the requested information. However, he has recorded a procedural breach of section 17(1) of FOIA.
3. The Commissioner does not require the University to take any steps as a result of this decision notice.

Request and response

4. On 29 October 2022, the complainant made the following request for information to the University:

"I would like to request under the Freedom of Information Act any material that the university has that relates to a complaint that was submitted by [name redacted] who was a student at Bolton University and who in 2021 was on a placement at Rockit

in Bolton where he was responsible for supervising my son [name redacted] who at that time was fifteen years old.”

5. The University’s final position was to apply section 40(2) (third party personal data) of FOIA to withhold the requested information.
6. The complainant wrote to the University on 15 February 2023 asking the following:

“I would also like clarification on whether my son and a trainee [(student name redacted)] should have been left without adult supervision for two hours at Bolton museum and if any safeguarding issues have been broken with this taking place. Please can you confirm?”

7. The University’s final position was the following:

“Trainee teachers do work independently with students, and processes for DBS and safeguarding again follow our internal processes and meet the necessary safeguarding standards commensurate with initial teacher education practice.”

Scope of the case

8. The complainant contacted the Commissioner on 28 March 2023 to complain about the way their request for information had been handled.
9. In particular, the complainant is concerned about the University’s refusal to provide them with information in relation to their request dated 29 October 2022 on the basis that it is third party personal data.
10. The Commissioner therefore considers that the scope of his investigation is to determine whether the University was entitled to rely on section 40(2) of FOIA to refuse to provide the student complaint information requested on 29 October 2022.

Reasons for decision

11. Section 40(2) of FOIA allows a public authority to withhold information, that is the personal data of someone other than the requester, if

disclosing the information would contravene any of the data protection principles¹ set out under UK data protection law.

12. One of the requirements of the data protection principles is that there is a "lawful basis" for the processing of any personal data (in this case, the "processing" in question being the personal data's disclosure under FOIA). If there is no lawful basis under data protection law², the personal data cannot be disclosed.
13. The Commissioner is satisfied that the withheld information in this case clearly relates to the student in question and that the student was named in the request. The information is therefore linked to an identifiable individual (the student) and is their personal data. It is incapable of being anonymised.
14. When information is disclosed under FOIA, it is considered to be disclosed to the world at large, rather than just to the individual requester. Therefore, when considering whether disclosure would contravene the data protection principles, the Commissioner must consider whether publication of the personal data in question to the world at large would contravene the principles.
15. As the data subject does not appear to have consented to the publication of their personal data, the Commissioner considers that the only lawful basis for publication would be if publication were necessary to satisfy a legitimate interest.
16. The Commissioner recognises that the complainant has a personal interest in having access to the student's complaint to the University and there are no less intrusive means of achieving the legitimate aims identified.
17. The Commissioner must therefore balance the legitimate interests in disclosure against the data subject's interests or fundamental rights and freedoms.
18. In this case, the Commissioner is satisfied that it would not be within the reasonable expectations of the individual concerned for their personal data to be disclosed to the wider world in response to an FOIA

¹ The data protection principles are set out in Article 5(1) of the UK General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.

² The lawful bases for processing are listed under Article 6 of the UK General Data Protection Regulation.

request. Indeed, the individual is likely to have a strong expectation of confidentiality regarding their complaint.

19. The Commissioner has also seen no evidence of any wider public interest in disclosure of the individual's complaint. Even if there was a public interest in disclosure, this would have to be very strong in order to override an individual's fundamental rights to privacy and the protection of their personal data.
20. Based on the above factors, the Commissioner has determined that there is insufficient legitimate interest to outweigh the data subject's fundamental rights and freedoms. The Commissioner therefore considers that disclosing the information in question would contravene a data protection principle as it would not be lawful. Therefore, he has decided that the data is exempt under section 40(2) of FOIA.
21. It follows that the University is entitled to withhold this information.

Procedural matters

22. Section 17(1) of FOIA states that where a public authority intends to refuse a request for information on the grounds that it is subject to an exemption in Part II of FOIA, it must issue the requester with a refusal notice explaining the exemptions relied upon and why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
23. In this case, the University failed to issue the requester with a valid refusal notice. The Commissioner therefore finds that the University breached section 17 of FOIA.

Other matters

24. In addition to their request for information, the complainant also raised a concern that the University had not provided the confirmation requested in their email of 15 February 2023 (detailed in paragraph six of this decision notice).
25. Requests under FOIA only apply to recorded information held at the time the request is received. FOIA does not require any information to be generated in response to a request. Therefore, public authorities are not required to answer questions, provide explanations, or give opinions, unless this is recorded information that they already hold.

26. Public authorities are therefore under no obligation to provide an explanation on a specific point unless they have already recorded and hold that specific explanation, and indeed in many cases this may be unlikely as public authorities simply cannot record everything. Public authorities are, of course, free to answer questions and provide explanations outside of FOIA, but this will be at their discretion and not something the Commissioner can require them to do.
27. In any event, the University provided the Commissioner with a copy of its email of 16 February 2023 (detailed in paragraph seven of this decision notice) responding to this query.

Right of appeal

28. 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

29. 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.
30. 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

Pamela Clements
Group Manager
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF