

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 January 2024

Public Authority: The Governing Body of the University of Oxford

Address: Wellington Square
Oxford
OX1 2JD

Decision (including any steps ordered)

1. The complainant has requested information relating to trigger and content warnings. The University of Oxford ("the public authority") disclosed the majority of the information but withheld some under section 40(2) (personal information).
2. The Commissioner's decision is that the public authority was correct to withhold the information it did under section 40(2).
3. The Commissioner does not require further steps.

Request and response

4. On 17 July 2023, the complainant wrote to the public authority and requested information. Due to the length of this request, it's outlined in an annex to this notice.
5. On 15 August 2023 the public authority responded. It disclosed ten content warnings in response to the request. However, it explained:

'We have redacted the names of the modules, or other information that could be used to identify the modules, in order to protect the

academics who issued the warnings...it would be possible to identify the academics by linking the module to course information on the University website, which includes the names of the teachers.'

6. The complainant requested an internal review on 17 August 2023. They disputed the public authority's use of section 40(2). They also reminded the public authority that the request included details of whether each content warning was generic or related to a specific text.
7. The public authority provided its internal review outcome on 27 September 2023. It upheld its previous response but did clarify which of the ten warnings were generic or related to a specific text. Again, it declined to identify individual texts, for the same reason that it declined to identify modules.

Reasons for decision

Section 40(2) – personal information

8. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
9. In this case the relevant condition is contained in section 40(3A)(a) . This applies where the disclosure of the information to any member of the public would contravene any of the principles relating to the processing of personal data ('the DP principles'), as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
10. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA18'). If it is not personal data, then section 40 can't apply.
11. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the requested information personal data?

12. Part 1, Section 3(2) of the DPA18¹ defines personal data as:

“any information relating to an identified or identifiable living individual.”

13. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable from that information.

14. 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.

15. An identifiable living individual is one who can be identified, either directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.

16. In its refusal notice, the public authority explained to the complainant:

‘it would be possible to identify the academics by linking the module to course information on the University website, which includes the names of the teachers.’

17. The Commissioner has studied the public authority’s website and agrees it’s possible to link the listed modules to the relevant academic. So, by linking the content warning to the module, or identifying specific texts, (as per the complainant’s request), the public authority would be allowing the relevant academic to be identifiable from that content or trigger warning.

18. Turning to whether the withheld information ‘relates’ to the academic, the public authority explained to the complainant that:

“The University does not recommend or encourage the use of trigger or content warnings but recognises that individual academics have the discretion to issue them where they regard them to be appropriate.”

19. So, the decision to issue any of the content warnings disclosed in response to the request lies with the individual academic and not the

¹ [Data Protection Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

English department or the University. Therefore, the Commissioner is satisfied that linking the content warning to the academic would tell us something about them; it would reveal their attitude towards content and trigger warnings, it would reveal (to a certain extent) how they conduct their role, their approach to students and the material they teach. For this reason, the Commissioner is satisfied that the withheld information, i.e. linking each content warning with its module or text, relates to the academic.

20. Since the Commissioner is satisfied that the withheld information relates to the academic in question, and they're identifiable from this information. Therefore, it's their personal data, making the academic the 'data subject.'
21. The fact that information constitutes personal data doesn't automatically exclude it from disclosure under FOIA. The Commissioner must now consider whether disclosure of the requested information would contravene any of the data protection principles.
22. The most relevant data protection principle in this case is principle (a) which states that "Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject"².

Would disclosure contravene principle (a)?

23. Personal data is processed when it is disclosed in response to the request. This means that a public authority can only disclose personal data in response to an FOI request if to do so would be lawful, fair and transparent.
24. In order to be lawful, one of the lawful bases listed in Article 6(1)³ of the UK General Data Protection Regulation (UK GDPR) must apply to the processing.

² [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

³ [Regulation \(EU\) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC \(General Data Protection Regulation\) \(Text with EEA relevance\) \(legislation.gov.uk\)](#)

Lawful processing: Article 6(1)(f) of the UK GDPR

25. The Commissioner considers that the lawful basis most applicable is basis 6(1)(f) which states:

“processing is necessary for the purposes of the legitimate interests pursued by the controller or by a third party except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require protection of personal data.”

26. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information made under FOIA, it is necessary to consider the following three-part test:

27. **i) Legitimate interest test:** Whether a legitimate interest is being pursued in the request for information;

ii) Necessity test: Whether disclosure of the information is necessary to meet the legitimate interest in question;

iii) Balancing test: Whether the above interests override the legitimate interest(s) or fundamental rights and freedoms of the data subject.

The Commissioner considers that the test of ‘necessity’ under stage (ii) must be met before the balancing test under stage (iii) is applied.

Legitimate interest test

28. The Commissioner must first consider the legitimate interest in disclosing the personal data to the public and what purpose this serves. In considering any legitimate interest(s) in the disclosure of the requested information under FOIA, the Commissioner recognises that a wide range of interests may represent legitimate interests; they can be the requester’s own interests as well as wider societal benefits. These interests can include the broad principles of accountability and transparency that underpin FOIA or may represent the private concerns of the requestor.

29. It is important to remember that disclosure under the FOIA is effectively disclosure to the world at large. The Commissioner is of the opinion that, if the requester is pursuing a purely private concern which is unrelated to any broader public interest, then disclosure is unlikely to be proportionate. Legitimate interests may be compelling or trivial, but trivial interests may be more easily overridden by the fundamental rights and freedoms of the data subject during the test under stage (iii).

30. The complainant has a specific interest in content and trigger warnings; this is obvious from their communication with the public authority and the Commissioner. This is a valid interest for the complainant to have.
31. With the above in mind, the Commissioner is satisfied that there is a legitimate interest in disclosure of this information.

Necessity test

32. The Commissioner must also consider if disclosure is necessary for the purpose that this legitimate interest represents or if there is an alternative method of doing so.
33. 'Necessary' means more than desirable but less than indispensable or absolute necessity. The necessity test is a means of considering whether disclosure under FOIA is necessary to meet the legitimate interest identified, or whether there is another way to do so that would interfere less with the privacy of individuals.
34. The University has explained that:

"The website of the English Faculty lists the specific areas taught by each academic but does not indicate which have issued trigger warnings."
35. This information will be known to the academics themselves, and the students who take the modules in question, but the Commissioner is satisfied that it's not in the public domain. Therefore, there are no less intrusive means of achieving the legitimate aims identified in stage (i).

Balancing test

36. Since the Commissioner is satisfied that disclosure is necessary for the purpose that this legitimate interest represents, he'll now go onto consider whether the identified interests in disclosure outweigh the interests or fundamental rights and freedoms of the data subject.
37. For example, if the data subject would not reasonably expect that the information would be disclosed to the public under FOIA in response to the request, or if such disclosure would cause unjustified harm, their interests or rights are likely to override legitimate interests in disclosure.
38. In performing this balancing test, the Commissioner has considered the following
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;

- whether the individual expressed concern to the disclosure; and
 - the reasonable expectations of the individual.
39. In the Commissioner's view, the balancing test should take into account whether the data subjects concerned have a reasonable expectation that their information would not be disclosed. This expectation may be influenced by a number of factors such as an individual's general expectation of privacy, whether the information relates to an employee in their professional role or to them as individuals, and the purpose which this personal information serves.
40. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
41. The public authority explained in its refusal notice that it was applying section 40(2):
- "...in order to protect the academics who issued the warnings from being targeted in the media or on social media by those who consider such warnings to be unnecessary."
42. The Commissioner acknowledges that the use of content and trigger warnings, especially in relation to literature and in academia, is a divisive and emotive topic. This is evident from the request itself and articles in the public domain (and the reaction to these article).
43. The complainant has argued:
- "Whilst I would agree that it would be unacceptable for any member of staff to be publicly abused because of an application of a trigger or content warning, there is no reason to believe that this would happen or indeed has ever happened in the past...I cannot recall seeing a story produced by any a journalist which has identified a member of staff."
44. Disclosure under FOIA is disclosure to the world at large. Whilst on the surface the complainant wasn't requested any personal data, it remains the case that data subjects could be identified from the information the complainant is requesting, and in the format in which its being requested.
45. Whilst the complainant has no intention of identifying, publishing or targeting any of the data subjects, another individual might.
46. Ultimately, the Commissioner agrees with the University when it says:
- "To the extent that there is any legitimate interest in disclosure of the information, I consider it is adequately met by the information that the University has already disclosed in its original response and that any

further benefit from revealing the modules or individual texts is insufficient to outweigh the rights of the individuals involved.

47. Since the Commissioner agrees that there is insufficient legitimate interest to outweigh the data subjects' fundamental rights and freedoms, there is no Article 6 basis for processing, and so the disclosure of the information would not be lawful.
48. Given that disclosure would be unlawful, the Commissioner doesn't need to go on to separately consider whether disclosure would be fair or transparent.

Right of appeal

49. 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

50. 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.
51. 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

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Annex

"Please note that I am interested in information which relates to any and or all of the following parts of the University's English degree course. Please note that in the questions below these will be referred to as modules.

- a) Shakespeare
- b) Literature in English, 1350-1550
- c) Literature in English, 1660 – 1760
- d) Literature in English 1760 – 1830
- e) Literature in English, 1910 – present day
- f) Medieval English and related literature, 1066 – 1550

Please note that the definition of trigger warnings and or content warnings and or content notes should extend to the following kinds of advice and or warning and or note and or guidance. It should be guidance and or warning(s) and or advice and or note(s) designed to...

(i) Protect and prewarn students who may be at risk of suffering stress and or discomfort and or anxiety and or emotional upset and or trauma and or distress when they are confronted with and or asked to study/explore stories and or plots and or ideas and or issues and or topics and or characters and or episodes and or images and or artworks and or films and or photographs and or historical and religious writings and or historical artefacts which may in some way reflect their own personal experiences and or other real life experiences.

And or

(ii) Warn students that the content of the modules and or specific teaching materials and or individual works and or ideas and or writings and or artefacts and or images either contain sexually explicit and or violent content and or that they have the potential to cause offence because they reference and or deal with and or include issues and depictions relating to birth and or childhood and or abortion and or age and or death and or disability and or sexuality and or gender and or religious belief and or race and or racism and or discrimination rape and or abuse and or slavery and or imprisonment and or warfare and or colonialism and or bloodshed and or economic exploitation and or income disparity and or class and or social background

Please note that the reference to 'texts and teaching materials' both above and in the questions below should be taken to mean particular novels and or

particular plays and or particular poems and or particular short stories and or particular literary anthologies and or particular pantomimes and or particular comics. It should also include particular musicals and or particular songs and or particular recordings and or particular photographs and or particular paintings and or particular statues and or particular sculptures and or particular busts and or particular drawings and or other kind of artworks and or cartoons and or animated works. The reference should also include examples of historical writings and historical texts and or any writings from antiquity and or sacred religious works (including but not limited to the Bible) and or religious writings and or philosophical works and or political theories/writings. They should also include historical artefacts and or any pieces of armour or weaponry and or human remains and or any fossils and or any historical finds. They should also include cinema films (live action or animated) and or television dramas and or TV documentaries and or TV programmes (live action or animated) and or individual academic textbooks.

Please redact the names of any students, teaching staff, faculty employees and researchers from the documents and information provided.

I am interested in all information generated and or held by the relevant faculty/department which relates to its own actions and decisions as well as the actions and decisions of its academic staff and or employees and or anyone acting on its behalf. I am also interested in all relevant information held by the faculty/department which relates to the actions of other individuals and or bodies within the University.

1. Are students studying and or all of the aforementioned modules listed above issued with what might be termed a general content warning and or trigger warning or content note which covers the overall content of each and or all of the modules. Alternatively, this general note or warning could relate to specific literary/dramatic/artistic/poetic traditions which feature in any of the modules or the work of particular authors/novelists/poets/dramatists which feature in any of the modules. It could also include particular artistic schools and traditions and or particular genres of film and or the works of particular filmmakers/artists/photographers which feature in the modules and or particular issues and subjects and or particular historical time periods and or particular religious works which feature in the modules.

2. If the answer to question one is yes can you please provide the following details. In the case of each general trigger warning and or content warning and or content note(s) can you provide a copy of the actual warning and or note. In the case of each warning and or note can you identify what it relates to. Please see the definitions above. In the case of each warning can you identify the relevant module. In the case of each warning and or note can you state when it was introduced and why. In the case of each general warning/note can you provide a list of 'texts and or teaching materials' covered by that warning. In the case of each warning or note can you state

how it is communicated to the student(s). For instance, is it communicated in writing and or verbally.

3. Are students studying any and or all of the aforementioned modules issued with a trigger warning and or content warnings and or content note(s) which apply to specific texts and or teaching materials. Please see the definition of teaching materials above.

4. If the answer to question three is yes can you please provide a copy of the specific trigger warning and or content warning and or content note(s). in the case of each warning and or note can you provide the title of the particular 'text and or teaching material(s)' it relates to. In the case of each text and or teaching material(s) can you identify the relevant novelist and or playwright and or poet and or thinker and or author and or film maker and or composer and or artist and or photographer and or musician and or historical figure and or religious figure. In the case of each warning and note can you state when it was introduced and why. In the case of each warning and note can you state which module it relates to. In the case of each warning and note can you state how it is communicated to students. For instance, is it communicated verbally or in writing.

5. Since 1 June 2022 and in relation to any and or all of the modules listed above have staff felt the need to rest and or drop or edit any texts and individual teaching materials (see definition above). If the answer is yes, can you identify the specific teaching materials. In the case if each of these teaching materials can you identify the relevant author and or writer and or novelist and or playwright and or poet and or filmmaker and or TV dramatist and or artist and or photographer and or musician and or historical figure and or religious figure. In the case of each of these teaching materials can you state whether it has been dropped from the course altogether or whether it has been rested. If information has been withdrawn, can you identify the information which has been withdrawn, can you identify the information which has been withdrawn. In the case of each work that has been dropped and or rested and or has had material withdrawn can you state when this action was taken and why."