

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

### **Decision notice**

**Date:** 2 April 2024

**Public Authority:** **Governing Body of Lancaster University**  
**University House**  
**Bailrigg**  
**Lancaster LA1 4YW**

#### **Decision**

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1. The Commissioner's decision is that Lancaster University ('the University') is entitled to rely on section 40(2) of FOIA to withhold some of the requested information in a report. The information is the personal data of a third party and disclosing it would be unlawful. The University did, however, breach sections 1(1), 10(1) and 17(1) of FOIA in respect of the timeliness of its response to the request. It's not necessary for the University to take any steps.

#### **Request and response**

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2. The complainant made the following information request to the University on 4 July 2023:

“Would you kindly share the report from IbeX Gale with [redacted] please as this will allow transparency when responding to the Grievance Outcome.
3. The University responded to the request on 24 November 2023. It advised that it had received the consent of the complainant and two other people to disclose their personal data in the report but hadn't received the consent of a fourth person. The University therefore disclosed the report having redacted some information under section 40(2) of FOIA.
4. The University invited the complainant to request an internal review if they weren't satisfied with its response. The complainant did so on 4 December 2023, but the University didn't provide an internal review. On

this occasion, the Commissioner therefore accepted the complaint without a review having been carried out.

## Reasons for decision

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5. This reasoning covers the University's reliance on section 40(2) of FOIA to withhold some of the information falling in scope of the complainant's request. The Commissioner will also consider the timeliness of the University's response. He'll consider its handling of the internal review under 'Other matters.'
6. 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.
7. The relevant condition is contained in section 40(3A)(a). This applies where disclosing 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').
8. In this case, the complainant has requested information that concerns a third party – the 'data subject' - which is in a particular report. The Commissioner is satisfied, first, that the requested information is the data subject's personal data – they can be identified from the information and the information relates to them.
9. The Commissioner has next considered whether disclosing the personal data would contravene one of the DP principles. The most relevant DP principle in this case is principle 5(1)(a) of the UK GDPR. This says that:  
  
"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".
10. In order to be lawful, one of the lawful bases listed in Article 6(1) of the UK GDPR must apply to the processing. It must also be generally lawful.
11. Article 6(1) of the UK GDPR specifies the requirements for lawful processing by providing that "processing shall be lawful only if and to the extent that at least one of the" lawful bases for processing listed in the Article applies.
12. 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, in particular where the data subject is a child.”

13. In considering the application of Article 6(1)(f) of the UK GDPR in the context of a request for information under FOIA, it's necessary to consider a three-part test: the legitimate interest test, the necessity test and the balancing test.
14. First, the legitimate interest test. The Commissioner appreciates that, for personal reasons, the complainant has an interest in this information, and he accepts that that's a legitimate interest for them to have. There's also a general legitimate interest in public authorities being open and transparent.
15. The Commissioner has gone on to consider the necessity test; whether it's necessary to disclose the information in order to meet the complainant's legitimate interests and the general interest in transparency.
16. In this case, the Commissioner doesn't consider it's necessary to disclose to the wider world under FOIA the personal data the University is withholding, in order to meet the complainant's legitimate interest. That's because the report concerns the complainant (and others); they know who the data subject is and disclosing the information wouldn't provide them with any information they don't already have. Disclosure under FOIA wouldn't therefore be the least intrusive means of achieving their legitimate aim. In addition, the general interest in transparency had been met through the University having disclosed the remainder of the report.
17. As the Commissioner has decided that disclosing the information isn't necessary to meet the legitimate interest in disclosure, he hasn't gone on to conduct the balancing test. As disclosure isn't necessary, there's no lawful basis for disclosing the information under FOIA and so disclosure is unlawful. It therefore doesn't meet the requirements of principle 5(1)(a).
18. The Commissioner has therefore decided that the University was entitled to withhold the information under section 40(2), by way of section 40(3A)(a).

## Procedural matters

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19. Under section 1(1) of FOIA a public authority must (a) confirm to an applicant whether it holds information they've requested and (b) communicate the information to the applicant if it's held and isn't exempt information.
20. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of a request.
21. Under section 17(1) a public authority must issue a refusal notice in respect of any exempt information within the time limit provided under section 10(1).
22. In this case, the complainant submitted their request on 4 July 2023, but the University didn't comply with section 1(1) or issue a refusal notice until 24 November 2023. The University therefore breached sections 1(1), 10(1) and 17(1) of FOIA. The Commissioner has recorded this breach for monitoring purposes.

## Other matters

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23. Providing an internal review isn't a requirement under FOIA but is a matter of good practice. The Commissioner recommends that a public authority provide an internal review within 20 working days of a request for one and in the most complex cases only, within a maximum of 40 working days.
24. In this case, the University offered an internal review, the complainant duly requested a review, but the University didn't then provide one. The Commissioner has also recorded this poor handling for monitoring processes.

## Right of appeal

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25. 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)

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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