

**FREEDOM OF INFORMATION ACT 2000 (SECTION 50)**

**DECISION NOTICE**

**Dated 23 September 2005**

**Name of Public Authority: University of Cambridge**

**Address of Public Authority: University Offices  
The Old Schools  
Cambridge  
CB2 1TN**

**Nature of Complaint**

The Information Commissioner (the "Commissioner") has received a complaint which states that on 31 January 2005 the following information was requested from the University of Cambridge (the "University") under section 1 of the Freedom of Information Act 2000 (the "Act"):

Copies of documents named E3310; E3349; E3502; the paper from the Secretary on publication of class lists mentioned in on-line minute 408.20 (E3542); and any minutes of meeting 409.

It is alleged that:

- (1) The University failed to supply the complainant with Appendix A to document E3349. The University refused to disclose this document to the complainant citing an exemption under section 42 of the Act ('legal professional privilege') and the complainant contends that this exemption is not valid, and
- (2) When issuing the refusal notice, the University failed to provide details of any complaints procedure as required by section 17(7) of the Act.

## The Commissioner's Decision

Under section 50(1) of the Act, except where a complainant has failed to exhaust a local complaints procedure, or where the complaint is frivolous or vexatious, subject to undue delay, or has been withdrawn, the Commissioner is under a duty to consider whether the request for information has been dealt with in accordance with the requirements of Part I of the Act and to issue a Decision Notice to both the complainant and the public authority.

The Commissioner has decided that:

- (1) the section 42 exemption applies and that the public interest in maintaining this exemption currently overrides the public interest in disclosing the requested information. Section 42(1) of the Act provides that:

Information in respect of which a claim to legal professional privilege or, in Scotland, to confidentiality of communications could be maintained in legal proceedings is exempt information.

- (2) the University breached section 17(7) of the Act in failing to either provide details of any internal appropriate complaints procedures or, alternatively to notify the complainant that such procedures do not exist. In addition, the University failed to advise the complainant of his right to apply to the Commissioner for a decision as to whether his request had been dealt with in accordance with the requirements of Part I of the Act. Section 17(7) of the Act states that:

A notice under subsection (1), (3) or (5) must–

- (a) contain particulars of any procedure provided by the public authority for dealing with complaints about the handling of requests for information or state that the authority does not provide such a procedure, and
- (b) contain particulars of the right conferred by section 50.

A further explanation of this decision is provided in the attached Statement of Reasons.

**Action Required**

The Commissioner hereby gives notice that he does not require any remedial steps to be taken by the University in relation to the allegation about the validity of the section 42 exemption.

The Commissioner notes that the University remedied the deficiencies in the refusal notice of 28 February 2005 in correspondence to the complainant dated 10 March 2005. In view of this, the Commissioner hereby gives notice that he does not require any remedial steps to be taken by the University in relation to the allegation concerning section 17 of the Act.

**Right of Appeal**

Either party has the right to appeal against this Decision Notice to the Information Tribunal (the "Tribunal"). Information about the appeals process can be obtained from:

Information Tribunal	Tel: 0845 6000 877
Arnhem House Support Centre	Fax: 0116 249 4253
PO Box 6987	Email: <a href="mailto:informationtribunal@dca.gsi.gov.uk">informationtribunal@dca.gsi.gov.uk</a>
Leicester	
LE1 6ZX	

Any Notice of Appeal should be served on the Tribunal within 28 days of the date on which this Decision Notice is served.

Dated the 23rd day of September 2005

Signed: .....

Graham Smith  
Deputy Commissioner

Information Commissioner  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

## **STATEMENT OF REASONS**

In reaching the above decision, the Commissioner has taken a number of factors into account, including all of the submissions of both the complainant and the public authority.

### **Validity of section 42 exemption**

Turning first to the question of whether the information requested is exempt information under section 42 of the Act, the Commissioner has determined that legal professional privilege is attached to the requested information.

The Commissioner is satisfied that the information contained within Appendix A does constitute legal advice which was provided to the University. The document discusses various points of law in relation to the disclosure of examination results. Having viewed the information, the Commissioner believes the requested information falls into the category of advice privilege.

The advice contained in the requested information was provided to the University by a member of staff who, at the time the advice was given (7 May 2004), held the position of Legal Adviser. As evidence of this, the Commissioner has seen an employment contract between the person providing the legal advice and the University.

Further, the Commissioner has taken steps to ensure that the Legal Adviser was competent to provide the advice in question. To this effect, the University has provided the Commissioner with a copy of the Legal Adviser's practising certificate for the year 01/11/2003 – 31/10/2004 which covers the period when the advice was issued. The Commissioner is therefore satisfied with the assurances that, at the time the advice was provided, the Legal Adviser was qualified to act as a solicitor.

In determining whether legal professional privilege applies to the requested information, the Commissioner has carefully considered whether the University has waived legal professional privilege by publicly disclosing the legal advice. From the evidence of the case, the Commissioner is satisfied that privilege has not been waived and notes the University has addressed this point in both correspondence with the complainant and the Commissioner.

### **The public interest test**

The Commissioner believes that, in this case, there are a number of arguments both for and against disclosing the requested information.

Turning firstly to the arguments in favour of disclosure, the Commissioner recognises that there is an inherent public interest in public authorities being transparent in the decisions they take in order to promote accountability. If reasons for decisions are made public, there is a strong argument that this should improve the quality of future decisions.

The Commissioner accepts that there is a strong public interest in disclosing information where to do so would help determine whether public authorities are acting appropriately.

It is clearly also in the public interest to disclose information where this would help further the understanding of and participation in the public debate of issues of the day. This would also help to increase public understanding of how decisions made by public authorities affect the public and, where appropriate, allow the public to challenge these decisions.

However, the Commissioner also acknowledges that there is a strong public interest in protecting the established principle of confidentiality in communications between lawyers and their clients. This promotes respect for the law, encourages clients to seek legal advice and allows for full and frank exchanges. This is, in itself, a compelling reason that the information should not be disclosed.

There is another strong argument that the rule relating to disclosure of such advice must operate with reasonable certainty in advance. Without this, the principle would be undermined and the quality of legal advice may not be as full and frank as it ought to be, if there were a risk that it would be disclosed in the future.

It is clearly vital that public authorities are able to obtain full and frank legal advice to aid them in complying with their legal obligations and conducting their business accordingly. As legal advice has to be necessarily fair, frank and reasoned, it is inevitable that it is likely to highlight the strengths and weaknesses of a course of action. If legal advice were to be routinely disclosed, public authorities may be reluctant to seek advice as it could contain information which may damage their position. Subsequently, public authorities not seeking legal advice may be less able to properly comply with their legal obligations.

In view of the above, the Commissioner believes that, in this case, the public interest in maintaining legal professional privilege outweighs the public interest in disclosing the information.

### **Breach of section 17(7)**

The Commissioner has seen a copy of the refusal notice provided to the complainant of 28 February 2005. This notice does not provide either details of any complaints procedure relating to the handling of this information request or an indication as to whether such a complaints procedure does in fact exist. Furthermore, no details of the right of the complainant to contact the Commissioner for a decision under section 50 of the Act were provided.

In a subsequent letter to the complainant of 10 March 2005, the University informed the complainant that the University had no internal complaints procedure. The University then went on to inform the complainant of his right to contact the Commissioner under section 50 of the Act. However, the University failed to provide the complainant with details of how to contact the Commissioner.

### **Summary of Commissioner's decision**

After careful consideration of all the relevant facts of this case, the Commissioner has decided that the section 42 exemption should be maintained for the reasons outlined above. Therefore, the University is not obliged to disclose the information requested.

The Commissioner has also decided that the University breached section 17(7) of the Act when issuing its original refusal notice.