

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 03 June 2009

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

Summary

The complainant originally requested minutes and papers, specifically including minutes of reserved business and papers relating to graduate student rents, from the Secretary of the Bursars' Committee who was then located at Jesus College, Cambridge. This was subsequently requested directly from Cambridge University itself (the "public authority"). This Notice only deals with the request to the public authority.

The public authority stated that it held the information as one or more of its employees attended the meetings. However, it stated that employees were invited to attend on the express understanding that the business was conducted on a confidential basis. It therefore stated that it believed the information was exempt from disclosure in its entirety under section 41 (information provided in confidence) of the Freedom of Information Act 2000 (the "Act").

The Commissioner finds that the public authority does hold the information for its own purposes and that the exemption at section 41 is not engaged. He also finds breaches of sections 1(1)(b) and 10(1). The complaint is upheld.

The Commissioner's role

1. The Commissioner's duty is to decide whether a request for information made to a public authority has been dealt with in accordance with the requirements of Part 1 of the Act. This Notice sets out his decision.

Background

2. The following useful definitions are all found on the public authority's own 'jargon buster' website at:
<http://www.quns.cam.ac.uk/Queens/Misc/jargon/CUjargon-B.html>
 - Bursar - a college administrative officer.
 - Senior Bursar - a college officer, responsible for finance and investments.
 - Bursars' Committee - the intercollegiate committee of College Bursars.
 - Reporter - the Cambridge University Reporter, a periodical in which official university notices ... are published.
3. The Bursars' Committee was listed as a University Body in the University Reporter at the time of the request. However, the public authority maintains that it is not a University body as it is an 'intercollegiate' Committee.
4. By comparison, the Senior Tutors' Committee is another intercollegiate Committee. This one routinely publishes its minutes which can be accessed via the main University website. The public authority states that this Committee is also not a University Body. This is listed as one both in the University Reporter and on the public authority's website at: <http://www.admin.cam.ac.uk/committee/>. The public authority further elaborates that the business of the two Committees is significantly different as the Senior Tutors' Committee is concerned with educational and student matters whereas the Bursars' Committee deals with financial and legal matters.
5. The Commissioner located the following information about archived materials via the public authority's website at:
<http://janus.lib.cam.ac.uk/db/node.xsp?id=EAD%2FGBR%2F0265%2FMin.VII.155-60>

"This intercollegiate body [the Bursars' Committee] is not a formal University Committee. It was established in about 1928 to provide a forum for the discussion of such College-related financial issues as student fees, student housing, investments, property rating, staff employment and pensions. It acquired the catering responsibilities of the University's Stewards' Committee when it was wound up in 2000."

"This material was transferred to the University Archives by [name removed] on 21 December 2005."

6. Contents, including minutes and papers are said to date from 1928 to 2001, but they are only listed, i.e. the actual documents cannot be viewed online. However, the Commissioner made enquiries and was advised that copies can be ordered or arrangements can be made to view the documents.
7. A further incomplete set of minutes and papers is shown to have been transferred to the University Archives by Emmanuel College in April 1990.
8. The earliest documents in this archive do not explain the constitution or background to the Committee.
9. The complainant requested the minutes from 28 other Committees via either their Chair or Secretary. These were all handled by the public authority.
10. During his investigation the Commissioner located the following questionnaire response form <http://www.berr.gov.uk/files/file24641.doc> which was submitted by the 'Bursars' Committee of the Cambridge Colleges'. The Commissioner notes that this is clearly submitted 'on behalf of an organisation' and the organisation is shown to be both the public authority and all the Colleges.

The request

11. The complainant originally sought disclosure of minutes, including those of reserved business, of the Bursars' Committee ('the Committee') from its Secretary on 21 February 2006. He asked for "*copies of minutes dating back to September 2003*" and "*copies of any papers relating to graduate student rents ... which the Bursars' Committee has considered since September 2003*".
12. The Committee Secretary responded on 28 February 2006 saying that the Committee was not a public authority within the definition of the Act and therefore not subject to the regime. This was challenged by the complainant on 1 March 2006 (a copy also being passed directly to the public authority at this stage) who stated that:

"The Committee is a proper part of the University, and the University certainly is a public authority (as are the Colleges). Therefore the minutes and papers of the Committee are University records. And therefore they should be released in accordance with the Act."

13. The complainant emailed both the Committee Secretary and the public authority again on 9 March 2006. In this correspondence he drew attention to the fact that the Committee was listed as a University Committee and provided the following link: <http://www.admin.cam.ac.uk/reporter/2005-06/special/12/part2.pdf>, where it is listed on page 25. He also stated that, even if the Committee were distinct from the public authority, as the public authority itself held the records then it had an obligation to disclose.

14. He was subsequently advised by the Committee Secretary on 9 March 2006 that:

“The Bursars’ Committee is an inter-Collegiate body, and legally in the nature of an unincorporated association or members’ club, with its members mutually bound together by contract. The members of the Committee are the Bursars of Colleges and additionally a small number of other individuals.”

“Whilst it is true that each of the Colleges is a public authority, the Bursars’ Committee itself is not... It is accordingly not subject to the Act.”

15. The complainant was also advised that this response was being copied to the public authority and, the Committee Secretary further added, that the complainant’s previous email of 9 March 2006 had not been directed to the appropriate member of staff. The Committee Secretary named the appropriate person.

16. In his emailed response to the Secretary on 10 March 2006, which was also copied to the public authority contacts mentioned above, the complainant advised that:

“... I indicated that my request was meant to be a request to the University (and in any case now has been brought to the attention of the University). The University is governed by the Act in respect of all records it holds, regardless of their origin. Therefore as far as I can see, the University ought to disclose the information I requested...”

“...as far as I can see it doesn’t matter whether the Bursars’ Committee is a University Body or not – if the University holds the records I have asked for then it should disclose them.”

“I take myself to have put a request to the University, and have received a refusal notice. And I take myself to have made an internal complaint, and to have received a response...”

He also advised that he would complain to the Commissioner if he did not receive the requested information.

17. On 17 March 2006 the public authority made its first response to the complainant, referring to his email of 10 March 2006. In this it stated that any correspondence he had had with the Committee Secretary could not be considered to have been either by or on its behalf as each of the colleges is a distinct legal entity. It further advised him that:

"... the University has no record of receiving from you a request in respect of the records of the Bursars' Committee. I am in receipt of an email of 9 March 2006 from you to the Senior Bursar of Jesus College and the Administrative Secretary of the University. Contrary to what is stated in your email of 10 March 2006, that earlier email does not indicate that you are thereby making a request to the University under the Freedom of Information Act 2000."

"If you do wish formally to make a request for information to the University, then I would be grateful if you could send such request to me... I can then investigate whether the University holds such information and consider which (if any) exemptions may apply."

18. In his response of 21 March 2006 the complainant explained the audit trail of his correspondence to date and also pointed out that this was the twentieth working day since his original request (which was to the Committee Secretary only). This included the fact that he had copied correspondence to the public authority on 1 March 2006 and he included a copy of his original request at this point. He also commented that he had met with the author of the letter in the above paragraph on 8 March 2006 and physically passed over a copy of the request. He additionally made the following observations:

".. I have made it clear throughout that I regard the request as a request to the University. I cannot explain the lack of any University record of a request but that is surely an internal matter."

"I had good reason to write to [the Committee Secretary] with my initial request. He was listed, in the University Reporter, as the Secretary of the Bursars' Committee, which was listed as a University Body. I acted reasonably in writing to him and I cannot be expected to have known that, despite being listed as such in the University Reporter, the Bursars' Committee would deny being a University Body. Therefore I feel that it is no defence on the part of the University to appeal to this denial; for I could not have predicted it, and I acted reasonably on the basis of the information I had. If that information was incorrect or misleading then the University should bear the consequences since the source was the official University publication."

“You are further aware that I wrote to several other Secretaries of University Committees on 21 Feb, making similar requests to the one under consideration. You took all these requests as to the University, and you knew I agreed (we discussed on 8 March). This context further undermines any suggestion that the University had reason to think differently in the case of the Bursars’ Committee.”

“.. I can see no justification for any claim by the University that it has not received a request for information. Therefore I see no reason to accept your invitation to put in a fresh request at this stage. University Officers know the details of my request (enclosed again) and know that I have always considered it a request made to the University. These circumstances are incompatible with the claim that the University has not received a request.”

19. The public authority responded on 28 March 2006. It did not accept that the *“copying of these letters ... constituted a request for information to the University.”* It stated that, due to the circumstances, it would treat the complainant’s letter of 21 March 2006 as a request and would respond by 21 April 2006. This was acknowledged by the complainant on 3 April 2006.

20. On the 21 April 2006 the public authority sent out a refusal notice. It stated the following:

“I am writing to confirm that the University holds the information you requested. However, the information is held by one or more of the employees of the University, who attend meetings of the Bursars’ Committee at the invitation of that Committee on the express understanding that the business will be conducted on a confidential basis. Accordingly, the information in question is exempt information under section 41 of the Freedom of Information Act 2000 on the grounds that disclosure of such information would constitute a breach of confidence actionable at the instance of the members of the Bursars’ Committee.”

21. The complainant appealed this refusal on 24 April 2006 and it was acknowledged on 8 May 2006. In his appeal he stated that he did not believe that the Bursars’ Committee could actually take legal action against the University for breach of confidence as the Committee only existed in its present form because of its recognition by the public authority. He did not accept that it was a ‘members club’ saying instead that it was *“clearly a vehicle for University and college business”*, its decisions affecting University policy and its advice being sought by other University Committees. He also stated:

“You may be interested to learn that I have obtained full minutes dating back several years from the Oxford equivalent committees.”

22. In its internal review of 14 June 2006 the public authority upheld its earlier view that the minutes were held in confidence by University Officers. It further stated that:

“I believe that the Bursars’ Committee is not a creation of the University of Cambridge in the corporate sense, but that it is a creation of the Cambridge Colleges which are legally distinct from the University. Colleges individually are public authorities for the purposes of the FOI Act, but the question which I believe you are going to consider is whether an association of representatives of the colleges, such as the Bursars’ Committee, is a public authority in itself.”

The investigation

Scope of the case

23. On 3 July 2006 the complainant wrote to the Commissioner. He outlined the following as his reasons for complaint:
- The information requested was not supplied
 - The exemption claimed was incorrect
 - The public authority had disputed when his request had been made
 - The public authority had not handled his request satisfactorily, particularly by generating complexity and being slow
24. In his submissions he set out the reasons on which he based his complaint.
25. In addition to the issues raised by the complainant the Commissioner will also consider the following:
- Whether the Committee is subject to the Act
 - Whether or not the information was ‘held’ by the public authority

Chronology

26. On 2 November 2007 the Commissioner advised both parties that he was commencing investigation of the complaint. As the complaint had been raised against the University this was the public authority that he initiated the complaint against.

27. He asked the public authority the following initial questions to assist with his investigation, and copied in the Committee Secretary at the same time:
- When, and how, was the Bursars' Committee established?
 - Who are its designated members?
 - What are its terms of reference?
 - How often does it meet?
 - Who does it report to?
 - What powers does it have?
 - According to the Bursars' Committee Secretary it has the legal nature of "*an unincorporated association or members' club, with its members mutually bound together by contract.*" Please can you expand on this statement? Could you also please provide a copy of 'the contract' referred to if you have one.
28. In its response of 22 November 2007 the public authority advised the Commissioner that: "*Although the Bursars' Committee is described in the Cambridge University Reporter as a University Committee ... the Committee is not in fact a constituent part of the University, being neither established by the University nor under its control*". It further advised that it regretted that because of this there was a limit to the information which it could provide about a 'third party' body.
29. The public authority provided details of the Committee membership and advised the Commissioner that two of its Officers attended meetings by invitation on the "*express understanding that the business of the Committee will be conducted on a confidential basis.*" It further said that it had contacted the Committee and it had been advised that it was an '*unincorporated association*' and that release of information held by the public authority would constitute a breach of confidence '*actionable at the instance of the members of the Committee*'. It advised the Commissioner to direct his other queries to the new Chair of the Committee who was now the Bursar from Fitzwilliam College.
30. On 26 November 2007 the Commissioner was advised that the complainant was no longer the President of the Graduate Union. He contacted him again and on 30 November he confirmed that he would like his complaint pursuing and that future dealings should remain with the Graduate Union President as this was the capacity in which he made the request. He also advised that: "*... it seems odd for a group of public authorities to be able to escape the strictures of the Act by the simple ruse of acting collectively. That would be a serious loophole and I cannot believe it was the intention of the Act.*"

31. On 30 November 2007 the Commissioner asked the public authority to confirm whether or not it actually held the information originally requested by the complainant.
32. On 3 December 2007 the Commissioner emailed the Chair of the Committee, as suggested by the public authority. He asked the same questions as he had asked the public authority (paragraph 27 above) other than details of membership which had been supplied. He also asked for a copy of the withheld information.
33. On 11 December 2007 the Chair of the Committee responded. He advised that the Committee was not subject to the Act and that he therefore did not believe that the Commissioner had any jurisdiction in making enquiries. He did advise that if the Commissioner had a contrary view that he should provide reasons for this.
34. On 17 December 2007 the Commissioner left a message for the Chair. He called back on 18 December 2007 and was reluctant to assist with the Commissioner's enquiries. He eventually gave some verbal responses but only on the proviso that these would not be divulged.
35. On 18 December 2007 the Commissioner contacted the public authority and requested copies of the withheld information. On 20 December 2007 the public authority advised the Commissioner that it would not provide copies unless the Commissioner issued it with a formal Information Notice.
36. On 21 December 2007 the Commissioner issued an Information Notice. He asked for copies of the withheld information and raised further queries. A response was sent on 18 January 2008.
37. This response included a copy of all the information which was held though it was stated that this may not be complete.
38. The Commissioner was supplied with nine sets of minutes, one set being omitted. He noted that on four of the nine occasions neither of the public authority's invitees actually attended, being subsequently recorded as absent. However, the minutes were held so they had obviously been passed to the attendee by other means rather than being retained by its officer after the meeting. Additionally, on three occasions the minutes had clearly been circulated as they were noted by other parties.
39. The Commissioner raised further queries about the public authority's attendees and also how the minutes were actually held by the public authority. He further enquired regarding a set of minutes which had not been provided.

40. He was advised, on 13 October 2008 that

"... the University per se does not receive or retain any of the minutes or papers of the Bursars Committee and in particular ... [They] ...are held by an officer of the University in his own personal files for his own reference. ... the minutes and papers of the Bursars' Committee are circulated at its discretion to the University officers who attend its meetings."

"As regards the [missing] minutes ... I confirm that I did not locate these. As stated in my previous letter, the University may not hold all the papers or minutes for the period specified in the request."

41. The Commissioner further enquired regarding various other committee minutes which were referred to in the Bursars' Committee papers. He specifically sought to ascertain whether or not any of these committees were either sub-committees of the Bursars' Committee or committees of the public authority. He was advised that none of them were committees or bodies of the public authority and that *"the precise relationship between the Bursars' Committee and the committees or bodies in question is not a matter on which I am able to comment authoritatively and you would need to address this aspect of your query to the Bursars' Committee itself."*

Analysis

42. The full text of the relevant sections of the Act cited below can be found in the legal annex at the end of this notice.

Procedural issues

Section 1 - general right of access

Is the information held by the authority?

43. Section 1(1) states that any person making a request for information to a public authority is entitled to be informed in writing as to whether the public authority holds the information and if so to have the information communicated to him. The public authority has argued that it does not actually hold the information in its own right but that any information held is only held by one of its employees who has retained his own copies after attending the meetings.
44. The Committee itself consists of the Bursars from each of the Colleges plus other invitees such as the two officers who attend on behalf of the public authority. All attendees appear to have a direct association either

- with one of the Colleges or the public authority itself. The minutes and paperwork are a record of the business of the Bursars' Committee which relate to financial matters.
45. In the case of *Ennis McBride & the Ministry of Justice (formerly the Privy Council Office ('PCO')) (EA/2007/0105)*, the applicant requested information from the PCO relating to the 'Visitor' of the University of London. The Visitor determines disputes between the University and its members, such as students who are dissatisfied with their teaching. The PCO maintained that some of the information requested was held by them on behalf of the Visitor and therefore, by virtue of section 3(2), it was not subject to the Act. The Tribunal found that the PCO "...performed all the administrative and management functions in relation to the office of Visitor..." These circumstances allowed the Tribunal to conclude that "...we are entirely satisfied that the PCO held the information on its own behalf..." (para 31) although they did comment that whether a public authority holds information on behalf of another is "...not an issue that turns on who owns the information, nor on whether the PCO has exclusive rights to it, nor indeed on whether there is any statutory or other legal basis for the PCO to hold the information. Rather, the question of whether a public authority holds information on behalf of another is simply a question of fact, to be determined on the evidence..." (paragraph 27).
46. Whilst the public authority argues that it only holds the information as one of its employees has decided to retain the records in "*his own personal files for his own reference*" (the other attendee choosing to hand papers back to the Committee at the end of each meeting) the Commissioner does not agree with this viewpoint. In line with the Tribunal's decision in the case cited above, the Commissioner is of the view that it is a point of fact that the information is held by the public authority. Additionally, on several occasions no-one attended the meetings on behalf of the public authority yet the minutes are still held (see paragraph 38). Whilst the files may not be a part of the public authority's own central filing system the Commissioner is of the opinion that the employee only attends as he is an employee of the public authority. He will therefore use the papers as a '*reference*' in respect of his duties as an employee of the public authority – and on three occasions they have been noted as seen by other parties so they are not held '*personally*'. The attendees are obviously not invited as independent members of the public rather, as cited by the public authority, "*to provide advice and comment to the Committee from their perspective as officers of the University, where appropriate*". As invitees only they apparently do not provide agenda items, and are not given actions by the Committee, nonetheless their input is obviously of value or they would not be invited. Additionally, one attendee has opted to retain the information, and has therefore been allowed to do so by the Committee.

47. Under the Act, where information is held by a public authority to any extent for its own purposes, then even if it is also holding that information for someone else, it is nevertheless holding the information for the purpose of the Act. The Commissioner is therefore of the opinion that the public authority holds the information for its own purposes.

Section 10 – time for compliance

48. Section 10 requires that a public authority must comply with section 1(1) promptly and in any event no later than the twentieth working day following the date of receipt. Section 1(1) states that any person making a request for information to a public authority is entitled to be informed in writing as to whether the public authority holds the information and if so to have the information communicated to him.
49. The Commissioner accepts that the first request was made to Jesus College. However, the subsequent request of 1 March 2006 was copied to the public authority too. This letter clearly shows that the request is made to the public authority and whether or not it was actually addressed to the 'correct' member of staff is irrelevant.
50. The Commissioner finds that the request dated 1 March 2006 is the first request to the public authority. It should have responded to the complainant within 20 working days. As it did not, this is a breach of section 10(1).
51. As the Commissioner finds that the information requested should have been disclosed then this is a further breach of sections 1(1)(b) and 10(1).

Exemption

Section 41 – information provided in confidence

52. Section 41 provides that information is exempt if it was obtained by the public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by that or any other person.
53. In relation to the application of the section 41 exemption, the Commissioner must first consider whether or not the requested information was in fact obtained from another person. This is to satisfy the requirements of section 41(1)(a).

Was the information obtained from a third party?

54. The information is held by the public authority as two of its employees are invited to attend the meetings. The public authority has further cited that “... minutes and papers are circulated at the discretion of the Bursars’ Committee to the ... University Officers who attend its meetings ...” (However, he does further note that copies of information are held where no officers actually attended).
55. In line with the case of *DBERR v Friends of the Earth (EA/2007/0072)* the Commissioner takes the view that there is no requirement for any physical passing of documents from one party to another when considering whether the information was “obtained from” a third party. Therefore information which is transcribed or recorded by one party can fall under section 41(1)(a) if it contains information disclosed to it from a third party.
56. Although the public authority holds the information in its own right the Commissioner notes that the information is sourced from the various committee attendees and also from the minutes of many other different committee meetings. The Commissioner does therefore find that the information was passed to the public authority from another party, i.e. attendees from the other Colleges associated with the public authority, each of which are public authorities in their own right. He further notes that some of the contents may actually be sourced from the public authority’s own employees as the providers of advice, however, this is unfortunately not apparent from looking at the content.

Would disclosure constitute an actionable breach of confidence?

57. The Commissioner has adopted the approach to confidentiality taken by the court in *Coco v A N Clark (Engineers) Limited [1968] FSR 415*, although he recognises that this is not the only test. In that case Megarry J decided that disclosure would constitute an actionable breach of confidence if:
- the information has the necessary quality of confidence;
 - the information was imparted in circumstances importing an obligation of confidence; and
 - disclosure would be an unauthorised use of the information and to the detriment of the confider.
58. If these parts of the test are satisfied, the Commissioner believes that he should then consider whether there would be a defence to a claim for breach of confidence based on the public interest in disclosure of the information. All three elements must be present for a claim to be made.

Necessary quality of confidence

59. The Commissioner has had sight of the information withheld under section 41 and has carefully considered whether or not it had the necessary quality of confidence at the time of the request. Information will have the necessary quality of confidence if it is not otherwise accessible, or if it is more than trivial. Where information has only been disseminated to a limited audience, such as the members of a committee, it will not be regarded as being generally accessible. Also, information which is of importance to the confider will not be trivial.
60. According to the public authority the documentation requested is only readily available to those parties who attend the meetings (though older papers have been archived – see paragraph 5 above – and these are available). Parties attend the meetings as Committee members or by invitation. However, much of the information contained within the documents actually reflects the outcome of other meetings and working parties and these subject areas have therefore been aired within different forums. The Committee therefore appears to be an avenue for promulgating and discussing areas of interest regarding issues which have often been raised elsewhere.
61. The Commissioner considers that some of the information is not limited knowledge as it has come from other sources who, for example, have required action by the Committee. However, the Commissioner does accept that subsequent information regarding specific actions or planned actions may not be available in its entirety – though the bulk of this will presumably be passed back to the relevant enquirer.
62. The Commissioner also assumes that any other relevant business which arises from other sources is discussed by the Committee and passed back to that source where it will be recorded as appropriate.
63. The nature of the minutes means that it is not possible to ascertain which information has been specifically created by the Committee purely for its own use and which will not be passed on to further parties. As such, some of the recorded information is likely not to be otherwise available.
64. As part of his assessment the Commissioner must also consider whether or not the withheld information is trivial. As it clearly relates to financial-related business he finds that it is not of a trivial nature.
65. In deciding whether the information has the necessary quality of confidence the Commissioner considers this to be a borderline case. Whilst it is possible some of the information is more widely known via other committees it is clear that not all of it is. After careful consideration

the Commissioner finds that although some of the information may be in the public domain, this specific information, organised in the way it is, is not in the public domain. He is therefore satisfied the necessary quality of confidence has been met in this case.

Obligation of confidence

66. The Commissioner has also considered whether the withheld information was imparted in circumstances giving rise to an obligation of confidence. The public authority contends that the information was supplied to its officers under a duty of confidence and has advised the Commissioner that related papers are all marked as '*confidential*' and that the Chair "*routinely reminds members of the Committee and any invitees present that its proceedings are confidential.*" The Chair therefore treats all attendees in the same manner.
67. The Commissioner understands that an obligation of confidence may be expressed explicitly or implicitly and, therefore, he asked the public authority to provide either written evidence to support its contention that there was an '*express understanding*' regarding the confidentiality of the meetings, or to ask its attendees what was stated to them at the meetings in this respect.
68. Although invited to do so by the Commissioner, the public authority provided no further details regarding the specific wording of the 'routine reminder' given by the Chair and it is not actually recorded in the minutes themselves, though the minutes and background papers viewed are all marked '*confidential*'. In the absence of any further evidence he is therefore not persuaded by this argument.
69. The Commissioner also notes that the Committee claims to be "*bound together by contract*" but he has not been able to obtain such a contract from the public authority so its attendees have either retained their own personal copies of the contract or have not actually been given a copy of such a contract.
70. The Commissioner notes that only one of the two attendees opts to retain the associated papers and also that the papers held by the public authority are actually incomplete. The public authority has failed to clarify whether this is because the papers were not handed out at a particular meeting for some reason or whether the officer did not attend on that occasion.
71. Purely marking a document as '*confidential*' does not mean that it carries an obligation of confidence. If this were the case then it would be possible to add this caveat to any information in order to avoid disclosure. In this instance, much of the content of the requested information has already

been discussed in other forums and is only being reported on at this Committee with relevant issues being raised.

72. Having viewed the information, the Commissioner does not consider that the actual content and nature of the requested information is of a 'personal' or 'sensitive' nature, instead relating purely to business matters. Additionally, each Committee member or invitee is likely to rely on information imparted in order to carry out their duties effectively in whatever capacity they attend.
73. It is noted that earlier documents, as seen in paragraph 5 above, are already available. The Commissioner presumes that these state that they are '*confidential*' and that they are subject to the same '*contract*' between Committee members. These documents appear to be of a similar nature and content to those requested as they are described as '*Minutes and papers of the Bursars' Committee; and of its fees Sub-Committee*'. However, they have been deemed to be suitable for preservation by the public authority, even though they purport to be the papers of an '*unincorporated association or members' club*', and they are readily accessible. It is also of note that they have been archived under the heading of "*Minutes of University Committees, occasionally with other papers*".
74. The Commissioner finds it highly unlikely that a '*club*' would be allowed to discuss and give formal advice on any matters which would potentially affect the public authority and all of its Colleges. It also has representatives on many other of the public authority's committees which are identified in the Reporter (see paragraph 13 above) as members of these committees by their designation as a member of the Bursars' Committee. Indeed, there are examples of other committees within the Reporter whose members have actually been appointed by the Bursars' Committee. The Commissioner cannot accept that such responsibility would be afforded to a '*members' club*', as it was described by the Committee Secretary above .
75. The Commissioner also notes that the public authority required him to issue an Information Notice before it would respond to any of his queries regarding the Committee. In its previous refusal to him it stated:

"As you are aware, the Bursars' Committee claims confidentiality in the information in question. Accordingly, unless the University is formally placed under a legal duty to release the information, any disclosure (even to the Commissioner's Office) would constitute a breach of confidence actionable at the instance of the members of the Bursars' Committee. In the circumstances, given that in this instance there are third party rights

involved and the University is at risk, I regret that ... it will be necessary for the Commissioner formally to serve an Information Notice."

76. The Commissioner considers that whilst the business of the Committee may be conducted in accordance with a principle of confidentiality there is no evidence to support any confidentiality agreement. Merely writing '*confidential*' on the papers is not sufficient proof that there is such an agreement. The public authority has advised the Commissioner that "*The Chairman of the Committee routinely reminds members of the Committee and any invitees that its proceedings are confidential*" but this does not mean that the minutes which are subsequently produced or the papers which are circulated at the time are actually confidential in themselves. There is a possibility that some areas of discussion may be sensitive at some point but the Commissioner has not noted any such information in the documents he has been provided with. Whilst he does note that there is one statement appertaining to the confidentiality of one item sourced from a working party this is the only written proof of which he is aware. In any event, he does not consider this document to have the necessary 'quality of confidence' as it was over two years old at the time of the request.
77. No evidence has been provided to support the claim that the Committee is an '*unincorporated association or members' club*' and nothing has been provided to document how it was constituted, its terms of reference or its powers, other than the statement cited in paragraph 5 above. Nothing of this nature is held within the archived material.
78. Although both the Committee and the public authority claim otherwise, the Committee is actually listed as a University Body in the official University Reporter and has a similar make-up to other Committees, such as the Senior Tutors' Committee. Bursars attending Bursars' Committee meetings do so in their capacity as paid employees of the Colleges. The Commissioner is also of the opinion that the public authority's officers who attend do so purely as paid staff of the public authority and not as independent members of "a club".
79. It is reasonable to assume that the public authority, as well as the other Committee members, would use this information as they see fit and would act on the contents as necessary without further referral to the Committee for its 'permission'. Some of the papers provided have clearly been noted by other parties so there must be further interest in the contents. Additionally, on four of the nine occasions where minutes have been retained by the public authority, the Commissioner notes that neither of its officers actually attended the meeting. The minutes must therefore have been passed separately to interested parties after the meeting.

80. The Commissioner finds it unreasonable to assume that the confidentiality clause would apply to information supplied to or discussed by the Committee.
81. The Commissioner does not accept that a public authority could set up another body, such as a Committee with the legal nature of an unincorporated association, for conducting business which it subsequently chooses not to consider under the Act. The Act covers all the business of the public authority and exists to encourage disclosure of such undertakings. It is of significance that no other University has tried to make such a claim, even one with a similar setup to this public authority. The Commissioner finds that it is not within the scope of the Act for a Committee to try and exempt itself from the Act in this way when it is clearly conducting 'university' type business. Any other similar public authority would not be able to claim such an anomaly and the Commissioner does not accept that this public authority's more unusual setup of multifarious smaller public authorities means that it should be allowed to treat requests differently.
82. Furthermore, the Commissioner does not believe that the Committee could actually bring an action against the public authority as there would be no evidence to support that any agreement had been breached. All attendees are employees of either the public authority or one of its Colleges and he doubts that in practice they actually would sue the public authority. In any event, he finds that the Bursars' Committee is properly a University Committee rather than an *'unincorporated association or members' club'* and that the public authority cannot take action against itself.
83. The Commissioner finds that the withheld information was not imparted in circumstances giving rise to an obligation of confidence. As he does not find that there is any obligation of confidence he will not further consider this exemption. Section 41(1) is not engaged.

The Decision

84. The Commissioner's decision is that the public authority did not comply with section 1(1)(b) of the Act as it failed to provide the complainant with the information, by virtue of the incorrect application of section 41(1).
85. The public authority did not comply with section 10(1) of the Act as it failed to comply with section 1(1)(b) of the Act within twenty working days of receiving the request.

86. The authority also breached section 10(1) of the Act for failing to confirm whether it held the requested information within the statutory timeframe of twenty days.

Steps required

87. The Commissioner requires the public authority to take the following steps to ensure compliance with the Act:
- The information held should be released to the complainant.
88. The public authority must take the steps required by this notice within 35 calendar days of the date of this notice.

Right of appeal

89. Either party has the right to appeal against this Decision Notice to the Information Tribunal. Information about the appeals process may be obtained from:

Information Tribunal
Arnhem House Support Centre
PO Box 6987
Leicester
LE1 6ZX
Tel: 0845 600 0877
Fax: 0116 249 4253
Email: informationtribunal@dca.gsi.gov.uk

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

Dated the 3rd day of June 2009

Signed

**Anne Jones
Assistant Commissioner
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**

Legal annex

Section 1(1) provides that -

Any person making a request for information to a public authority is entitled –

- (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and
- (b) if that is the case, to have that information communicated to him.

Section 10(1) provides that –

...a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt.

Section 41 provides that –

(1) Information is exempt information if-

- (a) it was obtained by the public authority from any other person (including another public authority), and
- (b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.