

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 May 2011

Public Authority: The Governing Body of the University of Greenwich
Address: University of Greenwich
Park Row
Old Royal Naval College
London
SE10 9LS

Summary

The complainant requested under the Freedom of Information Act 2000 (the 'Act') the workplace email addresses of all of the public authority's staff. The public authority confirmed that it held the information, but believed that it was exempt. It argued that the request may be invalid by virtue of section 8, but in the event that it was valid, sections 40(2) [third party personal data] and section 14(1) [vexatious requests] applied. The complainant requested an internal review and the public authority maintained its position. The complainant then referred this case to the Commissioner.

During the course of his investigation, the public authority provided evidence that it was now relying on section 36(2)(c) [information would prejudice the effective conduct of public affairs]. The Commissioner finds that section 36(2)(c) was engaged and that in all the circumstances of the case the public interest favoured the maintenance of the exemption over the disclosure of the information. He has therefore not been required to make a formal decision about the operation of either section 40(2) or section 14(1). He has found procedural breaches of sections 17(1)(b) and section 17(3), but requires no remedial steps to be taken.

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 Freedom of Information Act 2000 (the "Act"). This Notice sets out his decision.

Background

2. The complainant owns a website that enables all Universities to receive requests for information simultaneously. He believes that the website should be able to investigate higher education matters through FOI requests and publishes the results.
3. This request has been made to every University in the UK and the complainant has told the public authority that he requires this information to inform the staff about his website. He explained that each member of staff was to be invited to suggest topics worthy of investigation in confidence.
4. The complainant has asked the Commissioner to consider a number of his requests, where those requests have been refused. The Commissioner has considered the arguments the complainant has made to him, across all of these complaints, in reaching his decision in respect of this particular case.

The Request

5. On 26 April 2010 the complainant requested the following information from the public authority:

'FOI Request – Staff E-mail Addresses

I would like to request the following information under the provisions of the Freedom of Information Act. I would ask you to send your response by e-mail.

A list of the workplace e-mail addresses for all staff.

By workplace I am referring to corporate e-mail addresses ending in .ac.uk.

By staff I am referring to all individuals employed by your institution.

Please note that I do not require any segmentation of the list or any associated details.'

6. On 24 May 2010 the University issued its response. It explained that it believed that the request may be invalid, but that it was not refusing to answer the request on that basis. It confirmed that it held information that was relevant to the request. However, it believed that it was entitled to withhold the information on the following three grounds:
 1. Section 14(1)¹ – it explained that it believed the request was vexatious. It had come to this view because the University could be opened up to a large number of spam or unsolicited marketing material and that sufficient methods for its customers to contact it would be through the links in its website;
 2. Section 40(2) – it explained that the email addresses amounted to third party personal data and that it believed their disclosure would contravene the first data protection principle. It explained that it provided the relevant contact details on its website and that these were sufficient for the needs of its customers. It explained that it did not believe there was a legitimate public interest in the disclosure of the email addresses and explained it felt that the disclosure of the information would be unfair to its staff – particularly those in junior roles; and
 3. Section 12(1) – it explained that it believed the necessity to redact names of its junior staff would involve more than 18 hours work.
7. On 25 May 2010 the complainant wrote to the University to request an internal review. He challenged the University's position through focussing on alleged flaws within it:
 1. Section 14(1) – he explained that he did not accept that the request fell within any of the criteria found in the Commissioner's guidance on vexatious requests²; and
 2. Section 40(2) – his arguments had two themes:
 - (i) He disputed that all workplace email addresses amounted to personal data. This was because their format may enable them to be divorced from individual staff members ie js100@ would not identify any relevant individual; and

¹ All the sections that are cited in this Notice can be found in full in the Legal Annex attached to this Notice.

² The Commissioner's guidance can be located at the following link:

http://www.ico.gov.uk/~/_media/documents/library/Freedom_of_Information/Detailed_specalist_guides/VEXATIOUS_AND_REPEATED_REQUESTS.ashx

- (ii) He explained that the University was inconsistent. It did release a number of workplace email addresses on its website.
8. On 21 June 2010 the University communicated the results of its internal review. It explained that it had considered all the arguments raised and decided to uphold its position. It addressed the complainant's submissions in relation to its application of section 40(2) and 14(1):
1. Section 40(2):
 - (i) The University explained its view that a partial name would still amount to personal data under the DPA; and
 - (ii) That it agreed that it had included the key contact details on its website and in its publication scheme. It explained that these decisions were a conscious business decision to disclose the details for set purposes. In its view this did not undermine its application of section 40(2) to the full list in a way that was not similarly restricted.
 2. Section 14(1) – it explained it believed that the request satisfied a number of conditions from the Commissioner's guidance. In particular:
 1. It found that the request was harassing and may cause distress to its staff. This was because it believed that there was potential for harassment in relation to direct marketing and SPAM. In addition, it felt that the way the complainant's website worked and the number of requests it received has the potential to cause harassment. Finally, it explained that it had independent evidence to suggest that the complainant's website amounted to wider behaviour and what it believed to be concerted campaign;
 2. The request may be designed to cause disruption or annoyance. It explained it didn't know the complainant's intention, but believed that the effect of the request could cause disruption or annoyance; and
 3. The request may lack serious purpose or value. It explained that it did not know the complainant's purpose, but believed it was connected to his website. It explained that in light of the key contact details being on its website, it viewed the request as having no serious purpose or value.

The Investigation

Scope of the case

9. On 21 June 2010 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant told the Commissioner that he did not feel that the application of section 14(1) was appropriate and that he wanted the withheld information to be disclosed.
10. The Commissioner has been asked by the complainant to consider a number of requests for the email addresses of all staff. The complainant has explained that he wanted the Commissioner to decide whether he could receive the full list in every case, except for those staff who had specifically requested anonymity on grounds of personal safety.

Chronology

11. On 2 August 2010 the Commissioner wrote to the complainant to explain that the complaint he had made was eligible to be considered. He also wrote to the University to inform it of the complaint and to ask it for a copy of the withheld information.
12. On 5 August 2010 the University replied. It asked the Commissioner to tell it which of the complainant's requests had been referred to him. On 20 August 2010 the Commissioner clarified this matter.
13. On 24 August 2010 the Commissioner then wrote to the University. He made detailed enquiries about the operation of section 14(1). On 20 September 2010 the Commissioner received its detailed opening arguments.
14. There followed a delay when the Commissioner considered a number of other cases that were also made by the complainant about workplace email addresses.
15. On 23 February 2011 the Commissioner wrote a detailed letter to the University to confirm that he was not convinced by its arguments in respect of section 14(1), asked it about the operation of section 40(2) and for it to carefully consider its position again.
16. On 1 March 2011 the University issued a preliminary response. It confirmed that it was unhappy that the Commissioner would not accept section 14(1) and that it wished to rely again on section 12(1). The Commissioner then explained his position on the telephone and followed

that phone call with a second detailed letter addressing the concerns. He asked the University to readdress his letter dated 23 February 2011.

17. On 28 March 2011 the University issued its latest response. It explained that in light of the Commissioner's decision in **FS50344341** it wished to rely on section 36(2)(c) [disclosure would prejudice the effective conduct of public affairs]³. It provided its detailed arguments about the operation of that exemption.

Findings of fact

18. The person designated as being the Qualified Person for this public authority is the Vice Chancellor – Tessa Ann Vosper Blackstone, Baroness Blackstone. This corresponds with an Order issued by David Willetts, the Minister of State for Universities and Science.⁴

Analysis

Exemptions

19. The Commissioner is obliged to consider all exemptions that are raised by the public authority in the course of his investigation. This is the result of the Upper Tribunal (Information Rights)' decision in the linked cases *DEFRA v Information Commissioner and Simon Birkett* [2011] UKUT 39 (AAC) and *Information Commissioner v Home Office* [2011] UKUT 17 (AAC).⁵

Section 36(2)(c) – prejudice to the effective conduct of public affairs

20. The Commissioner has chosen to consider section 36(2)(c) first because should it be appropriately applied then it would cover all of the withheld information. Only one exemption needs to be applied correctly to withhold the information under the Act.
21. Section 36(2)(c) provides that information is exempt if in the reasonable opinion of the qualified person, disclosure of the information would, or

³ This decision can be found at the following link:

http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50344341.ashx

⁴The relevant Ministerial Order can be found at the following link:

<http://www.bis.gov.uk/assets/biscore/corporate/docs/foi/foi-authorisation-of-a-qualified-person.pdf>

⁵ This decision can be found at the following link:

<http://www.osspsc.gov.uk/judgmentfiles/j3160/GIA%201694%202010-01.doc>

would be likely to, prejudice the effective conduct of public affairs. It is a qualified exemption, so subject to a public interest test. The Commissioner will first consider whether the exemption is engaged and, if so, will move on to consider where the balance of the public interest lies.

Is the exemption engaged?

22. In *McIntyre v the Information Commissioner* (EA/2007/0068), the Information Tribunal noted that no definition of 'public affairs' was given in the Act. However, The Tribunal commented that this category of exemption was:

"intended to apply to those cases where it would be necessary in the interests of good government to withhold information, but which are not covered by another specific exemption, and where the disclosure would prejudice the public authority's ability to offer an effective public service or to meet its wider objectives or purposes due to the disruption caused by the disclosure or the diversion of resources in managing the impact of the disclosure."

23. In order to establish that this exemption is engaged the Commissioner must:

- Ascertain who the qualified person is;
- Establish that an opinion was given;
- Ascertain when the opinion was given; and
- Consider whether the opinion was objectively reasonable and reasonably arrived at.

24. The Commissioner has established that the 'Qualified Person' as noted above is Baroness Blackstone.

25. The next two criteria can be dealt with swiftly. The Commissioner has established that an opinion was given by Baroness Blackstone on 25 March 2011. This was in response to a submission being put to her on 24 March 2011. In this submission the University's relevant officials explained the way section 36(2)(c) operated, the nature of what needed to be decided, the factors that the official believed were relevant when making this decision and all of its public interest considerations. It also provided a statement from the Head of IT about the nature of the prejudice that may be experienced.

26. The last criterion noted in paragraph 24 requires detailed analysis. In the case of *Guardian & Brooke v Information Commissioner & the BBC* [EA/2006/0011 and 0013] ('Guardian & Brooke'), the Information Tribunal stated that "in order to satisfy the subsection the opinion

must be both reasonable in substance and reasonably arrived at." (paragraph 64). The Commissioner will consider each of these requirements in reverse order.

Reasonably arrived at

27. In determining whether an opinion had been reasonably arrived at, the Tribunal in *Guardian & Brooke* suggested that the qualified person should only take into account relevant matters and that the process of reaching a reasonable opinion should be supported by evidence, although it also accepted that materials which may assist in the making of a judgement will vary from case to case and that conclusions about the future are necessarily hypothetical.
28. When considering whether the opinion was reasonably arrived at, the Commissioner has received a copy of the submissions provided to the Qualified Person and her detailed opinion. He has also been provided with a large quantity of evidence that relates to what was considered when the opinion was provided by the Qualified Person. The Commissioner's view is that the evidence considered when coming to an opinion is an important factor in considering whether that opinion is reasonably arrived at. He has therefore noted what was considered below:
 - A five page submission from the Information Governance Officer. This explained:
 1. Details of the request and related correspondence;
 2. The nature of the exemption and the different thresholds that should be considered when making an opinion – the submission asks the Qualified Person 'In your reasonable opinion, do you believe that disclosure of the information would prejudice, or would be likely to prejudice, the effective conduct of public affairs?'
 3. It identifies potential adverse effects to its core functions in the event that the disclosure is made; and
 4. It also identifies public interest considerations and about how the factors can be weighted together.
 - A copy of a statement from the Head of IT about the effects disclosure may have in volume and to its IT systems;
 - A copy of the correspondence between the Commissioner and the University about this case; and

- A copy of Decision Notice **FS50344341**.

29. In her opinion the Qualified Person outlined exactly what she had taken into account and what she believed would be the adverse effects in disclosure. These will be considered in more detail in the next section below. However, from these documents, the Commissioner is satisfied that the qualified person has taken into account relevant considerations and does not appear to have been influenced by irrelevant ones. In particular, she has not taken into account events which had not occurred until after the request or paid insufficient attention to relevant events in this case. He has therefore determined that the Qualified Person's opinion was reasonably arrived at.

Reasonable in substance

30. In relation to the issue of whether the opinion was reasonable in substance, the Tribunal indicated in *Guardian & Brooke* that "the opinion must be objectively reasonable" (paragraph 60).

31. In order to determine whether the opinion was objectively reasonable, it is important to understand what the Qualified Person meant when she gave her opinion. There are two possible limbs of the exemption on which the reasonable opinion had been sought:

- where disclosure "would prejudice" the effective conduct of public affairs; and
- where disclosure "would be likely to prejudice" the effective conduct of public affairs.

32. The Qualified Person was given the choice and she explained in her submission that she was relying on the 'would be likely to prejudice' limb of the exemption. This means the Qualified Person's decision was that she was of the view the chance of the prejudice being suffered was more than a hypothetical possibility and that there was a real and significant risk⁶. The Commissioner will judge whether the opinion was a reasonable one on the basis of this threshold.

33. When providing her opinion, the Qualified Person considered the submissions that were provided and explained those she found convincing. She put forward her opinion that section 36(2)(c) was engaged for the following reasons:

⁶ This threshold was confirmed in paragraph 15 of the Information Tribunal decision in *John Connor Press Associates Limited v The Information Commissioner* [EA/2005/0005]: <http://www.informationtribunal.gov.uk/DBFiles/Decision/i89/John%20Connor.pdf>

- The disclosure of the information would be likely to cause an adverse effect to the University's ability to carry out its core functions;
 - The proper channels of communication had been agreed to ensure that a consistent service could be provided to all of its stakeholders. The disclosure of the full list would undermine those channels of communication;
 - The result of this would be a consistent loss of time from its core functions. It had designed its communication channels to prevent the disruption of staff and reduce time wasted in redirecting enquiries to the appropriate team;
 - The disclosure of the email list would be to the public at large. This would be likely to lead to many more unsolicited marketing messages, SPAM and disruption to its staff;
 - The University should be entitled to protect its reputation by delivering consistent messages through the appropriate channels. She believed that the disclosure of the list may lead to a loss of reputation;
 - She believed that the potential targeting of staff of irrelevant and unwanted emails could cause disruption, confusion and distress;
 - The University has a duty of care to prevent staff being misled by emails purporting to come from a University source; and
 - The University should also be able to protect its staff from emails that may be fraudulent in nature. It explained that security systems are not perfect and the nature of attack always evolves.
34. The University has also offered the Commissioner further detailed arguments about the prejudice it believes it would be likely to experience. The arguments that the Commissioner feels are relevant are noted below:
- The University's primary function is to provide education and to conduct research. The disclosure of the full email list would risk the interruption of its business;
 - Email is crucial and underpins the University's core business. It is used by all administrative, managerial and academic staff, and is key to certain correspondence. Key services depend on email;
 - Emails that are part of the University's core business are directed to the correct place through the correct channels. This ensures that they are dealt with by the right people with the right experience; and

- The disclosure of the list could lead to a potentially unlimited drain on its limited resources. It explained that a survey was carried out in 2007 and a principal concern was the number of emails received.
35. The Commissioner has noted that the University has already published a number of its email addresses of the key contacts noted above. The complainant has argued that this in itself has not adversely impacted on the public authority. However he accepts that there is a difference in the current availability of the key email addresses (which the public authority accepts are necessary for the performance of an individual's role or duties) and the disclosure of a full list containing 2428 email addresses. He has also noted the complainant's arguments that he would use the list responsibly. It is important to note that disclosure of information under the Act should be regarded as disclosure to the world at large. This is in line with the Tribunal in the case of *Guardian & Brooke* (following *Hogan and Oxford City Council v The Information Commissioner* (EA/2005/0026 and EA/2005/0030)) which confirmed that, "*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions*" (paragraph 52).⁷ The motivations of the complainant are therefore irrelevant. However, the argument that equivalent public authorities have not withheld the same information that was requested has been evidenced by the complainant. While it must be noted that the application of an exemption is discretionary, the Commissioner must consider whether the prejudice has been overstated by this University given the alternative approach by the others.
36. The complainant has also argued that the amount of email traffic would not be affected in a material way through the disclosure of the full list of email addresses to the public. However, the University has provided the Commissioner with a written statement from the Head of its IT department which has explained from experience the likely effect that the disclosure would have. In addition, the Commissioner has found in favour of another University in **FS50344341** that such an effect has happened previously. In view of this, the Commissioner doubts that the release of the list to the public would not affect the traffic that the University receives.
37. The complainant also argued that sophisticated IT systems ought to be able to counteract any possible prejudice that the University would experience through the disclosure of the list. The Commissioner accepts that there is some merit to this argument. However the Commissioner is willing to accept that a method of attack can vary and there is always

⁷This decision can be found at the following link:

http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_info_comm.pdf.

likely to be a time delay between where the problem is noted and counteracted. This delay may mean that the attack has already done considerable damage and therefore the existence of IT security does not mitigate the prejudice to a significant extent.

38. The Commissioner has carefully considered the arguments presented by both parties in this case and is satisfied that the Qualified Person's opinion was objectively reasonable in substance. This is because he is satisfied that in the particular circumstances of this case it was reasonable for the Qualified Person to conclude that the disclosure of the withheld information to the public would be likely to cause an adverse effect to the University's ability to carry out its core functions (providing education and conducting research). He considers that in this case the evidence supported the opinion of the Qualified Person. In particular, the University should be entitled to organise itself so that the correct members of staff receive the correct emails to prevent both duplication and wastage of its limited resources. In addition, it should be able to protect itself from SPAM and/or unsolicited marketing material.
39. The Commissioner has concluded that the opinion of the qualified person appears to be both reasonable in substance and reasonably arrived at, and he therefore accepts that the exemption found in section 36(2)(c) is engaged.

The Public Interest Test

40. Section 36(2)(c) is a qualified exemption. That is, once the exemption is engaged, the release of the information is subject to the public interest test. The test involves balancing factors for and against disclosure to decide whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
41. The Commissioner will commence his analysis by considering those factors that favour disclosure. He will then consider those that favour the maintenance of the exemption, before concluding where he considers the balance lies.

Public interest arguments in favour of disclosing the requested information

42. The University has explained to the Commissioner that its starting point is always disclosure. It also listed the public interest factors that it believed to favour disclosure:
 - The public interest in ensuring transparency in the activities of public authorities;

- The public interest in ensuring that members of the public are able to contact appropriate staff within the public authority; and
 - The public interest in staff being able to access certain external services for their work.
43. It explained that it understood that the public interest in ensuring the transparency of the University's work is always strong as it is the fundamental objective of the Act. It also understood that it should be as accountable as possible.
44. However, it explained that these arguments should be given little weight in this case, as it believed that the disclosure of the information would not provide greater transparency of the University and the list on its own does not tell the requestor anything about its activities.
45. The Commissioner has considered the accountability arguments against the information that has been requested. He finds that it is appropriate to consider the Information Tribunal's view about accountability in *Cabinet Office v Lamb and the Information Commissioner* [EA/2008/0024 & 0029] which explained '*Disclosure under FOIA should be regarded as a means of promoting accountability in its own right and a way of supporting the other mechanisms of scrutiny, for example, providing a flow of information which a free press could use*'. This indicates that even though the email addresses on their own add little to the public understanding of how the public authority operates, their disclosure may facilitate or support scrutiny by allowing the applicant to invite the University's staff to raise issues of concern. He therefore finds that the arguments about accountability should be given some weight in this case. However the weight of these arguments is mitigated by further evidence that has been provided. This evidence shows that there is real awareness of FOI within the University and there are set channels where members of staff can request management information.
46. The Commissioner also accepts that there is a public interest in knowing the number of staff and who are employed by public funds. In addition, there is a public interest in making it possible to contact relevant individuals where their expertise would merit their contact. However, in this case it must be noted that the number of staff is known (2428) and the list by itself provides no information that would enable specific individuals to be selected.
47. The complainant has also argued that the University's staff are likely to be interested in the services that he offers. He supported this argument by the interest shown in his service when he has approached other Universities. He explained that the marketing of the service provided a

real benefit to the staff. The Commissioner's view is that while some services will be useful to individual members of staff, he is obliged to consider what the effect would be of disclosing this information to the whole public.

Public interest arguments in favour of maintaining the exemption

48. The University has provided detailed submissions about why it believes that the public interest favours the maintenance of the exemption. It is important to note that only factors that relate to the likely prejudice of the effective conduct of public affairs can be considered in this analysis.
49. The University has detailed the following public interest arguments for the Commissioner to consider:
 - There is a public interest in ensuring that Universities are allowed to provide the services that they offer without undue disruption and hindrance. External email enquiries which are not routed through agreed channels cause disruption and waste staff time;
 - The undermining of communication channels is linked to the nature of the information requested. The University explained that most of its public facing staff work in defined specific areas. The wording of the request does not differentiate between areas – so any possible communication will either be sent to all staff or randomly without reference to their area of work;
 - There is a public interest in ensuring that enquiries are dealt with in a consistent and prompt manner and are therefore directed through agreed and publicised service channels;
 - The University has an interest in protecting its reputation by delivering consistent messages regarding procurement. It does so by routing enquiries through agreed channels and the disclosure of the list may lead to those channels being subverted;
 - Any release of the list under the Act would be to the public. The University has evidenced to the Commissioner that this would be likely to lead to many more unsolicited marketing messages, more spam and disruption to its staff;
 - It is in the public interest for the University to protect its staff from being bombarded or targeted by external contacts (particularly the most junior staff) and from them being sent irrelevant and unwanted emails as this can cause disruption to staff, confusion and distress;

- It is in the public interest for the University to protect its staff from spam emails which may be fraudulent in nature, such as phishing emails;
 - The University has a legitimate interest in ensuring that all University communications are genuine and the reputation of the public authority is not damaged by fraudulent mailings. The reputation may be damaged because members of staff would have less faith in its protection of their accounts;
 - The University has a duty of care to its staff to take reasonable steps to prevent staff being misled by emails purporting to come from a University source which may cause damage or distress to staff; and
 - It is unlikely that the release of the list would improve transparency and accountability to any real extent because the relevant communication channels are already available.
50. When making a judgment about the weight of the University's public interest arguments, the Commissioner considers that he is correct to take the severity, extent and frequency of prejudice or inhibition to effective conduct of public affairs into account.
51. The Commissioner is satisfied that there are two main themes of the public interest arguments that favour the maintenance of the exemption:
1. That the provision of the list to the public would undermine the channels of communication and lead to a consistent loss of time from the public authority's core functions; and
 2. That the provision of the list to the public would leave the public authority and its staff more open to phishing attacks and the resulting problems that may be suffered.
52. The Commissioner is satisfied that the first theme of arguments would amount to a fairly severe prejudice, whose extent and frequency would be potentially unlimited. He is therefore satisfied that these public interest factors should be given real weight in this case and they favour the maintenance of the exemption.
53. The Commissioner is also satisfied that the second theme of arguments relate to a severe prejudice, whose extent and frequency would be potentially unlimited. As noted above, he has considered the complainant's counterarguments that IT security systems should be able to mitigate this prejudice. However, he notes that IT security systems are not perfect and the nature of attacks is always evolving. The

Commissioner considers that the presence of IT security systems cannot be taken into account, because future attacks may be able to do damage before the IT security systems can intervene. He is therefore satisfied that this prejudice would be likely from the release of this information to the public and that these public interest factors should be given real weight in this case and favours the maintenance of the exemption.

Balance of the public interest arguments

54. When considering the balance of the public interest arguments, the Commissioner is mindful that the public interest test as set out in the Act relates to what is in the best interests of the public as a whole, as opposed to interested individuals or groups.
55. In this case the Commissioner considers that there is some weight to the public interest arguments on both sides. The Commissioner appreciates that the arguments in favour of additional accountability and transparency have some weight in this case. He accepts that it is important for a public authority to be as transparent as possible where there is not a significant adverse effect. However, in the circumstances of this case he considers that the weight of public interest factors maintaining the exemption are greater than those that favour disclosure. He is satisfied that the disclosure of the information to the public would be highly likely to prejudice the University from its core functions – both because it would undermine the channels of communications and leave the University open to spam emails and their consequences. Given the negative impact this would have on the public authority, the Commissioner has concluded that the public interest favours maintaining the section 36 exemption.
56. In light of the above, the Commissioner finds that the public interest lies in maintaining the exemption, and therefore withholding the disputed information outweighs the public interest in disclosure. The Commissioner is satisfied that the disputed information was correctly withheld by the University and upholds the application of section 36(2)(c).
57. As the Commissioner has found that section 36(2)(c) has been appropriately applied, he has not gone on to consider the application of sections 14(1) or 40(2).

Procedural Requirements

58. Section 17(1)(b) requires that a public authority specifies what exemption it is relying upon by the time for compliance. The University did not rely on section 36(2)(c) until the Commissioner's investigation.

It therefore failed to mention it within the time for compliance. This was a breach of section 17(1)(b).

59. Section 17(3) requires that a public authority explains why the public interest factors that favour the maintenance of a qualified exemption outweigh the public interest in disclosure of the information. The University did not apply a qualified exemption until the Commissioner's investigation and therefore failed to outline the public interest factors by the time of its internal review. It therefore breached section 17(3).

The Decision

60. The Commissioner's decision is that the University dealt with the request substantively in accordance with the requirements of the Act. This is because it applied section 36(2)(c) appropriately to all of the withheld information.
61. However, the Commissioner has also decided that there were procedural breaches of sections 17(1)(b) and 17(3) because the University did not apply section 36(2)(c) until the Commissioner's investigation.

Steps Required

62. The Commissioner requires no steps to be taken.

Right of Appeal

63. 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,
Arnhem House,
31, Waterloo Way,
LEICESTER,
LE1 8DJ

Tel: 0845 600 0877

Fax: 0116 249 4253

Email: informationtribunal@tribunals.gsi.gov.uk.

Website: www.informationtribunal.gov.uk

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.

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

Dated the 26th day of May 2011

Signed

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

Legal Annex

The Freedom of Information Act 2000

Section 1 - General right of access to information held by public authorities

(1) 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.

(2) Subsection (1) has effect subject to the following provisions of this section and to the provisions of sections 2, 9, 12 and 14.

(3) Where a public authority—

(a) reasonably requires further information in order to identify and locate the information requested, and

(b) has informed the applicant of that requirement,

the authority is not obliged to comply with subsection (1) unless it is supplied with that further information.

...

Section 8 – Request for information

(1) In this Act any reference to a “request for information” is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.”

(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

(a) is transmitted by electronic means,

(b) is received in legible form, and

(c) is capable of being used for subsequent reference.

Section 14 – Vexatious or repeated requests

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

Section 17 - Refusal of request

(1) A public authority which, in relation to any request for information, is to any extent relying on a claim that any provision of Part II relating to the duty to confirm or deny is relevant to the request or on a claim that information is exempt information must, within the time for complying with section 1(1), give the applicant a notice which—

- (a) states that fact,
- (b) specifies the exemption in question, and
- (c) states (if that would not otherwise be apparent) why the exemption applies.

(2) Where—

(a) in relation to any request for information, a public authority is, as respects any information, relying on a claim—

(i) that any provision of Part II which relates to the duty to confirm or deny and is not specified in section 2(3) is relevant to the request, or

(ii) that the information is exempt information only by virtue of a provision not specified in section 2(3), and

(b) at the time when the notice under subsection (1) is given to the applicant, the public authority (or, in a case falling within section 66(3) or (4), the responsible authority) has not yet reached a decision as to the application of subsection (1)(b) or (2)(b) of section 2,

the notice under subsection (1) must indicate that no decision as to the application of that provision has yet been reached and must contain an estimate of the date by which the authority expects that such a decision will have been reached.

(3) A public authority which, in relation to any request for information, is to any extent relying on a claim that subsection (1)(b) or (2)(b) of section 2 applies must, either in the notice under subsection (1) or in a separate notice given within such time as is reasonable in the circumstances, state the reasons for claiming—

(a) that, in all the circumstances of the case, the public interest in maintaining the exclusion of the duty to confirm or deny outweighs the public interest in disclosing whether the authority holds the information, or

(b) that, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

(4) A public authority is not obliged to make a statement under subsection (1)(c) or (3) if, or to the extent that, the statement would involve the disclosure of information which would itself be exempt information.

(5) A public authority which, in relation to any request for information, is relying on a claim that section 12 or 14 applies must, within the time for complying with section 1(1), give the applicant a notice stating that fact.

(6) Subsection (5) does not apply where—

(a) the public authority is relying on a claim that section 14 applies,

(b) the authority has given the applicant a notice, in relation to a previous request for information, stating that it is relying on such a claim, and

(c) it would in all the circumstances be unreasonable to expect the authority to serve a further notice under subsection (5) in relation to the current request.

(7) 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.

Section 36 - Prejudice to the effective conduct of public affairs

(1) This section applies to-

(a) information which is held by a government department or by the National Assembly for Wales and is not exempt information by virtue of section 35, and

(b) information which is held by any other public authority.

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

(a) would, or would be likely to, prejudice-

- (i) the maintenance of the convention of the collective responsibility of Ministers of the Crown, or
- (ii) the work of the Executive Committee of the Northern Ireland Assembly, or
- (iii) the work of the executive committee of the National Assembly for Wales,

(b) would, or would be likely to, inhibit-

- (i) the free and frank provision of advice, or
- (ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

...

Section 40 – Personal information

“(1) Any information to which a request for information relates is exempt information if it constitutes personal data of which the applicant is the data subject.

(2) Any information to which a request for information relates is also exempt information if—

- (a) it constitutes personal data which do not fall within subsection (1), and
- (b) either the first or the second condition below is satisfied.

(3) The first condition is—

(a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in section 1(1) of the [1998 c. 29.] Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—

- (i) any of the data protection principles, or
- (ii) section 10 of that Act (right to prevent processing likely to cause damage or distress), and

(b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in section 33A(1) of the [1998 c. 29.]

Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.

(4) The second condition is that by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject's right of access to personal data).

(5) The duty to confirm or deny—

(a) does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1), and

(b) does not arise in relation to other information if or to the extent that either—

(i) the giving to a member of the public of the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene any of the data protection principles or section 10 of the [1998 c. 29.] Data Protection Act 1998 or would do so if the exemptions in section 33A(1) of that Act were disregarded, or

(ii) by virtue of any provision of Part IV of the [1998 c. 29.] Data Protection Act 1998 the information is exempt from section 7(1)(a) of that Act (data subject's right to be informed whether personal data being processed).

(6) In determining for the purposes of this section whether anything done before 24th October 2007 would contravene any of the data protection principles, the exemptions in Part III of Schedule 8 to the [1998 c. 29.] Data Protection Act 1998 shall be disregarded.

(7) In this section—

- "the data protection principles" means the principles set out in Part I of Schedule 1 to the [1998 c. 29.] Data Protection Act 1998, as read subject to Part II of that Schedule and section 27(1) of that Act;
- "data subject" has the same meaning as in section 1(1) of that Act;
- "personal data" has the same meaning as in section 1(1) of that Act."

Data Protection Act 1998

Section 1 - Basic interpretative provisions

(1) In this Act, unless the context otherwise requires—

- "data" means information which—

(a)

is being processed by means of equipment operating automatically in response to instructions given for that purpose,

(b)
is recorded with the intention that it should be processed by means of such equipment,

(c)
is recorded as part of a relevant filing system or with the intention that it should form part of a relevant filing system, or

(d)
does not fall within paragraph (a), (b) or (c) but forms part of an accessible record as defined by section 68;

- “data controller” means, subject to subsection (4), a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- “data processor”, in relation to personal data, means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- “data subject” means an individual who is the subject of personal data;
- “personal data” means data which relate to a living individual who can be identified—

(a)
from those data, or

(b)
from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual;

- “processing”, in relation to information or data, means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including—

(a)
organisation, adaptation or alteration of the information or data,

(b)
retrieval, consultation or use of the information or data,

(c)
disclosure of the information or data by transmission, dissemination or otherwise making available, or

(d)
alignment, combination, blocking, erasure or destruction of the information or data;

- “relevant filing system” means any set of information relating to individuals to the extent that, although the information is not processed by means of equipment operating automatically in response to instructions given for that purpose, the set is structured, either by reference to individuals or by reference to criteria relating to individuals, in such a way that specific information relating to a particular individual is readily accessible.
- (2) In this Act, unless the context otherwise requires—
- (a) “obtaining” or “recording”, in relation to personal data, includes obtaining or recording the information to be contained in the data, and
 - (b) “using” or “disclosing”, in relation to personal data, includes using or disclosing the information contained in the data.
- (3) In determining for the purposes of this Act whether any information is recorded with the intention—
- (a) that it should be processed by means of equipment operating automatically in response to instructions given for that purpose, or
 - (b) that it should form part of a relevant filing system,
- it is immaterial that it is intended to be so processed or to form part of such a system only after being transferred to a country or territory outside the European Economic Area.
- (4) Where personal data are processed only for purposes for which they are required by or under any enactment to be processed, the person on whom the obligation to process the data is imposed by or under that enactment is for the purposes of this Act the data controller.