

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

### **Decision notice**

**Date:** 17 July 2020

**Public Authority:** Council of the University of Northampton  
**Address:** Boughton Green Road  
Northampton  
NN2 7AL

#### **Decision (including any steps ordered)**

---

1. Through a multi-part request, the complainant has requested information about electronic systems that the University of Northampton ('the University') may use to monitor and record student attendance. The University addressed the majority of the parts of the complainant's request. It relied on section 21(1) of the FOIA (information accessible to applicant by other means) to withhold the information requested in part 7.5 of the request.
2. The Commissioner's decision is as follows:
  - On the balance of probabilities, the University does not hold the specific information requested at part 7.5 of the request. The University therefore breached section 1(1)(a) and section 10(1) of the FOIA as it did not confirm to the complainant that it does not hold this information within 20 working days of the request.
3. The Commissioner does not require the University to take any remedial steps.

#### **Request and response**

---

4. On 19 July 2019, the complainant wrote to the University and requested information in the following terms:

*"1. Does the university use any electronic systems or products – including but not limited to software, apps, online databases, swipe cards and registers – to monitor and/or record student attendance and/or course engagement?"*

*For your reference, examples of such systems/products include SEAts, myday and campusM.*

*<https://www.exlibrisgroup.com/>*

*<https://www.seatssoftware.com/>*

*<https://www.collabco.co.uk/>*

*2. If the university does use such products/systems, please specify:*

*2.1 What is the name of this electronic product/system?*

*2.2. If the electronic product or system was developed by an outside or affiliated company/organisation, what is the name of that company or organisation?*

*3. When did the university first begin to use this electronic system/product?*

*4.1 Does this electronic product or system track the location of students on campus?*

*4.2 Does this electronic product or system track the location of students off campus?*

*4.3 If this electronic product or system does either of the above (see 4.1 & 4.2) can students turn this location tracking function off themselves?*

*5.1 Does this electronic product or system monitor and/or record the attendance of Tier 4 students? (See: <https://www.gov.uk/tier-4->)*

*5.2 If so, is the product or system used to record any different and/or additional information on the attendance of Tier 4 students than that which is recorded about home (UK/EU) students?*

*5.3 Is information about Tier 4 students gathered by this product or system shared with staff responsible for ensuring the university's compliance with Home Office/UKVI guidelines on immigration and visa status?*

*6.1 Has the university conducted or commissioned an equality impact assessment on the electronic product or system used to monitor student attendance and/or course engagement?*

*6.2 Has the university conducted or commissioned an assessment of the*

*electronic product's/system's compliance with the university's public sector equality duties?*

*6.3 If the university has conducted or commissioned either of the above (see 5.1 & 5.2) assessments on the electronic product/system, did this explicitly consider the impact on race equality?*

*7.1 Has the university conducted or commissioned a data protection impact assessment on the electronic product or system to monitor student attendance and/or course engagement?*

See here for more info: <https://ico.org.uk/for->

*7.3 Is any of the information gathered by the product or system shared with the developer?*

*7.4 Is any of the information gathered by the product or system shared with a third party?*

*7.5 Please provide a copy of or weblink to the terms and conditions of the product or system, i.e. the information provided to students. If this is covered by a wider data protection/usage agreement with students, please provide a copy of that or a weblink to it."*

5. The University responded on 20 August 2019. It addressed the questions at parts: 1, 2, 3, 4, 5, 6 and 7.1 – 7.4 of the request. The University withheld the information requested in part 7.5 of the request under section 21 of the FOIA as it considered this was already accessible to the complainant.
6. On 10 October 2019, the complainant wrote to the University for clarification and submitted a separate request for further information. The complainant advised the Commissioner that he considered this correspondence was a request for an internal review.
7. Following an internal review, the University wrote to the complainant on 28 January 2020. It indicated that it was maintaining its reliance on section 21 with regard to its response of 20 August 2020.

## Scope of the case

---

8. The complainant contacted the Commissioner on 30 January 2020 to complain about the way his request for information had been handled.
9. In correspondence to the complainant dated 6 May 2020 the Commissioner detailed her understanding of the scope of his complaint. The complainant did not correct that understanding and so the Commissioner has proceeded on that basis.
10. The Commissioner was prepared to investigate whether the University could rely on section 21(1) of the FOIA to withhold the information the complainant has requested in part 7.5 of his request. However, it became apparent that the issue was, in fact, whether the University holds the specific information requested in that part.
11. The complainant was also dissatisfied with the University's handling of the internal review process for this request and a separate request he had submitted to the University. This is discussed in 'Other Matters'.

## Reasons for decision

---

12. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
13. Section 10(1) obliges a public authority to comply with section 1 promptly and within 20 working days following the date of receipt of the request
14. Section 21(1) of the FOIA says that information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.
15. In part 7.5 of his request, the complainant has requested the following:  
*"Please provide a copy of or weblink to the terms and conditions of the product or system, i.e. the information provided to students. If this is covered by a wider data protection/usage agreement with students, please provide a copy of that or a weblink to it"*
16. In its submission to the Commissioner, the University has confirmed that it does not hold the specific information requested in the above part of the request.

17. The University has noted that section 16(1) of the FOIA places a duty on a public authority to offer an applicant advice and assistance. It has explained to the Commissioner that it directed the complainant to where information of some relevance to part 7.5 of the request is published, in order to meet the section 16 duty. The University has noted that, in retrospect, it should have advised the complainant that it does not hold the specific information he requested, but that he might find the published information to which it was directing him helpful.
18. The University directed the complainant to published information and relied on section 21 of the FOIA to refuse to disclose this information to him. By relying on section 21, the University was suggesting that the published information was what the complainant had requested, and that the University holds this information. The University has now confirmed that, in fact, it does not hold the specific information requested in part 7.5 of the request.
19. The University has confirmed to the Commissioner that it does not have (ie hold in recorded form) formal terms and conditions, or a student agreement, for the student attendance IT product as defined by the complainant. The Commissioner sees no reason to doubt this – she considers that the University would know whether or not it holds such information, the scope of which is straightforward.
20. The Commissioner acknowledges that the University was trying to be helpful when it directed the complainant to published information of some relevance to part 7.5 of his request. However, she must find that the University breached section 1(1)(a) and section 10(1) of the FOIA as it did not confirm that it does not hold the specific information in question within 20 working days of receiving the request.
21. The Commissioner suggests that the University reviews Part 2 of the [Freedom of Information Code of Practice](#) – this deals with the matter of advice and assistance, and the circumstances under which it might be offered.

## Other matters

---

22. The complainant is dissatisfied with the University's handling of the internal review process with regard to its handling of this request and a separate request he had submitted to it. Internal reviews are not a requirement of the FOIA; they are a matter of good practice that are discussed in Part 5 of the above Code of Practice. As such, the Commissioner cannot make a formal decision about the University's handling of the internal review process in this case.
23. In its response to the current request, the University advised the complainant to follow its Complaints Procedure if he was dissatisfied with its response, providing him with a link to that procedure.
24. Instead, on 7 January 2020 the complainant wrote to the officer who had provided the response to request an internal review.
25. On 9 January 2020 that officer advised the complainant to direct his complaint to the University's Director of Student and Academic Services. However, somewhat confusingly, the officer also advised the complainant to direct "*all future correspondence on this matter*" to the University's Academic Registrar and provided that individual's email address.
26. On 10 January 2020 the complainant sent his internal review request to the Academic Registrar. On 22 January 202 the Academic Registrar wrote to the complainant and advised that they had not received a request for a review from him with regard to this request and the separate request. Correspondence then followed with the Academic Registrar advising that they had not received the 10 January 2020 correspondence and the complainant not accepting that that was the case.
27. The University provided a review of its responses to both the complainant's requests on 28 January 2020. The complainant was not satisfied with the review but in subsequent correspondence the University directed the complainant to the Commissioner if he remained dissatisfied.
28. The Commissioner is not going to consider whether or not the University was deliberately misleading the complainant when it indicated it had not received the review request that he re-directed to the Academic Registrar on 10 January 2020. She has considered the timeliness of the review response and the issue of advice and assistance.

29. The Commissioner considers that in all but the most exceptional circumstances, an internal review should be provided within 20 working days of a request for one. The complainant first requested a review on 7 January 2020 and was provided with one on 28 January 2020 ie within 20 working days. In this respect, the review was satisfactory.
30. Should the University have required the complainant to re-direct his request for a review to the correct person himself or should it have re-directed it for him? With the benefit of hindsight, and in the spirit of the section 16 obligation under the FOIA to provide an applicant with advice and assistance, the University might have re-directed the complainant's request for a review to the correct person itself, especially since the advice it gave to him on 9 January 2020 was not clear. However, as above, the review response was finally provided within the required timescale and, on this occasion, the complainant was not significantly inconvenienced.

## **Right of appeal**

---

31. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals  
PO Box 9300  
LEICESTER  
LE1 8DJ

Tel: 0300 1234504  
Fax: 0870 739 5836  
Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

## **Signed**

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