

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date 15 September 2008

Public Authority: Liverpool Hope University
Address: Hope Park
Liverpool
L16 9JD

Summary

The complainant made a request under the Freedom of Information Act 2000 (the "Act") to Liverpool Hope University (the "university") for information relating to enrolment of students at the university and refunds made for fees paid by students who did not go on to commence the course enrolled for. The university refused to provide the requested information and applied the exemption set out at section 40(2) of the Act, as the information contained personal data relating to a third party and to disclose this information would breach the principles set out in the Data Protection Act 1998 (the "DPA"). After considering the case the Commissioner upheld the university's decision to withhold the information under section 40(2) by virtue of section 40(3)(a)(i) of the Act. The Commissioner did however find that the university was in breach of sections 17(1)(b) and 17(1)(c) of the Act as it did not give the complainant enough detail as to exactly which subsection of section 40 it was relying upon and why this exemption had been engaged. Furthermore the Commissioner has found that the university is also in breach of section 10(1) as it did not provide an adequate refusal notice within the twenty working day time period specified by that section. The Commissioner does not require the university to take any further steps in relation to the complainant's request.

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.

The Request

2. On 18 December 2007 the complainant made a request for information to the university as to whether any of the students whom the complainant claimed

may have enrolled at the university actually started. The complainant provided the university with a list of the relevant students. Furthermore the complainant requested confirmation that student fees which had been paid direct to the university had been refunded to students (who did not start) and that the refunds made were cleared through the university's bank. Again a list of the relevant students was attached to the complainant's request.

3. In a letter dated 25 January 2008 the university refused the complainant's request for information as it stated to release it would breach the Data Protection Principles. It further clarified that the information related entirely to personal details about other individuals and was therefore exempt under section 40 of the Act.

The Investigation

Scope of the case

4. On 20 February 2008 the complainant contacted the Commissioner to make a complaint as he was dissatisfied with the university's response to his request for information. The Commissioner has specifically investigated whether the information which the university has refused to disclose does in fact contain the personal data of a third party and whether it has been correctly withheld in accordance with the exemption contained at section 40(2) by virtue of section 40(3)(a)(i) of the Act.
5. The Commissioner has also considered whether the university has complied with its obligations under sections 10(1) and 17(1)(b) and 17(1)(c) of the Act.

Chronology

6. On 13 March 2008 the university confirmed to the Commissioner that it did not have a procedure to carry out an internal review. The Commissioner has therefore proceeded with the investigation in the absence of an internal review having been carried out by the university.
7. On 14 April 2008 the university supplied a copy of the withheld information to the Commissioner. It explained that the complainant was requesting it to divulge information relating to the registration status or fee status of students. It further clarified that it would not divulge this information to any third party in line with the Data Protection Act 1998 and stated that the case clearly falls under the exemption contained at section 40 of the Act.
8. On 27 June 2008 the Commissioner wrote to the university to obtain a more detailed explanation as to why it had relied upon the exemption contained at section 40 and also to highlight the university's obligations under section 17(1)(b) and 17(1)(c) as to the level of detail it is obliged to provide to the complainant when relying upon such an exemption. The Commissioner

explained that there are a number of components to section 40 and that the particular subsection relied upon should be cited. In this case the Commissioner considered that the relevant component was section 40(2) by virtue of section 40(3)(a)(i). Furthermore the Commissioner asked the University to explain in detail with reference to the Data Protection Principles contained at Schedule 1 of the DPA 1998 exactly why this exemption was applied. In particular the university was asked why disclosing the requested information to the public at large would be deemed unfair.

9. The university replied to the Commissioner on 25 July 2008. It drew particular attention to how the requested information was obtained and the expectations of the data subjects regarding onward disclosure of the information. It explained that whether a student registers with the university or not is a contractual matter between that student and the university. Similarly it clarified that whether the student has paid a deposit or a fee or not is also a matter between the university and the student. It stated that under no circumstances would the university release such information to a third party as the students had provided that information to the university in the expectation that it would remain confidential between them. It concluded that there can be no public interest in disclosing information on individual student registrations to a third party as the information relates to student's personal and private affairs.

Analysis

10. The full text of the sections of the Act which are referred to can be found in the Legal Annex at the end of this notice, however the relevant points are summarised below.

Procedural Matters

Section 10

11. Section 10(1) of the Act requires 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 of the request. Section 1(1) outlines that upon receipt of a request for information a public authority must inform the requester in writing whether it holds the information and if that is the case the public authority should communicate that information to the requestor unless an exemption is claimed.
12. The university did not provide such a response to the complainant within twenty working days of the request.

Section 17

13. The Commissioner considers that under section 17(1)(b) and 17(1)(c) of the Act the public authority is required, when relying upon an exemption such as section 40(2) by virtue of section 40(3)(a)(i), to specify the exact exemption in question (down to the subsection) and state (if it would not otherwise be apparent) why the exemption applies.
14. In its response to the complainant the college explained that it was unable to provide the requested information as to do so would breach the data protection principles as the information relates entirely to personal details about individuals and is therefore exempt under section 40 of the Act. The Commissioner does not consider that this response complies with section 17(1)(b) or 17(1)(c) of the Act as it does not specify the exact subsection of section 40 the university were relying upon nor does it provide enough detail as to why that exemption was applied.

Exemption

Section 40

15. The university argued that the information that had been requested was exempt from disclosure under section 40.
16. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties:

'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.'*

17. In this case the university stated that the requested information constituted the personal data of third parties and was therefore exempt under section 40(2) of the Act. In order to reach a view on the university's arguments the Commissioner has first considered whether the withheld information is the personal data of the third parties. Section 1 of the DPA defines personal data as information which relates to a living individual who can be identified:

- from that data, or
- from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

In this instance the information withheld is the names of students along with confirmation as to whether or not they enrolled at the college and if they did not enrol, confirmation as to whether any fees paid had been refunded. The Commissioner believes that the third party's would be identifiable from this

information, and therefore he is satisfied that it is the personal data of those third parties.

18. Such information is exempt if either of the conditions set out in sections 40(3) or 40(4) are met. The relevant condition in this case is at section 40(3)(a)(i), where disclosure would breach any of the Data Protection Principles. The Data Protection Principles are set out in schedule 1 of the Data Protection Act 1998. The Commissioner considers that disclosure of the personal data would breach the first data protection principle, which states:

'Personal data shall be processed fairly and lawfully...'

19. In reaching the conclusion that disclosure of the requested information would contravene the first data protection principle the Commissioner has considered the following:-

How was the information obtained?

20. The information was obtained in the process of registering students at the university and in relation to the payment of fees. The university have explained that this is a contractual matter between the individual students and the university.
21. In accordance with the Commissioner's Guidance No. 1, the Commissioner is satisfied that the information was obtained by the university for the sole purpose of enrolling the students at the university. The students therefore provided this information to the university upon the basis that it was obtained only for this purpose.

Likely Expectation of the Data Subject

22. The university have asserted that the students provided the relevant information to the university in the expectation that it would remain confidential between them.
23. The Commissioner does not believe that it would be reasonable to assume that those involved would have expected their personal information to be disclosed to a wider audience and considers that it would be unfair to do so.
24. Having considered the information involved and the purposes for which it was generated, the Commissioner has concluded that the university has applied the Act appropriately in withholding the information under section 40. He has concluded that it would be unfair and therefore a breach of the First Data Protection Principle to disclose it. Accordingly, he has decided that the information is exempt under section 40(2) of the Act by virtue of section 40(3)(a)(i).
25. As the Commissioner has determined that disclosure of the information would be unfair he has not considered whether any other data protection principles would be breached if the information was disclosed.

The Decision

26. The Commissioner's decision is that the university correctly applied section 40(2) of the Act by virtue of section 40(3)(a)(i).
27. However the Commissioner has decided that the following elements of the request were not dealt with in accordance with the Act by the university:
- The university breached section 10(1) of the Act as it did not provide the complainant with a response within the 20 working day time limit specified by this section.
 - The university has breached its obligations under section 17(1)(b) and 17(1)(c) of the Act as it did not provide adequate explanation of its application of section 40(2) by virtue of section 40(3)(a)(i) prior to the Commissioner's intervention.

Steps Required

28. The Commissioner requires no steps to be taken.

Right of Appeal

29. 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@tribunals.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 15th day of September 2008

Signed

**David Smith
Deputy Commissioner**

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

Legal Annex

Time for Compliance

Section 10(1) provides that –

“Subject to subsections (2) and (3), 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 10(2) provides that –

“Where the authority has given a fees notice to the applicant and the fee paid is in accordance with section 9(2), the working days in the period beginning with the day on which the fees notice is given to the applicant and ending with the day on which the fee is received by the authority are to be disregarded in calculating for the purposes of subsection (1) the twentieth working day following the date of receipt.”

Section 10(3) provides that –

“If, and to the extent that –

- (a) section 1(1)(a) would not apply if the condition in section 2(1)(b) were satisfied, or
- (b) section 1(1)(b) would not apply if the condition in section 2(2)(b) were satisfied,

the public authority need not comply with section 1(1)(a) or (b) until such time as is reasonable in the circumstances; but this subsection does not affect the time by which any notice under section 17(1) must be given.”

Section 10(4) provides that –

“The Secretary of State may by regulations provide that subsections (1) and (2) are to have effect as if any reference to the twentieth working day following the date of receipt were a reference to such other day, not later than the sixtieth working day following the date of receipt, as may be specified in, or determined in accordance with the regulations.”

Section 10(5) provides that –

“Regulations under subsection (4) may –

- (a) prescribe different days in relation to different cases, and
- (b) confer a discretion on the Commissioner.”

Section 10(6) provides that –

“In this section –

“the date of receipt” means –

- (a) the day on which the public authority receives the request for information, or

- (b) if later, the day on which it receives the information referred to in section 1(3);

“working day” means any day other than a Saturday, a Sunday, Christmas Day, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in any part of the United Kingdom.”

Refusal of Request

Section 17(1) provides that -

“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.”

Section 17(2) states –

“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.”

Section 17(3) provides that -

“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.”

Section 17(4) provides that -

“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.

Section 17(5) provides that –

“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.”

Section 17(6) provides that –

“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.”

Section 17(7) provides that –

“A notice under section (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.”

Personal information.

Section 40(1) provides that –

“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.”

Section 40(2) provides that –

“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.”

Section 40(3) provides that –

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

Section 40(4) provides that –

“The second condition is that by virtue of any provision of Part IV of the 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).”

Section 40(5) provides that –

“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) he 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 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 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)."

Section 40(6) provides that –

“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 Data Protection Act 1998 shall be disregarded.”

Section 40(7) provides that –

In this section-

"the data protection principles" means the principles set out in Part I of Schedule 1 to the 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.