

Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 22 June 2009

Public Authority: University of Wolverhampton
Address: Wulfruna Street
Wolverhampton
WV1 1SB

Summary

The complainant made two requests for information relating to students transferring between university courses. The University of Wolverhampton (“the University”) provided some information relating to the request and stated that further information may be held but estimated that the costs involved in determining whether any further information was held would exceed the appropriate cost limit.

The Commissioner is satisfied that the University correctly refused to provide any further information as to do so would exceed the cost limit as set out by section 12(1) of the Act. However, the Commissioner also found that the University breached section 17(5) of the Act by failing to provide the complainant with an adequate refusal notice.

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 Requests

Request 1

2. On 16 August 2008 the complainant requested “all the information relating to my degree title allocation”.
3. In a refusal notice dated 18 August 2008 the University stated that the information requested constituted personal data of the complainant and was exempt under section 40 of the Act. The University advised the complainant to make a subject

access request for the information in accordance with section 7 of the Data Protection Act 1998.

Request 2

4. On 19 August 2008 the complainant requested “details of the number of people who have started BSc (Hons) Computer Science and have been transferred to BSc (Hons) Computing or BSc (Hons) Combined Studies because of not obtaining a placement from 1995 to 2008 inclusive”. This request was acknowledged by the University on 19 August 2008.

Request 3

5. On 25 August 2008 the complainant requested “the number of students who transferred from the BSc (Hons) Computer Science route (including Multimedia, Software Engineering etc) to the BSc (Hons) Computing who were told that they could gain their previous title, Computer Science etc, by completing a work placement after the final year (of full-time study in University)”. This request was treated by the University as clarification of request 2.
6. On 11 September 2008, the University responded to the complainant in relation to his request for information (request 2) and subsequent clarification (request 3). It provided information obtained from its placement system in respect of the “Number of students on BSc (Hons) Computing awards who were actively seeking a placement but who were unable to obtain one (including multimedia students)”. The University provided these figures for the period from 2000 to 2008 inclusive and advised that information prior to 2000 was not held in its archives. The University also confirmed that the system did not specify the course transferred to, the reason for any transfer or details of any advice provided. Therefore the University advised that it did not hold information relevant to this part of the request.
7. On 11 September 2008 the complainant requested an internal review of the University’s response. He stated that the information provided did not cover the time period he had requested and that, in his opinion, he did not feel the University had fulfilled its responsibilities under the Act.
8. On 24 September 2008 the University provided the complainant with the outcome of its internal review and confirmed that the complainant’s requests had been treated as one request, with subsequent clarification. The University upheld its decision that all information held in relation to the requests had been provided. The University advised that, with regard to request 3, although students may be advised that they could obtain their previous title by completing a work placement, the information was not recorded. The University stated that additional information relating to request 3 may be held in correspondence or notes held by members of staff. However, the University maintained that it was unable to confirm this because the costs involved in locating and retrieving any additional information which may be held would exceed the appropriate cost limit as stated in the Freedom of Information (Fees and Appropriate Limit) Regulations 2004.

The Investigation

Scope of the case

9. On 8 October 2008 the complainant contacted the Commissioner to complain about the way his request for information had been handled. The complainant specifically asked the Commissioner to consider the use of the term “actively” seeking placements in the University’s response to this request. He felt that this term allowed for subjective analysis as he was aware of numerous students without placements in the year 2000/2001 but the information provided by the University showed only one student without a placement in that year.
10. In a letter to the complainant dated 22 December 2008 the Commissioner confirmed that he would not be investigating request 1 (the request dated 16 August 2008), unless the complainant remained dissatisfied after making a subject access request to the University, in which case any subsequent complaint would be considered under the Data Protection Act. The Commissioner’s investigation has therefore focused on the University’s handling of requests 2 and 3, as detailed in paragraphs 4 and 5 above.

Chronology

11. On 22 December 2008 the Commissioner contacted the University and asked for further clarification on the use of the term “actively” in its response dated 11 September 2008. The Commissioner also asked the University why it did not hold information prior to 2000 or any information in relation to the courses transferred to, the reason for the transfer or any advice given. The Commissioner also requested details of the searches carried out at the time of the request, and further information to support the University’s view that any further searches for information that may be held would exceed the appropriate limit.
12. On 7 January 2009 the University provided a full response to the Commissioner, stating that:
 - the term “actively” was used to identify any student who was eligible for a placement and any students who had failed or withdrawn from studies were excluded;
 - although the University recorded where a person had transferred between courses, it did not record the reason for the transfer or any advice given verbally as it was not required for any business purpose. As such, information relating to the number of students who had transferred because they did not obtain a placement could not be provided;
 - at the time of the original request a thorough search of the placements system was undertaken which involved viewing over 1000 electronic student records to identify and extract information relevant to the request;
 - extracting the data already provided took two members of staff in excess of two days; and

- information prior to 2000 was not held as there was no management purpose to retain such information and to do so would be in breach of the fifth data protection principle which relates to retaining personal data longer than necessary.
13. In relation to the Commissioner's request for information about further searches to determine whether any additional information was held, the University advised that potentially any one of the 65 academic staff could hold records relating to any advice given to students in respect of placements in the form of correspondence or notes. The University provided further information about the processes involved in carrying out further searches and clarified that this would include the following steps:
- 1,000 electronic records would need to be reviewed to extract the names of those students who may have been given advice relating to placements.
 - Each of the 65 academic staff would be required to:
 - search their in-boxes, sent items and archived email records to identify whether any information was held. This search would need to be repeated for each student to identify whether any advice on placements was provided;
 - look through any manual records they may hold on students and any files kept on placements in general;
 - trawl through any note taking devices to see if any notes had been kept on any advice given; and
 - check any general files on servers and public folders.
 - Registry staff would need to check the individual electronic record of each student to see if pertinent award board decisions had been recorded. For years prior to 2004, it would be necessary to check through award board minutes to see if any recommendations were made to students in relation to placements and course transfers. This would involve a member of staff going through the University's archives to retrieve the relevant records and then reading each set of minutes to check if any students identified were discussed.
14. The Commissioner wrote to the complainant on 5 February 2009 to endeavour to resolve the case informally in light of the University's response. The Commissioner reported on the investigation that had been conducted, and advised that he was minded to accept the University's explanation of the work that would be involved in carrying out any further searches required to identify whether any additional information was held. The Commissioner asked the complainant to confirm whether he was satisfied with the University's disclosure taking into account that under section 12 the University is not obliged to provide any information which exceeds the cost limit.
15. On 5 February 2009 the complainant stated he was dissatisfied with the University's disclosure and he requested that the Commissioner make a formal decision.

Analysis

Procedural matters

Section 12: cost limit

16. Section 12(1) of the Act states that:

“Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.”

17. Accordingly, section 12(1) provides that a public authority is not obliged to comply with a request for information if it estimates that to do so would exceed the appropriate cost limit. The appropriate limit is set out in the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004 (the Regulations). A public authority may take into account the cost of determining whether it holds the requested information, and then locating, retrieving and extracting it in performing its calculation. The cost limit is currently set at £450 for the public authority in question. The Regulations allow for a charge of £25 per hour to be attributed to time spent complying with a request for information. Therefore a charge of £25 per hour amounts to 18 hours' work up to the £450 cost limit.
18. The University has advised the Commissioner that its student management system records transfers between generic course codes, but in respect of the School of Computing and Information Technology all course codes have the “Compmaths” generic subject coding. Therefore the University stated it is not possible to electronically search for students who have transferred between computer routes. In order to identify transfers between detailed route codes, each record within the student management system would have to be viewed manually in order to determine whether any student's route had changed at any time.
19. The University has confirmed that its student management system does not hold detailed placement information and, as such, it did not search the student management system in relation to request 2 to identify those students who had transferred between courses because of not obtaining a placement. The University therefore searched its placement system as it was believed that some information relation to request 2 would be held in relation to students seeking a placement but unable to obtain one.
20. The University has advised that its placement system was developed to allow staff to manage student placements. It provides access to students in respect of placement information and records details of placements applied for. Further, the University has stated that the search functionality within the placements system is limited and does not provide a facility to electronically search for information relating to request 2. As a result, in order to determine whether it held information relating to this request, staff had to manually view over 1000 records held in the

system to locate, retrieve and extract information relating to students seeking a placement but unable to obtain one. The University has advised that the manual searching of the placement system took two members of staff two days to view each record and locate, retrieve and extract information relevant to the request.

21. On receipt of request 3 the University decided that request 3 was clarification of request 2. The initial search of the placement system took place after receipt of request 2 but prior to receipt of request 3, and as such the initial search of the placement system focussed on statistical evidence only. The University estimated the time and work involved in identifying any students who may have been provided with any advice about placements in relation to request 3 and then determining whether any of its academic staff held any information relating to such advice would exceed the appropriate limit.
22. On the basis of information provided during the investigation, the Commissioner is satisfied that the University does not hold information for any period prior to 2000.
23. In the Information Tribunal case of *Quinn v the Information Commissioner and the Home Office (EA/2006/0010)* the Tribunal found that, "there is no time bar within the statute that prevents an estimate of costs being provided after significant time has already been spent searching for information. Indeed it may be that in many cases some searching will be required to provide the foundation of a subsequent estimate." This means that public authorities can search up to the cost limit and then refuse to conduct further searches under section 12 of the Act.
24. The Commissioner accepts the representations made by the University about the processes involved in conducting further searches to determine whether any additional information is held. The Commissioner also accepts the representations made by the University in respect of the time it has already spent in locating, retrieving and extracting the information provided to date. The Commissioner is satisfied that the University has already exceeded the £450 cost limit, therefore the Commissioner can not require the University to carry out any further searches under section 12(1) of the Act.

Section 16: advice and assistance

25. Section 16(1) of the Act requires a public authority to provide reasonable advice and assistance to applicants. Section 16(2) outlines that any public authority which conforms with the code of practice issued under section 45 of the Act, is to be taken to comply with the duty imposed by section 16(1).
26. The code of practice outlines that where an authority is not obliged to comply with a request for information because the cost of complying would exceed the "appropriate limit" (i.e. cost threshold) the authority should consider providing an indication of what, if any, information could be provided within the cost ceiling. The authority should also consider advising the applicant that by reforming or re-focusing their request, information may be able to be supplied for a lower or no fee.

27. In the Information Tribunal case of *Barber v The Information Commissioner (EA2005/0004)* the Tribunal stated that it will generally be appropriate for the Commissioner to consider whether it was reasonable to expect a public authority to have provided more advice and assistance and, if had it done so, whether this might have had an impact upon how the request was handled.
28. Under the circumstances of this case the Commissioner does not consider that the University would have been able to provide the complainant with advice and assistance as it would not be possible to refine this particular request to bring it within the cost limit. This is due to the specific nature of the request and the steps that would be required to be taken to extract the information even if the request were refined.
29. The Commissioner therefore considers that the University did not breach section 16(1) of the Act by failing to provide advice and assistance to the complainant as it would have had no impact upon how the request was handled.

Section 17: refusal notice

30. Section 17(5) of the Act states that a public authority which is relying on a claim that section 12 or 14 applies must give the applicant a notice stating that fact.
31. In its refusal notice dated 11 September 2008, the University advised the complainant that further information may be held but as it was not easily accessible, it was likely to exceed the appropriate limit and could incur costs in excess of £500. The University did not specify its reliance on the application of section 12 of the Act at this stage.
32. The Commissioner finds that in failing to specify to the applicant that it was relying on section 12(1) to withhold any additional information which it may hold, the University was in breach of the requirements of section 17(5) of the Act.
33. Section 17(7)(b) states that a public authority must provide the applicant with details of his rights under section 50 of the Act. This should include details of how to complain to the Commissioner. In its refusal notice dated 11 September 2008 the University made reference to the complainant's right to refer the matter to the Commissioner, but only provided the Commissioner's website address. In its internal review letter dated 24 September 2008 full contact details of the Commissioner were provided to the complainant. Accordingly, the Commissioner considers that the University did not breach the requirements of section 17(7)(b), although full contact details of the Commissioner ought to have been provided as part of the original refusal notice.

The Decision

34. The Commissioner's decision is that the University correctly relied on section 12(1) in relation to the complainant's request. Further, the Commissioner finds

that the University did not breach section 16 of the Act by failing to provide advice and assistance to the complainant.

35. However, the Commissioner is satisfied that the University breached section 17(5) of the Act, in that it failed to specify its reliance on the application of section 12(1) in its refusal notice.

Steps Required

36. The Commissioner is satisfied that the University correctly applied the cost limit under section 12 of the Act, therefore the University is not required to take any remedial steps in relation to this request.

Right of Appeal

37. 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.
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 served.

Dated the 22nd day of June 2009

Signed

**Anne Jones
Assistant Commissioner**

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

Legal Annex: Relevant statutory obligations

1. **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.

2. **Section 12(1)** provides that:

Section 1(1) does not oblige a public authority to comply with a request for information if the authority estimates that the cost of complying with the request would exceed the appropriate limit.

3. **Section 16(1)** provides that:

It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

4. **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.

5. **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.

6. **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.

7. **Regulation 4 of the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004** provides that:

(1) This regulation has effect in any case in which a public authority proposes to estimate whether the cost of complying with a relevant request would exceed the appropriate limit.

(2) A relevant request is any request to the extent that it is a request-

- (a) for unstructured personal data within the meaning of section 9A(1) of the 1998 Act, and to which section 7(1) of that Act would, apart from the appropriate limit, to any extent apply, or

- (b) information to which section 1(1) of the 2000 Act would, apart from the appropriate limit, to any extent apply.

(3) In a case in which this regulation has effect, a public authority may, for the purpose of its estimate, take account only of the costs it reasonably expects to incur in relation to the request in-

- (a) determining whether it holds the information,

- (b) locating the information, or a document which may contain the information,

- (c) retrieving the information, or a document which may contain the information, and

- (d) extracting the information from a document containing it.

(4) To the extent to which any of the costs which a public authority takes into account are attributable to the time which persons undertaking any of the activities mentioned in paragraph (3) on behalf of the authority are expected to spend on those activities, those costs are to be estimated at a rate of £25 per person per hour.