Freedom of Information Act 2000 (Section 50)

Decision Notice

Date: 26 May 2011

Public Authority: **The Governing Body of Manchester Metropolitan University ('The University')**
Address: **All Saints Building, All Saints, Manchester, M15 6BH**

Summary

The complainant requested under the Freedom of Information Act 2000 (the 'Act') the workplace email addresses of all of the University's staff. The University confirmed that it held the information, but believed that it was exempt. It argued that the information was already available on its website and explained that section 21(1) [information reasonable accessible to the applicant] applied. It was asked to conduct an internal review and revised its position in that it said section 21(1) applied to some of the addresses and section 40(2) [third party personal data] applied to the others. The complainant then referred this case to the Commissioner.

During the course of his investigation, the University 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 21(1) or section 40(2). 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 University 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 University:

> *'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 27 April 2010 the University issued its response. It confirmed that it held the information that was relevant to the request. However, it believed that it was entitled to withhold the information because the workplace email addresses were publicly available on its website and therefore exempt by virtue of section 21 [information reasonably accessible to the applicant by other means][1].

7. On 27 April 2010 the complainant wrote to the University to request an internal review. He challenged the application of section 21(1) to the whole list.

8. On 18 May 2010 the University communicated the results of its internal review. It explained it had considered all the arguments raised and decided to continue to withhold the information. However, in light of the complainant's comments it was varying its position. It was applying section 21(1) to those email addresses on the website and section 40(2) [information constitutes third party personal data] to those that were not. However, it mentioned it believed that it would not be possible to differentiate between the emails that could and could not be disclosed within the cost limit. It therefore said that it believed section 12(1) [the costs limits] applied on that basis.

9. On 8 June 2010 the complainant approached the University again to explain that he remained dissatisfied with his internal review response, but because it raised new issues he wanted to request a further internal review before approaching the Commissioner. He also conceded that the email addresses on the website were available through the contact directory and explained that if the same data was provided to him in list format, it would lead to this matter being resolved in his view.

10. On 18 June 2010 the University issued another response. It maintained that its position was appropriate and confirmed that it would not provide the email addresses available in its on-line web-directory in list form to the complainant.

[1] All the sections that are cited in this Notice can be found in full in its Legal Annex.

The Investigation

Scope of the case

11. 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 believe that the exemptions were applied appropriately.

12. 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.

13. It also became apparent that the University was unable to regenerate the list of work place email addresses as it stood on 26 April 2010. The list was always evolving as new staff came and went from the University. The Commissioner agreed with the complainant and the University that the only equitable thing would be for him to consider the contemporary list in this investigation. In this case, he has considered the email list as it was on 4 March 2011.

14. The complainant also raised other issues that are not addressed in this Notice because they are not requirements of Part 1 of the Act. In particular, it must be noted that the Commissioner must consider the operation of the Act as it has been passed.

Chronology

15. On 2 August 2010 the Commissioner wrote to the complainant to explain that this complaint was eligible for substantive consideration. He also wrote to the University to inform it that the complaint had been received and to ask it for a copy of the withheld information.

16. On 4 August 2010 the University replied. It asked the Commissioner to tell it which of the complainant's requests had been referred to him. On 24 August 2010 the Commissioner clarified this matter and explained that he did not require any further information from the University at this stage.

17. There followed a delay when the Commissioner considered a number of other cases that were also made by the complainant about workplace email addresses.

18. On 22 February 2011 the Commissioner wrote a detailed letter to the University. He asked detailed questions about how the information was held and the operation of the exemptions that had been applied.

19. On 4 March 2011 the University issued a preliminary response. It explained what it held and confirmed that it wanted to apply section 12(1) in relation to the work that would be required to see if the email addresses that were not on the contact directory could be released in accordance with the Data Protection Act 1998.

20. On 9 March 2011 the Commissioner responded to the University. He explained that section 12(1) could not be appropriately relied upon and asked the University to reconsider its position and provide him with the arguments that he asked for on 22 February 2011.

21. On 31 March 2011 the University issued its new 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][2]. It provided its detailed arguments about the operation of that exemption.

Findings of fact

22. The person designated as being the Qualified Person for this University is the Vice Chancellor – Professor John Brooks. This corresponds with an Order issued by David Willetts, the Minister of State for Universities and Science.[3]

Analysis

Exemptions

23. The Commissioner is obliged to consider all exemptions that are raised by the University 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).[4]

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[2] This decision can be found at the following link:
http://www.ico.gov.uk/~/media/documents/decisionnotices/2011/fs_50344341.ashx
[3]The 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
[4] This decision can be found at the following link:

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

24. 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.

25. Section 36(2)(c) provides that information is exempt if in the reasonable opinion of the qualified person, disclosure of the information would, or 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?

26. 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."*

27. 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.

28. The Commissioner has established that the 'Qualified Person' as noted above is Professor Brooks.

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

29. The next two criteria can be dealt with swiftly. The Commissioner has established that an opinion was given by Professor Brooks on 30 March 2011. This was in response to a submission being put to him on the same day.

30. The last criterion noted in paragraph 28 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

31. 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.

32. When considering whether the opinion was reasonably arrived at, the Commissioner has received a copy of the submissions provided to the Qualified Person and his detailed opinion. He has also been provided with the evidence that 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 covering page outlining the request, how the request was handled by the University and exactly what an opinion was needed for. The question was posed about whether the Qualified Person believed that the disclosure would or would be likely to prejudice the effective conduct of public affairs. It explained it was necessary for him to be satisfied that there would be an adverse effect to the University offering a public service or meeting its wider objectives or purposes.

- The request for information dated 24 April 2010;

- A copy of the other correspondence exchanged between the University and the complainant in relation to this request;

- A copy of the relevant exemption;

- A copy of the Commissioner's guidance about the application of section 36;
- A sample of the workplace email addresses;
- A detailed submission from the legal team about why they believe that there would be such an effect along with detailed public interest considerations;
- The Commissioner's two letters dated 22 February 2011 and 9 March 2011;
- A copy of Decision Notice **FS50344341**;
- A copy of the Information Tribunal Decision in EA/2006/0027[5]. This related to the Tribunal's consideration about whether the contact details of members of the Ministry of Defence should be disclosed; and
- A copy of information explaining what a denial of service attack is.

33. In his opinion the Qualified Person outlined what he had taken into account and what he believed would be the adverse effects in disclosure. He clearly explained that he felt that the lower threshold applied and why (this will be considered further from paragraph 37 below). 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. He has therefore determined that the Qualified Person's opinion was reasonably arrived at.

Reasonable in substance

34. 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).

35. In order to determine whether the opinion was objectively reasonable, it is important to understand what the Qualified Person meant when he gave his opinion. There are two possible limbs of the exemption on which the reasonable opinion could have been sought:

    - where disclosure "would prejudice" the effective conduct of public affairs; and

[5] This decision can be found at the following link: http://www.informationtribunal.gov.uk/DBFiles/Decision/i101/MoD.pdf

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

36. The Qualified Person explained in his submission that he was relying on the 'would be likely to prejudice' limb of the exemption. This means that the Qualified Person's decision was that he was of the view that the chance of the prejudice being suffered was more than a hypothetical possibility and that there was a real and significant risk[6]. The Commissioner will judge whether the opinion was a reasonable one on the basis of this threshold.

37. When providing his opinion, the Qualified Person explained that he had examined all the evidence noted in paragraph 33 above. He explained that his opinion was that disclosure of the full list of email addresses would be likely to prejudice the effective conduct of public affairs. He explained that he offered his full support in relation to the submission provided by its legal team and added the following comment:

> *'I cannot assert strongly enough, that disclosure of the information would create a high probability of risk to the core business of the University. The University is absolutely reliant on email and online IT systems for all of its teaching and learning services, particularly relating to key facilities such as enrolment, the virtual learning environment and assessment.'*

38. The submission provided by its legal team contained detailed arguments about the prejudice the University considers 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. 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. The disclosure of the full email list would risk the interruption of its business;

- The disclosure of the all the workplace email addresses under the Act would be a disclosure to the public at large without restriction. It is appropriate for the University to therefore exercise caution;

[6] The nature of the 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

- 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;

- It explained the list would enable any member of the public to simultaneously email every member of staff irrespective of who is responsible for the work. It said that this would lead to stress and a cost in working time that could be unlimited;

- The way the University discloses its email addresses through its contact directory has been deliberately calibrated to ensure that people can contact the relevant individuals, yet provides some hurdles to make the email addresses more difficult to use for other purposes.

- It explained its staff were entitled to opt out of the contact directory and it felt that the disclosure would have two adverse effects – it would undermine the University's relationship with the individuals who have reasonable expectations that their names will not be in the public domain and secondly may lead to more individuals opting out of the contact directory leading to it being a less useful resource for both the public and other members of staff;

- It explained that it would not be able to split out those individuals whose personal information should not be disclosed under the Data Protection Act without checking 6440 sets of Human Resource Records. The time to do this itself would amount to a major disruption of its staff;

- Disruption to the University's email service, especially at key times in the academic year would be very difficult to manage. For example, the clearing process is highly dependent on email and disruption of the system would lead to students not being able to know if they are admitted. Alternatively, emails are necessary for students to contact staff about revised deadlines in times of strife; and

- Disclosure of the list would be likely to require considerable countermeasures to be undertaken to protect its staff. It expressed particular concern about:

  (1) Increase in SPAM and unsolicited direct marketing – it explained it was unable to guarantee such an increase in traffic itself because it hadn't disclosed the information in this format before. However, it relied on **FS50344341** because Sheffield Hallam University had released part of its directory and this led to more SPAM being received;

(2) The consequential need to update further its security system. It currently discloses the email addresses it feels are required into the public domain and holds the others back for security reasons. The disclosure of the others would remove this protection and it would have to reconfigure its system taking time and money. It explained that it would be likely to need to tighten its firewalls and this strengthening would increase the risk that legitimate emails get branded as SPAM and not considered by the right person;

(3) In addition, there is also a risk that spammers would be able to use those email addresses to create legitimate looking addresses and it could lead to the University's genuine email addresses being blocked by external bodies, therefore adversely affecting how it operates as a business;

(4) Increase in IT attacks – it explained that it had particular concerns about phishing attacks and their effects on staff. It explained that staff have varied experiences and it would be possible to 'spoof' emails to make them look genuine and inviting. The University has a duty of care to ensure that it protects its staff as best as it can.

(5) It explained that responding to such attacks is a costly and stressful process. It confirmed that it had received a phishing attack in February 2009 and countermeasures were put into operation. It took many man hours and required prompt action to ensure that the effect was limited. While only one member of staff lost out to that attack, it was because of its swift action and the work that was undertaken by its IT staff;

(6) It explained that its staff would also be likely to raise issues about how the University looks after its personal data and raise enquiries to IT in the event of considerable traffic. These eventualities would also take up a lot of its time;

(7) It explained that it was also cautious about allowing an increased risk of denial of service attacks; and

(8) It may also make targeted attacks more effective against the University.

39. The University also noted the information from its email server contained further information such as staff identity number and service name and that the disclosure of this additional information would be a higher risk for it. The Commissioner has placed no weight on these

arguments because the information other than workplace email addresses has not been requested by the complainant.

40. The Commissioner has also noted that the University has already published a number of its email addresses on its website. The complainant has argued that this in itself has not adversely impacted on the University. However he accepts that there is a difference in the current availability of the key email addresses (which the University accepts are necessary for the performance of an individual's role or duties) and the disclosure of a full list containing 6440 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)) 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.

41. 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 of the list 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.

42. 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 likely to be a time delay between where the problem is noted and

[7]This decision can be found at the following link: http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_infocomm.pdf.

counteracted as occurred in February 2009. 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.

43. 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 supports 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 and its staff from SPAM and/or unsolicited marketing material.

44. 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

45. 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.

Public interest arguments in favour of disclosing the requested information

46. 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 University; and

- The public interest in staff being able to access certain external services for their work.

47. 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.

48. However, it explained that these arguments should be given little weight for the following reasons:

- It believed disclosure would not provide greater transparency about the University or its work to the General public;

- It explained that it already supports openness, scrutiny and accountability by:

    1. Educating its staff and providing a strong amount of awareness about the Act and what can be found on the publication scheme;

    2. Providing advice and training to its staff about both Freedom of Information and Data Protection;

    3. Providing information about the number staff employed and salary data are published annually in its financial statements;

    4. Having a culture of openness and proactively provides management information to its staff; and

    5. Having separate facilities to enable staff to raise issues anonymously – through its staff survey and through its public interest disclosure procedures.

- It acknowledged that there is a public interest in individuals being able to contact members of staff when their expertise would merit their contact. However, the list of email addresses in the form requested could not be used in this way. Either an individual would email everyone or email people at random.

49. 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 University 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 the 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.

50. 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 and the list by itself provides no information that would enable specific individuals to be selected.

51. 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 public authorities. 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, however he must consider what the effect would be of disclosing this information to the whole public.

Public interest arguments in favour of maintaining the exemption

52. 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.

53. The University has detailed the following public interest arguments for the Commissioner to consider:

- There is a public interest in ensuring that public authorities are allowed to provide the services they offer without undue disruption and hindrance. External email enquiries which are not routed though 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 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 shown the Commissioner that this has the potential 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 more 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 and also for it to protect its staff from unwarranted disclosures of personal data;

- The University has a legitimate interest in ensuring that all University communications are genuine and the reputation of the University 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;

- The University believes that it would make the potential for denial of service attacks greater; 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.

54. 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 in to account.

55. The Commissioner is satisfied that there are two main themes of the public interest arguments that favour the maintenance of the exemption:

    1. The provision of the list to the public would undermine the channels of communication and lead to a consistent loss of time from the University's core functions; and

    2. The provision of the list to the public would leave the University and its staff more open to phishing attacks and the resulting problems that may be suffered.

56. 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.

57. 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.

58. In relation to denial of service attacks, the complainant has counter argued that the disclosure of the list would not be likely to increase the vitality of attacks on its system because for someone undertaking a denial of service attack may only require the email addresses already available and/or could locate them through using harvesting software. The Commissioner has considered the competing arguments about whether the likelihood of denial of service attacks would or would not be increased. The Commissioner has considered the arguments of both sides and has concluded that disclosure of the list would not pose a severe risk of increase to the potency of denial of service attacks and has decided to give little weight to the University's public interest arguments about this matter.

Balance of the public interest arguments

59. 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.

60. 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 University 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 University, the Commissioner has concluded that the public interest favours maintaining the section 36 exemption.

61. 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).

62. 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 21(1) or 40(2).

Procedural Requirements

Section 17

63. Section 17(1)(b) requires that a public authority specifies which 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).

64. Section 17(3) requires that a public authority explains why the public interest factors that favour the maintenance of a qualified exemption outweighs 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

65. 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.

66. 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

67. The Commissioner requires no steps to be taken.

Right of Appeal

68. 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

69. 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.

70. 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 12 Exemption where cost of compliance exceeds appropriate limit

(1) 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."

(2) Subsection (1) does not exempt the public authority from its obligation to comply with paragraph (a) of section 1(1) unless the estimated cost of complying with that paragraph alone would exceed the appropriate limit."

(3) In subsections (1) and (2) "the appropriate limit" means such amount as may be prescribed, and different amounts may be prescribed in relation to different cases."

(4) The secretary of State may by regulations provide that, in such circumstances as may be prescribed, where two or more requests for information are made to a public authority –

(a) by one person, or

(b) by different persons who appear to the public authority to be acting in concert or in pursuance of a campaign,

the estimated cost of complying with any of the requests is to be taken to be the estimated total cost of complying with all of them."

(5) The Secretary of State may by regulations make provision for the purposes of this section as to the costs to be estimated and as to the manner in which they are estimated.

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.