

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 27 October 2015

**Public Authority:** University of Reading

**Address:** Whiteknights

PO Box 217

Reading

Berkshire

RG6 6AH

### Decision (including any steps ordered)

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1. The complainant has requested information from the University of Reading ("the University") relating to a former employee.
2. The Commissioner's decision is that the University has correctly applied section 40(2) of the FOIA to the request.
3. The Commissioner requires the University to take no steps.

### Request and response

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4. On 14 July 2015, the complainant wrote to the University and requested information in the following terms:

*"1. The dates on which [redacted name] was employed by the University of Reading within the University's Disability Services and posts held pertaining to Disability Services.*

*2. The details and dates of equality/diversity training completed by [redacted name] whilst employed by the University of Reading.*

5. The University responded on 11 August 2014 and applied section 40(2) of the FOIA to the request.

6. Following an internal review the University wrote to the complainant on 23 September 2014. It upheld its previous decision. It must be noted that the complainant advised the Commissioner that he did not receive a copy of the internal review response until 18 June 2015.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 18 June 2015 to complain about the way his request for information had been handled. Specifically he disputed the University's application of section 40(2) of the FOIA to his request.
8. The Commissioner has had to consider whether the University was correct to apply section 40(2) of the FOIA to the request.

### **Reasons for decision**

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9. Section 40 of FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
10. Taking into account his dual role as regulator of both the FOIA and the Data Protection Act 1998 (the "DPA") the Commissioner has considered whether the University was correct to withhold information relating to a former employee's employment at the University under section 40(2) of the FOIA.

### **Is the withheld information personal data?**

11. Personal data is defined by section 1 of the Data Protection Act 1998 ("the DPA") as:

*"...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 data controller or any person in respect of the individual..."*

12. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.

13. The information sought in the request relates specifically to an individual's employment at the University, including details of her employment dates within a specific department, posts held in that department and details and the dates of training undertaken.
14. The Commissioner is satisfied that information relating to an individual's employment is personal data in accordance with section 1 of the DPA.

### **Would disclosure breach the data protection principles?**

15. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.
16. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

### **Reasonable expectations of the data subject**

17. When considering whether a disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject. However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.
18. The University explained that it has a Fair Processing Notice (FPN) which typically provides its staff with information regarding who a data controller may share personal data with. It further explained that by making the FPN readily available to staff, it manages their reasonable expectations in this regard.
19. The University accepted that processing outside of the specific categories listed in the FPN will not always be considered to be unfair. However, in this instance, the University explained that the general public is not listed as a possible recipient of personal data pertaining to dates of employment, or positions held and details of training undertaken by the University's staff. It therefore maintained its position that disclosure of the requested information would not be in the reasonable expectations of the data subject and not in accordance with its FPN and therefore it would be unfair processing of information in relation to the individual in question.

20. The University did acknowledge that whilst employed at a public authority, there may exist a greater public expectation of transparency in that those holding positions within the authority are identified and accountable for the role they perform. The University also acknowledged that there is a benefit and a need for transparency from public authorities.
21. However, the University argued that information requests for personal data need to be considered on a case by case basis and there should be 'no one size fits all' approach to disclosures to third parties. It argued that the data subject in question is no longer employed by the University and the personal data requested dates back to over nine years ago. The University explained the following:

*"In our view, the passage of time that has passed since their employment in this role, makes it harder to argue that the disclosure would be relevant and proportionate, when considered the balancing of the wider public interest, against the potential unfairness to the individual".*

22. When considering the reasonable expectations of the data subject, the Commissioner asked the University to confirm whether the data subject was in a customer facing role and therefore whether her job title would be known to the public.
23. The University confirmed that whilst she was employed at the University, the data subject was in a customer facing role, in as much as her name and role would have likely been widely available to staff and students at the time of holding the position. The University acknowledge that at the present time, names of those individuals currently performing this role for the University are publically available via a staff search facility on the University's website. The University explained that this is known to staff and it is within their reasonable expectations.
24. However, the University argued:

*"We have also considered the reasonable expectations of past employees who, we would argue, have a reasonable expectation that this information would be updated to reflect the fact that they are no longer employed or performing that role, and that this would be accurately reflected. By this token, we would further argue that the legitimate interests of the University and the wider public, in having access to this information, are no longer in balance with the reasonable expectations of past employees, and as a result, the rights and freedoms of the latter would be unnecessarily impinged upon, and at odds with the former".*

25. To further consider whether the data subject would have a reasonable expectation that the requested information would be disclosed, the Commissioner asked the University to confirm whether there were any statutory requirements for training in the post/s the data subject held, or whether the training was voluntary.
26. The University recognised that the performance of statutory functions that require specific training under order of statute are likely to be subject to increasing public scrutiny to ensure that those obligations are met.
27. The University explained that it had consulted with the Disability Advisory department with regards to any statutory requirements for training within the post that the data subject held. It confirmed that the post does not have any statutory requirements for training. The University confirmed that any training that was undertaken by the data subject was supplementary and voluntary.
28. To conclude, the University advised the Commissioner that it had contacted the data subject on two occasions to seek consent as to whether she would be willing for the information requested to be released under the FOIA. The Commissioner is aware that the data subject did not give her permission for the requested information to be disclosed. It is important to point out that the fact a data subject has not given, or expressly refuses, consent is not necessarily determinative but this factor may feed in to the wider consideration of fairness.

### **The consequences of disclosure**

29. When considering the consequences of disclosure, the University explained that in coming to a view, it had considered the views of the data subject and the circumstances of the request.
30. Upon receiving the information request, the University contacted the complainant to give him the opportunity to explain the legitimate public interests in the disclosure. The University explained that this was in order for it to thoroughly assess the potential lawful disclosure by virtue of Schedule 2(6)(1) of the DPA.
31. In his response, the complainant explained the following:

*"The legitimate interest is that in the performance of her current duties for the [redacted information] has cited the fact that she was employed by the University of Reading within the University's Disabilities Services. Thus, [redacted information] has herself referred to her association with the University of Reading Disability Services, and relies that associated to legitimate her determinations about matters pertaining to equality legislation".*

32. The complainant further explained why he was seeking the requested information which seemed to indicate that he is in a dispute with the data subject or her current employee. The University further believes that the complainant appears to be challenging information he has received from a third party (possibly the data subject or information received in connection with her new employment) with respect to the role previously held by the data subject at the University.
33. The University therefore considered that disclosure of the requested information is likely to cause distress to the data subject, particularly as the complainant appears to be at odds with the data subject.

### **The legitimate public interest**

34. The Commissioner considers that the public's legitimate interests must be weighed against the prejudices to the rights, freedoms or legitimate interests of the individual concerned. The Commissioner has considered whether there is a legitimate interest in the public (as opposed to the private interests of the complainant) accessing the withheld information.
35. The Commissioner acknowledges that the complainant has an interest in the requested information. However the Commissioner must consider the legitimate public interest in the requested information rather than the interests of the requester.
36. The Commissioner accepts that individuals that are in a public facing role within a public authority have some expectation that information such as that that has been requested in this case could be disclosed under the FOIA. However, as the information concerned dates back to over nine years ago, the Commissioner considers that the data subject would have no reasonable expectation that this information would be disclosed to the public, primarily because she left the University over nine years ago. The Commissioner has also taken into account the fact the data subject was not a senior member of staff within the University. With this in mind, the Commissioner considers that there is very little public interest in the requested information, other than the interests of the complainant.
37. On this basis, the Commissioner has determined that the University was correct to apply section 40(2) of the FOIA to the request.

## Right of appeal

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

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

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

39. 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.
40. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

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