

## **Freedom of Information Act 2000 (Section 50)**

### **Decision Notice**

**Date: 23 June 2011**

**Public Authority:** The Governing Body of City University  
(‘the University’)  
**Address:** Northampton Square  
London  
EC1V OHB

### **Summary**

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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 considered that the request was invalid. If the request was not invalid, then it believed sections 14(1), 21(1), 38(1) 40(2) and section 44(1) of the Act applied to the information. The complainant requested an internal review stating that he was prepared to limit his request to those staff who had not specifically requested anonymity. Following internal review the University accepted its reliance on sections 38(1) and 44(1) was no longer necessary due the narrowing of the request but maintained its position otherwise. It also applied section 12(1).

The complainant referred this case to the Commissioner. He further limited his complaint by confirming that he did not want the email addresses where individuals had expressed concern about their personal safety. During the course of his investigation, the University indicated that it was prepared to disclose all the outstanding email addresses that were within the scope of the complaint once it had undertaken a consultation with staff. However despite this assertion it has not provided the information or any further arguments about the application of exemptions.

The Commissioner determines that the University was entitled to apply section 21(1) to the workplace email addresses on its contact directory. For the remaining workplace email addresses within the scope of the complaint, he has found that no exemptions have been appropriately applied to them.

He has therefore ordered that this information is disclosed. He also finds procedural breaches of sections 1(1), 1(1)(b) and 10(1) because this

information was not disclosed within twenty working days from receiving the request.

## The Commissioner's Role

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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

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2. The complainant owns a website that enables all Universities to receive requests for information simultaneously. He believes that it should 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 request is asking for a list of all the email addresses of every member of the University's staff without any differentiation.
5. 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

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6. 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.'*

7. On 25 May 2010 the University issued its response. It confirmed that it held the relevant information the complainant had asked for. However, it would not provide the information for the following reasons:
  1. The request did not comply with the requirements found in section 8(1)(b)<sup>1</sup> and was therefore invalid. It explained that it was necessary to make the request using the complainant's own name. It explained that the complainant's website operated as a vehicle for other people to make requests under his name and in its view this meant that the request would not be valid. It explained that the failure to reveal the requestor would mean that it would be unable to fully assess its position under the Act;
  2. Section 14(1) – it believed that the request had no serious purpose or value and was vexatious;
  3. Section 21(1) – it had a searchable email directory and provided a link to it. It explained that this information was therefore accessible to the applicant by other means;
  4. Section 38(1) – it explained that it was concerned that the disclosure would or would be likely to endanger some its staff. The disclosure would reveal that they worked at the University and it explained that certain members of staff had valid reasons for this not happening;
  5. Section 40(2) – it explained that it believed the disclosure of the personal data of its staff would contravene the first data protection principle and engage the exemption. It expressed concern that it would mean that the privacy rights of those data subjects would be eroded and this would not be fair; and

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<sup>1</sup> All of the provisions that have been referenced in this Decision Notice can be found in full in the attached legal annex.

6. Section 44(1) – it explained that it believed the disclosure of the email addresses of those individuals who have good reason for this information to remain private would be a breach of their Article 8 rights [the right to privacy and a private life] under the ECHR (as incorporated by the Human Rights Act) and therefore section 44(1) could be applied appropriately to that information.
8. On the same day, the complainant wrote to the University to request an internal review. He explained that in this case he was prepared to limit his request and receive the list without the email addresses of the individuals who had specifically requested anonymity. He also challenged the decision that was made on the following grounds:
  1. Section 8 – he has used his own name to make the request and it was wrong therefore to say that this request was not valid;
  2. Section 14 – he explained why he believed the request had a serious purpose and value. He also explained why he disputed that this request was vexatious;
  3. Section 21 – the information in the contact directory was not complete and therefore some of the addresses could not be covered by section 21(1);
  4. Section 11 – to access the information on the contact directory would take a lot of work and this information should not therefore be regarded as reasonably accessible. He also explained that the University should take into account his personal circumstances when making this decision; and
  5. Section 40(2) – he disputed that all of the email addresses amounted to personal data and in any event disputed that the disclosure would contravene one or more of the data protection principles.
9. On 24 June 2010 the University communicated the results of its internal review. It maintained its position (although it agreed that the complainant's concession meant that sections 38(1) and 44(1) were no longer necessary). It also confirmed that its contact directory was as accurate as its email server as they used the same background information. It expressed its view that to differentiate between those email addresses that could be disclosed by virtue of section 40(2) and those that cannot would take work well in excess of the costs limit and therefore it could not do this work by virtue of section 12(1).
10. Later on 24 June 2010 the complainant challenged the University's new arguments as stated in its internal review.

## The Investigation

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### Scope of the case

11. On 25 June 2010 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 operation of the exemptions in this case.
12. In his internal review request dated 25 May 2010 the complainant explained *'I am willing to accept the redaction of the e-mail addresses for all staff members who have specifically requested anonymity'*. The Commissioner therefore considers that the workplace email addresses of individuals who have requested anonymity fall outside the scope of this case.
13. The Commissioner has also considered a large number of other cases of the complainant's requesting workplace email addresses. On 26 August 2010 he agreed with the Commissioner that he would restrict his complaints to those staff who had not expressed concerns about their personal safety. The workplace email addresses of individuals who have expressed their concerns about their personal safety therefore also fall outside the scope of this case (it is noted by the Commissioner that this category will be highly likely to overlap with paragraph 12 above).
14. 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 is at the date of this Notice.

### Chronology

15. On 6 August 2010 the Commissioner contacted the complainant and the University to confirm that he had received an eligible complaint.
16. There followed a delay when the Commissioner considered a number of other cases that were also made by the complainant about workplace email addresses.
17. On 23 February 2011 the Commissioner wrote a detailed letter to the University. He explained that on the basis of the evidence he had received he was not convinced that it had applied any exemption appropriately. He therefore asked the University to either disclose the information (except at this stage for those who had expressed concerns

about 'potential serious harassment from estranged family members and partners') or answer detailed enquiries about its application of the exemptions.

18. On 18 March 2011 the Commissioner received a letter from the University. It said it was minded to disclose the information, but required some clarification about the operation of the Data Protection Act 1998 ('DPA 1998') in this case. The Commissioner answered these questions on the same day and asked that the University made its final position clear by 31 March 2011.
19. On 7 April 2011 the University wrote to the Commissioner to explain that it was consulting with its staff to see if there were any objections to disclosure of specific email addresses. It explained that once this was completed it would disclose all the rest of the email addresses.
20. There followed a number of communications with the University. Within these communications, the University promised to disclose the information by the end of May.
21. On 1 June 2011 the Commissioner was told by the University that technological problems meant that the consultation had not yet been undertaken. However, it agreed that the information would be provided to the complainant by 17 June 2011.
22. However the Commissioner received a further response from the University explaining that the consultation would be completed by 22 June 2011 and the information disclosed shortly afterwards.
23. Given the delay that has been experienced and confirmation that the consultation has been completed, the Commissioner has decided it was appropriate to formally issue his Decision Notice on 23 June 2011.

## **Analysis**

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### **Substantive Procedural Matters**

24. Although the University has agreed that it will disclose all the information (apart from those who have specifically requested anonymity), all the exemptions that it previously cited continue to be in play and need to be considered by the Commissioner substantively.
25. The Commissioner will firstly consider whether the request was valid, before going on to consider the exclusions and then exemptions that have been relied upon by the University.

*Is the request a valid request under the Act?*

26. The University has argued that the request for information dated 26 April 2010 was invalid because it believed that the complainant was acting for an undisclosed principal. It therefore failed to satisfy the requirements outlined in section 8(1)(b) of the Act.
27. The complainant has argued that he was making the request on his own behalf in this case and that the request was valid.
28. The Commissioner therefore must consider if the request is valid under the provisions of section 8 of the Act. This section defines what constitutes a 'request for information' under the Act. It provides three requirements that need to be satisfied for a request made under the Act to be valid:
  1. It must be in writing [8(1)(a)];
  2. It must state the name of the applicant and an address for correspondence [8(1)(b)]; and
  3. It must describe the information that has been requested [8(1)(c)].
29. The University has argued that the request is only valid if the complainant can prove that he is making it on his own behalf (and so the name of applicant is clear on the face of the request to be him and not someone else). It explained that the complainant's website enables anyone to make a request under his name and therefore it cannot be sure that the name of the applicant was the complainant and therefore the request cannot be said to be valid.
30. The complainant argues that the University has read the Act too restrictively. He has informed the University that he is making a request on his own behalf and as he is a real person this should be enough. In addition, he is prepared to offer any source of identification to reinforce that this is so.
31. The Commissioner does not accept the University's view that this request was not valid. He considers that the reason why a valid request requires a name is to enable a response to be provided to the complainant who has made the request. In this case the complainant is a real individual and should be treated as so.
32. The Commissioner supports this interpretation through considering the framework of the Act. He notes that the general principle must be that the Act is applicant blind. This is in line with the Information Tribunal's

decision in *S v Information Commissioner and the General Register Office* [EA/2006/0030] which stated (at paragraph 19)<sup>2</sup>:

*"FOIA is, however, applicant and motive blind. It is about disclosure to the public, and public interests. It is not about specified individuals or private interests."*

33. The Commissioner has noted that this general principle is supported by the section 45 Code of Practice which makes reference to the principle in relation to the clarification of requests as part of the duty to advise and assist under section 16:

*"Authorities should be aware that the aim of providing assistance is to clarify the nature of the information sought, not to determine the aims or motivation of the applicant. Care should be taken not to give the applicant the impression that he or she is obliged to disclose the nature of his or her interest as a precondition to exercising the rights of access, or that he or she will be treated differently if he or she does (or does not)."*

34. The Commissioner believes that the University's approach would not accord with the rationale that is embraced by the Code of Practice. This issue has also been further considered by the Information Tribunal in *Mr L Meunier v Information Commissioner and National Savings and Investments* [EA/2006/0059] where it said (at paragraph 71)<sup>3</sup>:

*"There is no provision for a public authority to decide whether the application merits a response, or to appease what they consider the motive to be behind the request, instead of answering the request itself."*

35. From the above, the Commissioner considers that a public authority may only take into account the identity of the applicant in the following circumstances:

(i) when determining whether to aggregate costs for two or more requests pursuant to regulations made under section 12(4);

(ii) when determining whether a request is vexatious under section 14(1), for example by considering a pattern of requests made by a requester;

(iii) when determining whether a request falls within section

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<sup>2</sup> This decision can be found at the following link:

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i147/S.pdf>

<sup>3</sup> <http://www.informationtribunal.gov.uk/DBFiles/Decision/i144/Meunier.pdf>



14(2) as being a repeated request by the same applicant; and

(iv) when determining under section 40(1) whether a request for personal data is in fact a subject access request (i.e. a request for personal data of which the applicant is the data subject).

36. The Commissioner considers that whether or not the complainant is acting for an undisclosed principal would not affect the analysis in respect of these elements on the facts of this case. It follows that as this request was submitted by a genuine person it should have been dealt with in a manner that was applicant blind and it should be processed under the Act.
37. In any event, he is satisfied that this request has genuinely been made by the complainant to pursue his own agenda. The Commissioner has now considered a large number of cases for workplace email addresses and has discussed the operation of the Act across them. In this case, the complainant has contended that his request is genuine throughout his correspondence with the University and it is clear that he is taking a real interest in this request. It follows that the Commissioner accepts that the request satisfies the requirements in section 8(1)(b) of the Act.
38. The Commissioner's view is that the request dated 26 April 2010 satisfies the requirements of section 8 and is therefore a valid information request under the Act. Therefore the public authority is obliged to deal with it appropriately and provides the Commissioner with jurisdiction to issue a Decision Notice.

## Exclusions

### Section 12(1) – the costs limit

39. In its internal review, the University explained that the consultation process that it believed was necessary to determine whether or not section 40(2) applied would take work well beyond the costs limits and therefore it would be appropriate for it to apply section 12(1).
40. The complainant replied that this consultation process was not an activity that was allowed by the *Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004* (the "Regulations")<sup>4</sup> and therefore section 12(1) was inappropriately applied.

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<sup>4</sup> The Regulations can be located at the following link:  
<http://www.legislation.gov.uk/uksi/2004/3244/contents/made>

41. Section 12 of the Act does not oblige a public authority to comply with a request if the authority estimates the cost of complying with the request would exceed the appropriate limit.
42. The Regulations set a limit of £450 to the cost of complying with a request for all public authorities subject to the Act not listed Schedule 1 part I. In estimating the cost of complying a public authority can **only** take the following activities into account:
  - determining whether it holds the information requested,
  - locating the information or documents containing the information,
  - retrieving such information or documents, and
  - extracting the information from the document containing it.
43. The Regulations also state: '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'.
44. The key issue in this case is whether the words "extracting the information from a document containing it" can be said to include the time required to consider whether information was exempt and required to be redacted. His view is that it does not. This is because in this context, the term "information" relates to the information **requested**, not the information to be disclosed. It follows that the time taken to redact a document when the process of redaction, leaving only the information which is to be disclosed, cannot be taken into account. This is because it is not an activity which is required to extract the requested information from other information which has not been requested. The Commissioner's view on this matter has been supported by the recent decision of the High Court in *The Chief Constable of South Yorkshire Police v The Information Commissioner* [2011] EWHC 44 (Admin) a decision that can be found at the following link:  
  
<http://www.bailii.org/ew/cases/EWHC/Admin/2011/44.html>
45. In this case the request is clearly asking for all the workplace email addresses and the information is on the University's email server and can be identified easily. It is only this identification process that can be charged for. The University appears to wish to charge for the process of considering exemptions and it is not entitled to do so under the

Regulations because this is not one of the exhaustive specified activities that is allowed under Regulation 4(3).

46. The Commissioner finds that the University has incorrectly interpreted and misapplied the Regulations. It follows that it has applied section 12(1) inappropriately and cannot rely on it.

### **Section 14(1) – the request is vexatious**

47. Section 14(1) is an exclusion that provides that –

*“Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious”.*

48. The University also argued that the request was vexatious and it was therefore excluded from providing the information by virtue of section 14(1). Its position in its refusal notice was that this was so because the request had no serious purpose or value. In its internal review it reiterated and explained in more detail why it believed that this was so. It has not mentioned any other factors and therefore the Commissioner has considered only this factor.
49. The Commissioner’s view is that whether a request is vexatious for the purposes of the Act must be considered at the date it was received by the University – so on 26 April 2010.
50. When assessing vexatiousness the Commissioner adopts the view of the Information Tribunal (the ‘Tribunal’) decision in *Ahilathirunayagam v Information Commissioner’s Office* (EA/2006/0070) (paragraph 32); that it must be given its ordinary meaning: would be likely to cause distress or irritation. Whether the request has this effect is to be judged on objective standards. This has been reaffirmed by the Tribunal in *Gowers v Information Tribunal and London Camden Borough Council* (EA/2007/0114) (‘Gowers’) (paragraph 27). The Commissioner has developed a more detailed test in accordance with his guidance but it is important to understand that it has developed from these general principles and these guide him in applying his test.

*Does the request have a serious purpose?*

51. The University provided detailed arguments in its internal review about why in its view this request did not have a serious purpose:
  1. It had considered the Commissioner’s guidance on vexatious requests and believed that this request satisfied its definition about not having a serious purpose; and

2. It had considered the complainant's argument that *"The list is being requested so that staff at your university may notify me in confidence about wrongdoing, incompetence, fraud, discrimination, abuse of public funds or other matters which I can then investigate and publicise without jeopardizing the career of that staff member"* and explained that in its view the non-disclosure of the list did not prevent its staff members from contacting him.
52. The complainant has argued that this request does have a serious purpose and value. In other cases, he has explained that in his view the disclosure of the information would provide greater accountability and transparency. The Commissioner acknowledges that accountability and transparency are the fundamental objectives of the Act.
53. 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 the arguments about accountability should be given some weight.
54. In addition, the Commissioner accepts that there is a public interest in knowing the number of staff 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.
55. 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 Universities. 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, he is obliged to consider the effect of disclosing this information to the whole public, which will include less useful and/or harmful services too.

56. Overall, the Commissioner is of the view that the request did have a serious purpose. He recognises that there is an assumption built into the Act that disclosure of information by public authorities on request is in the public interest in order to promote transparency and accountability in relation to the activities of those public authorities. He has therefore found that this factor favours the complainant.
57. As the University did not argue that any other factor applied, he finds that the request cannot be characterised as vexatious and the reliance on section 14 was not appropriate in this case.

## **Exemptions**

### *Section 21(1)*

58. Section 21(1) states that information is exempt from disclosure if it is reasonably accessible to the applicant by other means. The purpose behind the exemption is that if there is an alternative route by which a requester can obtain information there is no need for the Act to provide the means of access. This removes the burden of responding to requests under the Act from public authorities.
59. The University explained that it was applying section 21(1) to the email addresses that were on its contact directory. The contact directory can be located at the following link:
- <http://www.city.ac.uk/email/>
60. The Commissioner understands that the contact directory was not at the time of the request on the University's publication scheme, which was under development.
61. The complainant disputed the application of section 21(1). He argued:
1. The contact directory was likely to be either incomplete or inaccurate – if information was not on the contact directory it cannot be said to be reasonably accessible to him; and
  2. It was exceptionally onerous for him to get all the workplace email addresses that he required off the contact directory.
62. The University has explained that its contact database and its server are updated in synch. However, it has not explained whether or not all the names are on it. The Commissioner must note that there would have been no reason for it to have applied any other exemption had it been so and the Commissioner can only come to the conclusion that the contact database was incomplete. It follows that it cannot rely on section 21 to withhold all of the email addresses that are outstanding.

63. However, the Commissioner does believe that the information on the contact directory is reasonably accessible to the applicant. The complainant has been directed to the contact directory and all the information on the contact directory can be found easily. In this case, by adopting the simple strategy of entering each letter of the alphabet into the 'family name' field, the information can be located in 81 clicks (one selecting the 'family name' field so that the letter of the alphabet can be entered, one selecting the staff category and then clicking search).
64. The Commissioner has considered the complainant's argument that obtaining the information would be particularly onerous and therefore section 21(1) cannot be applied. He places little weight on these arguments because the contact directory's format allows information to be gathered fairly quickly (as stated above). The Commissioner does not therefore consider that the obtaining of the information would be as onerous for the complainant as he has indicated.
65. It follows that the Commissioner supports the application of section 21(1) to the information that can be found on the contact directory.

*Section 40(2)*

66. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties where its disclosure would contravene one or more of the data protection principles found in the DPA.
67. The University believes that it is not obliged to provide the work email addresses to the public because the release of this information would be unfair to the data subjects and its disclosure would contravene the first data protection principle. In its view, it follows that section 40(2) applies to that information.
68. In analysing the application of section 40(2), the Commissioner has considered:

*(a) whether the information in question was personal data; and*

*(b) whether disclosure of the personal data under the Act would contravene the first data protection principle.*

69. Section 40(2) operates as an absolute exemption and has no public interest component. Therefore no public interest test is required.

*Is the information personal data?*

70. Personal data is defined in section 1 of 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 intentions of the data controller or any other person in respect of the individual.'*

71. In considering whether the information is personal data, the Commissioner has had regard to his own published guidance: "Determining what is personal data" which can be accessed at: [http://www.ico.gov.uk/upload/documents/library/data\\_protection/detailed\\_specialist\\_guides/personal\\_data\\_flowchart\\_v1\\_with\\_preface001.pdf](http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/personal_data_flowchart_v1_with_preface001.pdf)
72. From his guidance there are two questions that need to be answered in the affirmative when deciding whether the information if disclosed to the public would constitute the personal data of individuals:
- (i) *Can a living individual be identified from the data, or, from the data and other information in the possession of, or likely to come into the possession of, the members of the public?*
  - (ii) *Does the data 'relate to' the identifiable living individual, whether in personal or family life, business or profession?*
73. The complainant has specifically asked the Commissioner to explain why he believes that the information as connected to the email format can be correctly said to be personal data. By definition, the ownership of an email address relevant to the complainant's request proves that the individual in question is employed by the University.
74. The University has explained that its email addresses come in two formats:
- initial(s).secondname@city.ac.uk for older addresses; and
  - initial(s).secondname-[number]@city.ac.uk for the rest.
75. The first format of email addresses contains each individual's full surname along with their initial.
76. The Commissioner is satisfied that an individual can be identified from that data and that further information can be found about them by members of public. He agrees with the University that these email addresses will indicate where an individual is likely to be during standard working hours.

77. The Commissioner is also satisfied that the email address relates to this individual's professional life. It proves that the individual works for the public authority and provides the means by which they can be contacted. It follows that he is satisfied that this email address constitutes a living individual's personal data.
78. The second format of email addresses offers the same amount of information about the individual email account holder. These email addresses also constitute a living individual's personal data.

*Would disclosure contravene the first data protection principle?*

79. The first data protection principle has three main components. These are as follows:
- The requirement to process all personal data fairly;
  - The requirement to process all personal data lawfully; and
  - The requirement to satisfy at least one DPA Schedule 2 condition for processing of all personal data.
80. All three requirements must be satisfied to ensure compliance with the first data protection principle. If even one requirement cannot be satisfied, processing will not be in accordance with the first principle. The Commissioner is of the view that the nature of the arguments of whether disclosure would accord with the first data protection principle are the same for both format of email addresses and he will deal with them together.

*Would disclosure be fair?*

81. Firstly, for the sake of clarity, it must be noted that the following classes of workplace email addresses have been withdrawn by the complainant and therefore they won't be considered in the analysis below:
- the workplace email addresses of those individuals who have expressed concerns about their health and safety; and
  - the workplace email addresses of those individuals who have asked for anonymity (before the date of this Notice).
82. The complainant contends that it is appropriate and fair for the information to be disclosed to the public. In other complaints where the applicability of this exemption has being argued, he has submitted arguments that can be summarised as follows:



- it is typical for a University to publish hundreds of staff names and e-mail addresses on their website apparently without any express permission from the staff concerned;
  - it is not reasonable for the public authority to be able to differentiate and not provide all the workplace email addresses, given that there are so many available, which have been placed in the public domain incrementally without any central consideration;
  - that the emails concern the professional life of the publicly paid individuals and therefore their expectations are that the information should be available to the public for reasons of accountability; and
  - that access to the information in this form will enable private providers to offer services to those staff. For example, in this case providing the staff with knowledge of the website leads to many being interested in it and accountability being enhanced as a result.
83. The University has previously argued that the disclosure of this information in this format would be unfair to the data subjects. These arguments can be summarised as follows:
1. The disclosure of the information to the public would not accord with the expectations of its staff;
  2. It did not believe that the wholesale disclosure of the email addresses would be fair to those staff;
  3. The University believed that it would be appropriate only to disclose the information with the direct consent of its staff; and
  4. It argued that there was no factor of sufficient weight that means that the disclosure of the information would be for the legitimate interests of the public.
84. During the course of his investigation, the Commissioner explained that he was satisfied that the information that is now outside the scope of this case could be withheld by virtue of section 40(2). However he had not received adequate arguments about why any other email addresses could be withheld. He therefore asked the University to provide its arguments in the event that it felt it needed to withhold more workplace email addresses.
85. Further correspondence ensued, and the Commissioner explained that it was for the University to provide its arguments about what it was withholding. However nothing further was provided to him.

86. When deciding whether the disclosure of information is fair, the Commissioner's general approach is to balance both the reasonable expectations of the data subjects and the consequences of disclosure with general principles of accountability and transparency.
87. As a preliminary matter, the Commissioner agrees with the University that disclosure of information under the Act amounts to the disclosure of the information to the public at large and not just to the complainant. This was confirmed by the Information Tribunal in the case of *Guardian & Brooke v The Information Commissioner & the BBC* [EA/2006/0011 and EA/2006/0013] that said, "*Disclosure under FOIA is effectively an unlimited disclosure to the public as a whole, without conditions*" at paragraph 52<sup>5</sup>. If the public authority is prepared to disclose the requested information to the complainant under the Act, it should be prepared to disclose the same information to any other person who asks for it.
88. The first substantive matter that the Commissioner has considered is the expectations of the data subjects on the basis of the evidence that he has received. He has considered the presence of the contact directory and the way the University operates. He is not satisfied that the University has evidenced that there is any expectation (beyond those email addresses outside the scope of this case) that the workplace email addresses will not be disclosed to the public. Indeed, the contact directory (accessible to the public) provides not just the email addresses of staff, but also of its students as well.
89. He has also considered that the majority of the staff are paid with public money and should expect to be contacted by service users. The Commissioner considers that there is a greater expectation of transparency with regard to employees who are public servants than to those who are not. This is in line with the Information Tribunal decision in *The Corporate Officer of the House of Commons v IC and Norman Baker MP* [EA/2006/0015 & 0016]<sup>6</sup> which explained at paragraph 43 that:

*"...The existence of FOIA in itself modifies the expectations that individuals can reasonably maintain in relation to the disclosure of information by public authorities, especially where the information*

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<sup>5</sup> This decision can be located at the following link:

[http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews\\_HBrooke\\_v\\_info-comm.pdf](http://www.informationtribunal.gov.uk/Documents/decisions/guardiannews_HBrooke_v_info-comm.pdf).

<sup>6</sup> This decision can be located at the following link:

<http://www.informationtribunal.gov.uk/DBFiles/Decision/i83/HoC.pdf>

*relates to the performance of public duties or the expenditure of public money."*

90. As noted above, the Commissioner has recognised that there is some weight of argument that favour accountability and these have been outlined in paragraphs to 53 to 56.
91. In this case, it is clear that there are competing factors that need to be balanced for the Commissioner to make an informed decision. The Commissioner has concluded that, assessing all the arguments he has been provided with, that the disclosure of the email addresses would not be unfair to the data subjects. He has come to this conclusion in the absence of further detailed arguments from the University and because the University has agreed to disclose the information.
92. He is also satisfied that the disclosure would not be unlawful to those data subjects. The Commissioner is not aware that any law would be contravened by the disclosure of this information.
93. The last component of the data protection principles outlined in paragraph 79 requires a condition to be satisfied in Schedule 2 of the Act. The Commissioner agrees with the University that condition one (data subject has provided their consent) is not satisfied in this case.
94. The only condition in Schedule 2 that the Commissioner considers may be appropriate is condition 6(2). Condition 6 states that:

*"the processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject."*

95. In deciding whether condition 6 would be met in this case the Commissioner has considered the decision of the Information Tribunal in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060]. In that case the Tribunal established the following three part test that must be satisfied before the sixth condition will be met:
  - there must be legitimate interests in disclosing the information;
  - the disclosure must be necessary for a legitimate interest of the public; and

- even where disclosure is necessary it nevertheless must not cause unwarranted interference or prejudice to the rights, freedoms and legitimate interests of the data subject.

*Legitimate interests of the public*

96. The University has explained, in relation to its arguments about why the request is vexatious, why there are no legitimate interests of the public in disclosure.
97. For the same reason as noted in paragraphs 53 to 56 above, the Commissioner does consider that the public have legitimate interests in disclosure in this case. It follows that this part of the test has been satisfied.

*Necessity for a legitimate interest of the public*

98. 'Necessity' functions as a threshold condition. The Commissioner's view is that when considering necessity disclosure must be necessary to meet some of the legitimate interests above. There must not be a less intrusive means of meeting that end. He has therefore taken into account existing mechanisms and whether they satisfy these interests. It is noted that there is a contact directory that contains many of the addresses and in addition the website contains more general addresses which will enable those stakeholders interested in the University's business to make enquiries to the correct place.
99. However, the contact directory and the website appears to fail to provide full transparency and accountability in this case and there is not a less intrusive disclosure that would satisfy the legitimate interests of the public as outlined in paragraphs 53 to 56 above. It follows that the second part of the test has also been satisfied.

*Unwarranted Interference*

100. The Commissioner must then go on to consider the collective weight of the legitimate interests and whether meeting them would cause an unwarranted interference or cause unwarranted prejudice to the rights, freedoms and legitimate interests of the data subjects.
101. The Commissioner considers that the test in *House of Commons v Information Commissioner & Leapman, Brooke, Thomas* [EA/2007/0060] should be read in this way to accord with the verdict that was reached in that case and with the overriding purpose of the condition.
102. The University has argued that the disclosure may cause unwarranted interference to its staff and their privacy. However, as noted above it

has not taken the opportunity to explain why this is so or to evidence to the Commissioner why the release of workplace email addresses would have this effect. By already agreeing that it will disclose the information to the public subject to the conclusion of its consultation exercise, the University's arguments are substantially weakened.

103. As this is so, in the Commissioner's view the disclosure of this information would not be an unwarranted interference or cause prejudice to the rights, freedoms and legitimate interests of its staff. He considers that the balance reached (a disclosure of all the information apart from those who have asked for anonymity or expressed concern about their health and safety) is the right balance to reach on the facts of this case and that condition 6 allows the information to be disclosed and that the disclosure of the information would accord with Schedule 2 of the DPA.
104. The Commissioner has therefore come to the conclusion that the disclosure of remaining information would satisfy the requirements of the first data protection principle.
105. The Commissioner is also satisfied that the disclosure of the information would not contravene any of the other data protection principles.
106. He finds that the University cannot therefore rely upon section 40(2) to withhold this information. It follows that the Commissioner has determined that the public authority has not applied section 40(2) correctly to this information.

### ***Sections 38 and 44***

107. The University withdrew its reliance on sections 38 and 44 after the complainant agreed to restrict his request. The Commissioner has not therefore gone on to consider the application of these exemptions as they are not now being relied upon.
108. As the request is valid and no exemptions or exclusions have been applied appropriately to a list of workplace emails (apart from who have expressed concern about 'potential serious harassment from estranged family members and partners' and/or those who have requested anonymity) then it follows that the information must now be disclosed.

### **Procedural Requirements**

109. The detailed analysis above has meant that there are a number of procedural breaches of the Act in this case.

110. Section 1(1) requires that a public authority processes valid requests for information. The University believed that a valid request for information was invalid and so breached section 1(1).

111. Section 1(1)(b) requires that a public authority discloses non-exempt information to the public. The University has not done so and has therefore breached section 1(1)(b).

112. Section 10(1) requires that a public authority complies with section 1(1) within twenty working days. The University has not yet complied with section 1(1)(b) and has also therefore breached section 10(1).

## **The Decision**

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113. The Commissioner's decision is that the public authority did not deal with the request for information in accordance with the Act. In particular:

- It wrongly stated that a valid request for information was invalid and so breached section 1(1);
- It also wrongly applied the exclusions found in sections 12(1) and 14(1);
- It also wrongly applied the exemptions found in sections 21(1) (in relation to the information not on its contact directory) and 40(2);
- It failed to provide the information to which the complainant was entitled and so breached section 1(1)(b); and
- It failed to comply with section 1(1)(b) in twenty working days and so breached section 10(1).

## **Steps Required**

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114. The Commissioner requires the public authority to take one of the following three steps to ensure compliance with the Act:

1. Disclose a list of the workplace email addresses that are on its email server at the date of this Notice (without those on the contact directory, those who have expressed concerns about their health and safety or those who have asked for anonymity by the date of this Notice); or

2. Disclose a list of all the workplace email addresses that are on its email server at the date of this Notice (without those who have expressed concerns about their health and safety or asked for anonymity by the date of this Notice); or
3. Confirm to the complainant in writing that, at the date of the Decision Notice, all of the email addresses caught by the refined request are available via the contact directory.

115. The remedial step should be undertaken through email. He has provided the first two options as he notes that it may be difficult for the University to identify those email addresses that are not on its contact directory without going through every individual address. The Commissioner allows the University to choose to release this extra information if it wishes. The Commissioner also recognises that, since the date of the request, the University may have brought its contact directory up to date so as to include all relevant email addresses. If this is the case, it must simply confirm to the complainant that this is the case.

116. The public authority must take one of the three steps required by this notice within 35 calendar days of the date of this notice.

### **Failure to comply**

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117. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Right of Appeal

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118. 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: 0300 1234504

Fax: 0116 249 4253

Email: [informationtribunal@tribunals.gsi.gov.uk](mailto:informationtribunal@tribunals.gsi.gov.uk).

Website: [www.informationtribunal.gov.uk](http://www.informationtribunal.gov.uk)

119. 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.

120. 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 23<sup>rd</sup> day of June 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 8 – Request for information

(1) In this Act any reference to a “request for information” is a reference to such a request which –

(a) is in writing,

(b) states the name of the applicant and an address for correspondence, and

(c) describes the information requested.”

(2) For the purposes of subsection (1)(a), a request is to be treated as made in writing where the text of the request –

(a) is transmitted by electronic means,

(b) is received in legible form, and

(c) is capable of being used for subsequent reference.

### **Section 10(1) - Time for Compliance**

(1) Subject to subsections (2) and (3), a public authority must comply with section 1(1) promptly and in any event not later than the twentieth working day following the date of receipt'.

...

### **Section 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 14 – Vexatious or repeated requests**

(1) Section 1(1) does not oblige a public authority to comply with a request for information if the request is vexatious.

(2) Where a public authority has previously complied with a request for information which was made by any person, it is not obliged to comply with a subsequent identical or substantially similar request from that person unless

a reasonable interval has elapsed between compliance with the previous request and the making of the current request.

### **Section 21 - Information accessible to applicant by other means**

(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.

(2) For the purposes of subsection (1)—

(a) information may be reasonably accessible to the applicant even though it is accessible only on payment, and

(b) information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.

(3) For the purposes of subsection (1), information which is held by a public authority and does not fall within subsection (2)(b) is not to be regarded as reasonably accessible to the applicant merely because the information is available from the public authority itself on request, unless the information is made available in accordance with the authority's publication scheme and any payment required is specified in, or determined in accordance with, the scheme.

### **Section 38 - Health and safety**

(1) Information is exempt information if its disclosure under this Act would, or would be likely to—

(a) endanger the physical or mental health of any individual, or

(b) endanger the safety of any individual.

(2) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, have either of the effects mentioned in subsection (1).

### **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.”

### **Section 44(1)- Prohibitions on disclosure**

(1) Information is exempt information if its disclosure (otherwise than under this Act) by the public authority holding it—

- (a) is prohibited by or under any enactment,
- (b) is incompatible with any Community obligation, or
- (c) would constitute or be punishable as a contempt of court.

(2) The duty to confirm or deny does not arise if the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) fall within any of paragraphs (a) to (c) of subsection (1).

### **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.

## **Human Rights Act 1998**

### **ARTICLE 8**

#### **RIGHT TO RESPECT FOR PRIVATE AND FAMILY LIFE**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.