

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 July 2013

Public Authority: University of Sheffield
Address: Western Bank
Sheffield
South Yorkshire
S10 2TN

Decision (including any steps ordered)

1. The complainant has asked the University of Sheffield (the "University") for information about a request made in May 1987 by Head of Forensic Pathology at Sheffield University to the Prison Governor at Lincoln Prison concerning the removal of bone samples from the remains of executed felons.
2. The Commissioner's decision is that the University does not hold the requested information.

Request and response

3. On 20 December 2012, the complainant wrote to the University and requested information in the following terms:

"I am seeking information about a request made by Prof Usher, Head of Forensic Pathology of Sheffield University, on 1 May 1987 to the Prison Governor at Lincoln Prison to remove bone samples from the remains of executed felons..."

My request for information is;

A. To be made fully aware of how many bone samples were removed, how they were removed, what quantity of bones(s) were removed and from which executed felons. (I have a list of all 25 remains and their names).

B. What was the nature and outcomes of the scientific examination of the bone samples and what has been done with the bone samples on completion of the examination."

4. On 7 January 2013 the University informed the complainant that it does not hold the information requested and that it no longer holds any records for the Department of Forensic Pathology as they had been passed to the National Forensic Archive (the "NFA") in 2006.
5. On 1 February 2013 the complainant made the same request to the NFA. The NFA explained that the requested case file would still be held by the University and that it only holds records from 2006 onwards. The NFA confirmed on 12 March 2013, that the University had conducted further searches and did not hold the requested files/records.
6. The University clarified its response to the complainant on 13 March 2013 as follows:
 - It holds case files relating to the work of Forensic Pathologists based at the University when it had a Department of Forensic Pathology (before 2006).
 - The Department was transferred to the Forensic Science Service (the "FSS") in 2006.
 - The case files for 1988 have been inspected and none of them relate to the Professor.
 - The University does not hold any files or correspondence relating to the work of the Professor.
 - The University does not hold any records relating to the retention of human tissue or bone samples or the management of such samples.
 - It does not know where such material is or if it still exists.
 - The University's School of Medicine does not hold any such records.
 - The School of Medicine contacted the Medico-Legal Service who suggested contacting the NFA.

- The NFA only holds records post 2006.
7. The complainant requested an internal review on 14 March 2013. This was provided to him on 25 March 2013 and the University confirmed that the requested information is not held.

Scope of the case

8. The complainant contacted the Commissioner on 2 April 2013 to complain about the way his request for information has been handled.
9. He is dissatisfied that his request has not been fully answered. His complaint is that the University has not provided the information that was its responsibility in 1987/88 when he considers there is compelling external evidence to suggest this. He does not believe that the University is providing a consistent or balanced response to information requests relating to the work carried out by its Department of Forensic Pathology.
10. The scope of the Commissioner's investigation was to determine whether the University held the requested information.

Reasons for decision

11. Section 1(1)(a) and (1)(1)(b) of the FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds the information and if so, to have that information communicated to him.
12. In considering cases such as this, the Commissioner will consider whether on the balance of probabilities the requested information is held. In order to make a decision on this, the Commissioner will ask the public authority in question detailed questions as to the nature of the requested information and the searches it has carried out. He will then consider the context of the case, and nature of the requested information, the authority's responses, the arguments provided by the complainant and any evidence to suggest that the information in question is held.
13. In this case the University explained that,

"Forensic Pathologists are independent practitioners who provide unbiased medico-legal opinions for HM Coroners, the Police and

solicitors. Many forensic pathologists are self employed, whilst some are employed part-time or full-time within a University or NHS setting.

Professor Alan Usher...had been a member of staff at the University of Sheffield from 1961 until his retirement in 1990. He was the University's first Professor of Forensic Pathology. It is not now known what the formal contractual relationship was in respect of Professor Usher's employment with the University, but it is likely that his role may have been one where there was a level of independence relating to the work and research activities that he undertook, as is the case with many academic staff."

14. The Commissioner's questions to the University, and its responses, are detailed below:

- (1) What is the date range of the case files you hold which relating to the work of Forensic Pathologists based at the University when it had a Department of Forensic Pathology (before 2006)?

"It perhaps wasn't made explicitly clear enough in previous correspondence how the term 'case file' is defined in the context of the material held by the University. The term 'case file' in this context is defined as relating explicitly to post mortem examinations undertaken by forensic pathologists on behalf of HM Coroner, and opinion work undertaken on behalf of the UK Police Service and solicitors. The vast majority of the material relates to post mortem work undertaken on behalf of HM Coroner (either major cases or routine cases). Therefore the work was effectively 'commissioned' by either HM Coroner, or a Police Service, or a solicitor. They do not relate to any other work that may have been undertaken by the forensic pathologists, and importantly do not relate to any research activities that may have been undertaken. To answer the specific question the material dates from 1947 to April 2006."

- (2) If these files constitute the University's records of the work performed at the Department of Forensic Pathology in 1988 (i.e. before 2006), is there any reason why the work of Professor Usher would not be found in these records?

"As stated above in the introduction, the files currently held may only reflect part of the entire body of work undertaken by a forensic pathologist because of the independent nature of their role and often the self-employed nature of the relationship between themselves and institutions such as a University. Professor Usher is likely to have had a level of independence associated with his activities which means it cannot be assumed that all his work, including teaching and research

activities, will be wholly reflected purely in the case files held relating to post mortem work as defined in Q1."

(3) Are these records manual or electronic records?

"All records are in paper format."

(4) Please clarify exactly what searches were performed and explain why you consider they would have located the requested information if it did exist?

"In order to fully explain the searches that were undertaken it is necessary to explain the work that has been undertaken on the material. When the Records Management Service took custody of the material in 2006, a temporary member of staff was employed, under the guidance of the Records Manager, to catalogue all the material that was being brought to the University. Previously no complete record of the case file material existed. A spreadsheet was compiled for all the material consisting of the reference numbers assigned to the individual case files, the covering dates of the material within each box, and whether the material related to post mortem major cases, post mortem routine cases or opinion work. Once this was completed space was assigned to the material within the University records centre, and individual locations were also assigned to the spreadsheet. It therefore became possible to identify the records held by a particular year, or by a particular reference number that had been assigned to a post mortem case. For the period 1987 to 1988 11 (eleven) boxes of files are held. These relate to major case post mortems and top copies or duplicates of other post mortems carried out during that period. The 7 (seven) boxes of major case files covering all of 1987 and 1988 relate to specific major cases where individual post mortems were requested by HM Coroner. On the outside of each file is listed the name of the deceased, the reference number assigned to the case, the date and place where the post mortem was carried out and the name of the Pathologist that undertook the post mortem. The Records Manager personally inspected each of these boxes three times. Professor Usher didn't undertake any of the post mortem cases within the 7 boxes.

The remaining 4 (four) boxes contain duplicate copies of the actual report supplied to HM Coroner that were undertaken between 1987 and 1988. It should be noted, for the sake of clarity, that these relate to individuals who actually died in 1987 and 1988 and therefore on whom post mortem examinations were carried out on behalf of HM Coroner. It is noted that [the complainant's] request relates to prisoners who were executed and whose deaths would therefore pre-date the years 1987 and 1988 by decades. Again the Records Manager personally inspected

these records, and they do not relate to the information requested by [the complainant]. As explained in the email to [the complainant] on 13 March 2013 the request was also directed to the Faculty Director of Operations at the School of Medicine. She contacted the Department Manager at the Department of Neuroscience who enquired within the Department and was told that the Department had transferred to the Forensic Science Service at the Medico-Legal Centre operated by the Sheffield City Council. All this, of course, was well known within the University. The Medico-Legal Centre Manager informed the Department Manager at the Department of Neuroscience that no forensic pathology department records were now retained at the Medico-Legal Centre, but suggested contacting the National Forensic Archive, hence the suggestion to approach to them."

- (5) Please confirm whether the case files are the only place such information would be held.

"As stated in the responses to Q1 and Q2, the case files are the only place where information relating to the post mortem examination work undertaken by Professor Usher on behalf of HM Coroner, the Police or Solicitors would be held. As stated in the email to [the complainant] on 13 March 2013, we do not hold any other case files or correspondence files relating to the work of Professor Usher. For the sake of clarity, these records do not relate to other types of work that might have been undertaken, such as any research activities which may have been carried undertaken by Professor Usher."

- (6) Has the University ever held information in a case file regarding the work of Professor Usher and if so, has this information been destroyed?

"Since the material was returned to the University, under the custody of the Records Management Service, no records have been disposed of. It is not possible to determine prior to this whether records were disposed of because day to day record keeping was undertaken by the Department and there is no centralised record of such activity."

- (7) If relevant, does the University have a record of the destruction of this information?

"This is not relevant. Since 2006 we have not disposed of any records, see response to Q8 below."

- (8) What does the University's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the University describe the way in which it has handled comparable records of a similar age?

"When the Department of Forensic Pathology transferred to the Forensic Science Service in 2006 a contract was put in place to manage that transfer. As part of that contract, a clause was inserted which governed the transfer of the records back to the University. The relevant clause states the following:

'4.10 From Completion, the University agrees (subject to Clause 4.12 below) that it shall maintain and preserve (but only for as long as it is required by law to do so) criminal case records and/or files relating to the activities of the Unit prior to Completion (the "Archived Records"). FSS acknowledges and agrees that the University may, after 30 years following the date at which the relevant record and/or file is archived (or such other period as may, from time to time, be permitted by law) destroy or otherwise dispose of that record, without liability of any kind to FSS. For the avoidance of doubt, the University's title (if any) to the Archive Records shall at all times remain vested in the University.'

Therefore any case files relating to major cases are to be retained for the 30 years, as stipulated by the contract above. In addition there has also been an attempt to establish a retention policy relating to the non-major case material (i.e. the routine cases and the top copies as discussed in the response to Q4. Here it is recommended that a retention period of 15 years is applied to this material, because this is deemed to be the appropriate retention period applied to such material by the National Archives...

For the sake of clarity no material has yet been disposed of in accordance with the retention policy set by the contract, or the retention policy set out above by the National Archives."

- (9) You have explained that the University does not hold any records relating to the retention of human tissue or bone samples or the management of such samples. Please confirm whether you ever held such records and if so when were they destroyed?

"All case files currently held (as defined in Q1) relate to human tissue and / or bone samples. The sentence used above was an attempt to assist understanding and draw a distinction between the case work (as defined in Q1) carried out on behalf of HM Coroner, the Police Service and solicitors, (records which are held), and the nature of the request that [the complainant] was referring to, that is any other investigative

work or research activity that might have been carried out by Professor Usher and other forensic pathologists, (records of which are not held)."

(10) If relevant, does the University have a record of the destruction of such information?

"This question is not relevant or applicable because of the explanations provided to previous questions."

(11) What does the University's formal records management policy say about the retention and deletion of records of this type? If there is no relevant policy, can the University describe the way in which it has handled comparable records of a similar age?

"This question is not relevant or applicable because of the explanations provided to previous questions."

(12) Does the University hold any record of the exhumation and reburial of the remains and what searches (if any) has it conducted for such records relating to this information request?

"Exhumation and burial is not a function or activity undertaken by the University, and therefore the University wouldn't hold such records."

(13) Would the University have had an obligation to record the disposal of such human remains in 1988?

"There wasn't a requirement for such records to be kept in 1988. Following events at the Alder Hey Children's Hospital, The Human Tissue Act came into force in 2006 which effectively made sure records of sample collection and disposal were kept."

15. During the investigation of the case the Commissioner obtained further arguments from the complainant as to why he believed that information was held that fell under his requests. In particular, the complainant argued:

- That this important research work would be held in files, or other forms of paperwork, relating to Professor Ushers time at the University. He has referred to the letter to the governor at Lincoln Prison in which the Professor made a request to remove bone samples, and has argued that this serves as evidence of the existence of this research work.

- The letter to the prison governor appears to be the only document relating to this research project. The Professor was acting on behalf of the University in this work, and given the amount of paperwork that the exhumation and examination of human remains would have undoubtedly created, the balance of probabilities suggests that there are more documents relating to this research project and that these documents would be at the University.
 - His request does not concern any post mortem activity and relates solely to the exhumation of 25 executed felons from Lincoln Prison and the removal of bone samples by the University. The University's response continues to cite post mortem activity by Professor Usher which is not his FOIA request.
 - The balance of probability would suggest that the University maintained files and records pre-dating 2004 for the Department of Forensic Pathology.
 - There is a legal and moral obligation placed on any organisation that assumes the responsibility for human remains.
 - In the absence of any paperwork to support that reburial of the remains occurred it could be interpreted as a breach of the Home Office Licence conditions as the University has disposed of them in an unconventional method or is unable to trace their whereabouts.
 - His belief that the University is not providing a consistent or balanced response to information relating to the work carried out by its Department of Forensic Pathology, and the families of the executed felons have a right to know what happened to the remains of their relatives.
16. The Commissioner has considered the complainant's arguments at length, and in particular he notes his obvious belief that further information is and should be held. The Commissioner also accepts that the requests relate to a sensitive and emotive issue – as they focus on the exhumation and examination of human remains, together with what subsequently happened to those remains. However, the Commissioner has to consider whether, on the balance of probabilities the requested information is held, not whether it should be held.

17. In this instance the Commissioner has in particular noted the age of this information, and the fact that the University Department in which this research work was carried out, no longer exists. He has also taken account of the University's detailed explanation (as set out above) of what searches it has carried out, and why it considers that it does not hold any of the requested information. Despite the complainant's obvious belief that relevant information is held and should be held, the Commissioner does not consider that he has provided any evidence to support his belief that it is held.
18. Therefore, having considered the University's arguments as to why the requested information is not held, the Commissioner considers that they are reasonable and persuasive. Given this, and as the complainant has not provided any evidence to the contrary, the Commissioner is satisfied that on the balance of probabilities the University does not hold the requested information in this case.

Right of appeal

19. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

20. 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.
21. 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

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