

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 28 March 2023

Public Authority: The Governing Body of the University of Exeter
Address: Northcote House
The Queen's Drive
Exeter EX4 4QJ

Decision

1. The Commissioner's decision is that, on the balance of probabilities, the University of Exeter ('the University') holds no further email correspondence about remuneration matters falling within scope of the request. As such, the University complied with section 1(1) of FOIA. The University was entitled to redact some information in the disclosed emails under section 43(2) as it is commercially sensitive information.
2. It is not necessary for the University to take any corrective steps.

Request and response

3. The complainant made the following information request to the University of Exeter on 13 September 2022

"Under the freedom of information act I would like to see all recorded information, to include but not limited to, emails, agendas, minutes, business cases regarding direct works, estate services, campus services, which includes gas fitters/engineers, electricians, plumbers carpenters in relation to pay scales, pay, pay rises, and any other remuneration."
4. In its response of 19 October 2022, the University disclosed an "example of Blank PD47, PDF of the staff department (Work staff), copy confirmation letter, all with redactions". (The Commissioner notes that

the confirmation letter is dated 14 September 2022 ie the day after the request was submitted). The University's response indicated that all these documents had redactions under sections 40(2), 41 and/or 43(2) of FOIA. Section 40(2) of FOIA concerns personal data and section 41 concerns information provided in confidence.

5. In their request for an internal review the complainant advised that they were aware of email correspondence that is relevant to their request and which the University had not provided.
6. In its internal review dated 9 December 2022, the University upheld its reliance on the three exemptions it had referenced. Regarding further emails that the complainant had referred to, the University said that sections 40 and 41 of FOIA, "... result in necessary restrictions on the information that can be provided and would prevent the further disclosure of personal e-mails of which you may be aware."

Reasons for decision

7. In their complaint to the Commissioner, the complainant has said that they are content for names and figures to be withheld. They are interested in particular conversations they consider have taken place; what was said, not who said what.
8. The complaint suggests that the complainant's focus is email correspondence within scope of the request, but not the personal data in those emails. As such the Commissioner has not considered a document containing staff organisation charts, the PD47 form or the confirmation letters – blank, or redacted versions of which the University sent to the complainant. The Commissioner will also not consider the University's redaction under section 40(2) of specific individuals' names from the email correspondence it disclosed. Finally, there is one redaction in the email correspondence that concerns the specific level of remuneration four Gas Operatives are currently on. Although the Operatives are not named, the Commissioner considers that information is the personal data of those Operatives, because they will be identifiable to other people. Therefore that information is out of scope of this investigation.
9. This reasoning will therefore consider whether the University holds any further information within scope of the request for emails and its application of section 43(2) to some of the information in the emails it disclosed.

Section 1 – general right of access to information held by public authorities

10. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled to be told if the authority holds the information and to have the information communicated to them if it is held and is not exempt from disclosure.
11. In their request for an internal review and complaint to the Commissioner, the complainant has said that they consider the University holds further information relevant to their request for emails. This is because they say they have a copy of relevant emails sent within and from HR that have not been disclosed. The complainant also said that others sent email correspondence and that their line manager has not been asked to provide any information although that individual sent relevant emails.
12. The University provided the Commissioner with a document entitled "Email and paper correspondence" which is information extracted from emails and presented in a table. On 23 March 2023, the University confirmed to the Commissioner that it had disclosed this email correspondence to the complainant, save for a small amount of redacted information which will be discussed under the section 43(2) analysis.
13. The Commissioner put the complainant's points to the University and asked it to explain why it is confident that it has identified all the relevant email correspondence that it holds. The University said that the process it went through to identify the information was to approach all relevant senior staff and ask for the information the complainant has requested. The University said its communication to staff included the specific question and an explanation of what information the complainant is seeking. The University confirmed that the information in the emails that were retrieved, and which has been collated into the table it sent to the Commissioner, is all the information that was identified. The University further confirmed that it has not found any further emails up to the date of the request using the above search criteria.
14. The Commissioner pointed out its internal review response to the University. That response suggested to him that the University held other relevant emails that it was withholding in full.
15. The Commissioner had also reviewed the University's internal emails about handling the request, that the University sent to him. In that correspondence, the University discusses emails about a particular personnel matter that it held. It did not think that matter fell in scope of the request. The Commissioner also queried with the University whether it was sure about that.

16. The University confirmed its understanding that its Information Governance team requested and received all the emails within the parameters of the request that could be found. It had sent the relevant staff the complainant's questions and parameters so that they could search for emails meeting the criteria including emails of the persons' named in the request. The Commissioner understands the University to mean the "...direct works, estate services, campus services, which includes gas fitters/engineers, electricians, plumbers carpenters" to which the request refers.
17. Regarding the particular personnel matter, the University said that this, "by definition involves other staff members who are not party to this FOI". The University confirmed that it considered that it would be unacceptable for this information to be placed into the public domain as "it is unrelated and there is no lawful basis to share their data with the requestor."
18. To clarify for the University, unless a public authority is relying on an exemption that releases it from the following obligation (such as section 40(5B), section 1(1)(a) of FOIA obliges a public authority to confirm or deny it holds information an applicant has requested. But that does not mean it must disclose the relevant information it holds; as the University is aware, there are numerous exemptions under which an authority is entitled to withhold information.
19. However, on the basis of the University having confirmed that the emails about the personnel matter concern individuals in roles not referenced in the request, the Commissioner will accept that those emails are not in scope of the request. He notes that even if those emails **were** in scope, it is extremely likely they would be exempt from disclosure under section 40(2) or section 41(1) of FOIA.
20. The University has confirmed to the Commissioner that it does not hold any emails other than what it has disclosed, and it has explained how it has come to that conclusion. The Commissioner considers that the searches the University undertook were satisfactory and accepts the explanations the University has given to him. He therefore finds that, on the balance of probabilities, the University holds no further email correspondence within scope of the request and complied with section 1(1) of FOIA.

Section 43 – commercial interests

21. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it.
22. The University has provided the Commissioner with the information in the emails that it is withholding under section 43(2).
23. The Commissioner applies three tests when he is considering whether section 43 is engaged. First, he is satisfied that the harm the University envisages relates to commercial interests; its own.
24. The second test is to consider whether a causal link exists between disclosing the information and commercial prejudice. The University's submission to him lacks any detail on this point. But in its response to the request, specifically in its discussion of the public interest test, the University advised that disclosing the information would impact on its market position. This was because the information could be used by competitors to compare the University's remuneration arrangements with the sector more broadly. The Commissioner accepts that disclosing the redacted information would give the University's competitors an insight into how it remunerates or intends to remunerate particular staff. Its competitors could then offer better terms which would make it more difficult for the University to recruit people into particular roles or would mean it would have to increase its remuneration offer for those roles.
25. Finally, the University's above response indicates that it considers that the prejudice it envisions would be likely to happen, rather than would happen. The Commissioner considers that is a credible level of likelihood.
26. In their complaint to the Commissioner, the complainant has said that all pay scales are in the public domain. As such anyone could review the University's pay scale and see the salaries that individuals are paid. In the complainant's view there is no need to redact this information as it is readily available. The Commissioner considers that if that were the case, the complainant would not need to seek this information through their request. In any case, the information being withheld under section 43(2) concerns possible, future remuneration and not current remuneration.
27. Since the three tests have been met, the Commissioner's decision is that the University is entitled to apply section 43(2) to some of the information in the disclosed emails and he will go on to consider the associated public interest test.

28. In its response to the request, the University said that it acknowledged the public interest in both transparency and accountability in the way a public authority performs its functions.
29. As noted above, the University's public interest discussion focusses on the prejudice it envisions rather than the public interest factors against disclosing the information. However, there is a public interest in the University being able to compete for, attract and keep the best people in the roles responsible for maintaining the University's estate. There is also a public interest in the University being in as strong a financial position as possible. In the absence of compelling arguments for the information's disclosure and given that the University publishes certain information about its pay scales, on balance the Commissioner finds that the public interest favours maintaining the section 43(2) exemption.

Right of appeal

30. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

31. 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.
32. 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

Cressida Woodall
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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Cheshire
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