

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2020

Public Authority: Council of Newcastle University
Address: Kings Road
Newcastle upon Tyne
NE1 7RU

Decision (including any steps ordered)

1. The complainant requested information about non-disclosure agreements. The Council of Newcastle University ("the University") had failed to respond to the request at the date of this notice.
2. The Commissioner's decision is that the University failed to respond to the request within 20 working days and has therefore breached section 10 of the FOIA.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
 - Issue a substantive response, under the FOIA, to the request.
4. The University must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 26 February 2020, an agent acting for the complainant delivered a letter, from the complainant, to the University and completed a certificate of service. The complainant's letter requested information in the following terms:

"please let me have the following information:

- *Between 1 January 2016 and 1 January 2020, inclusive, how many non-disclosure agreements has Newcastle University entered into with students, staff, both current and former, irrespective if it involved a financial settlement?*
- *Between 1 January 2016 and 1 January 2020, inclusive, how many non-disclosure causes has Newcastle University endorsed in court orders from actions it has been enjoined in, including Tomlin Orders, sanctioned by any court, in any jurisdiction, irrespective if such orders involved financial settlements?*
- *Between 1 January 2016 and 1 January 2020, inclusive, how much money has Newcastle University expended on non-disclosure agreements or orders, excluding legal fees?*

"I would like this information provided in paper format. Given the confidential nature of the information I seek, I am happy to have purely statistical information in answer to the above questions."
[sic]

6. The University did not acknowledge the request and had failed to provide a substantive response by the date of this notice.

Scope of the case

7. The complainant contacted the Commissioner on 7 May 2020 to complain about the failure, by the University, to respond to the request.
8. In line with her usual practice, the Commissioner contacted the University on 29 June 2020 to highlight the outstanding response. She provided the University with a fresh copy of the request and asked that the University respond to the request within 10 working days. Given the burdens on all public authorities caused by the Covid-19 pandemic, she also asked the University to set out any exceptional circumstances which were preventing it from responding. The correspondence was neither acknowledged nor responded to.
9. The complainant contacted the Commissioner on 13 July 2020 to request a decision notice considering the University's compliance with the FOIA.
10. The scope of this notice and the following analysis is to consider whether the University has complied with section 10 of the FOIA.

Reasons for decision

11. Section 1(1) of the FOIA states that:

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.*

12. Section 8(1) of the FOIA states:

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.*

13. The Commissioner considers that the request in question fulfilled these criteria and therefore constituted a valid request for recorded information under the FOIA.

14. Furthermore the Commissioner is satisfied that, based on the available evidence, the request was received by the University – and that the University has had an opportunity to provide any contrary evidence.

15. Section 10 of the FOIA states that responses to requests made under the Act must be provided "*promptly and in any event not later than the twentieth working day following the date of receipt.*"

16. From the evidence presented to the Commissioner in this case, it is clear that, in failing to issue a response to the request within 20 working days, the University has breached section 10 of the FOIA.

Right of appeal

17. 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

18. 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.
19. 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

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