

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 September 2014

Public Authority: Girton College, Cambridge
Address: Huntingdon Road
Cambridge
CB3 0JG

Decision (including any steps ordered)

1. The complainant has requested from Girton College, Cambridge ("the College") information relating to minutes of the Bursars' Committee and the Bursars' Fees Sub-Committee for the years 2013 and 2014, in so far as it relates to the issue of setting of graduate fees, including graduate college fees.
2. The College stated that it did not hold any information in relation to these minutes as these minutes were not part of the College record. The complainant was not satisfied with the response and submitted a complaint to the Commissioner.
3. The College advised the Commissioner that this information was held by a totally separate secretariat, The Office of Intercollegiate Services ("OIS"), on behalf of the Committees, which the College had no control over or responsibility for.
4. The Commissioner's decision is that information is held by the OIS on behalf of the College. He therefore requires the College to take the following steps to ensure compliance with the legislation.
 - Issue a fresh response to the complainant without stating that the information is not held for the purposes of the FOIA.
5. The College must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Information 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.

Request and Response

6. On 13 February 2014 the complainant requested the following information from Girton College (the "College"):

"I am requesting for all minutes during the years 2013 and 2014 of meetings of the Bursars' Committee and the Bursars' fees Sub-Committee pertaining to the issue of setting graduate fees, including graduate college fees..."

7. On 10 March 2014 the College replied to the request. It advised that the minutes of the Bursars' Committee and Bursars' Fees Sub-Committee do not form part of the College's records and therefore it does not hold the information.
8. On the same date the complainant asked the College for an internal review of the handling of the request for information. The complainant stated that as Girton College was likely to rely upon discussions that had taken place at the Committee or decisions described in the Minutes of the meetings, the Chair of the College, as College representative at those Committees and also Chair of the Bursars' Committee, would be in possession of the requested information.
9. On 17 March 2014 the College provided a response to the request for an internal review. It advised that it upheld the response previously given and reconfirmed that it did not consider the information requested to be held by the College. It advised the complainant that the Bursars' Committee records were accessible to Bursars only through a web-based electronic repository which is owned and operated by the OIS.

Scope of the case

10. On 17 March 2014 the complainant lodged a complaint with the Information Commissioner's Office stating that they were not satisfied with the response they had received to their request.
11. Therefore the scope of this case has been to consider whether the College was correct to inform the complainant that it did not hold the information as requested by the complainant.
12. In particular, the Commissioner has considered the nature of the relationship between the College, the Bursars' Committee and Bursars' Fees Sub-Committee and the OIS and the obligations

between the respective parties as far as the requested information is concerned.

13. The scope of this case has therefore been to consider whether any information is held either by the College or by OIS on behalf of the College and whether the College has complied with its obligations under the FOIA.

Reasons for decision

14. 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."

15. Section 3(2) (b) of the FOIA states that:

"For the purpose of this Act, information is held by a public authority if-

(b) it is held by another person on behalf of the authority."

16. In situations where there is a dispute between a public authority and a complainant about whether the requested information is held, the Commissioner applies the civil standard of the balance of probabilities. The Commissioner must therefore decide whether on the balance of probabilities a public authority holds any information which falls within the scope of the request.
17. Previous Tribunal judgments have confirmed that the question of whether information is held by another person on behalf of the authority is not simply determined by who owns the information, whether there are exclusive rights to the information or whether there is a legal basis for holding the information. It is a question of fact, to be determined on the evidence and the circumstances of the case.
18. The Commissioner's approach to section 3(2)(b) is guided by the Tribunal in the University of Newcastle case¹. In upholding the finding that the University did hold the information the Upper Tribunal quoted

¹ University of Newcastle upon Tyne v Information Commissioner and BUAV [2011] UKUT 185 (AAC) and First Tier - [EA/2010/0064](#)

from paragraph 47 the original First-tier judgment:

"[47] 'Hold' is an ordinary English word. In our judgment it is not used in some technical sense in the Act. We do not consider that it is appropriate to define its meaning by reference to concepts such as legal possession or bailment, or by using phrases taken from court rules concerning the obligation to give disclosure of documents in litigation. Sophisticated legal analysis of its meaning is not required or appropriate. However, it is necessary to observe that 'holding' is not a purely physical concept, and it has to be understood with the purpose of the Act in mind. Section 3(2)(b) illustrates this: an authority cannot evade the requirements of the Act by having its information held on its behalf by some other person who is not a public authority...."

19. The Commissioner has gone on to consider whether the connection between the College and the OIS, including the context of the information, and how this informs the question as to whether the information is held by the College.
20. The College has provided the Commissioner with a detailed overview of the way in which it has concluded that it does not hold the requested information. It has advised that the Bursars' Committee is an unincorporated association formed in the 1920s and made the following comments:

"Its purpose has historically been, and remains, to serve as a forum for the private exchange of information between Bursars. It has no decision making power, but from time to time makes recommendations to Colleges. The matters dealt with are those within the bursarial remit within Colleges (financial, business, administrative and legal matters) that are of general interest or common concern."

"The membership of the Committee comprises the Bursars of the Colleges in the University of Cambridge and of the Colleges of the Cambridge Theological Federation."

In addition it advised that the Head of the OIS was also a member of the Committee and the OIS provided the administrative support and structure to service the main Bursars' Committee and its sub-committees.

21. It advised the Commissioner that the OIS was set up in 2009 to service the *"steadily growing burden of work involved in the servicing of the Committee."* This body is a company limited by guarantee

which is funded by the Colleges of the University of Cambridge and the Colleges of the Cambridge Theological Federation. The members and guarantors of this company are also the Colleges of the University.

22. In relation to the information produced by the Bursars' Committee and sub-committees, the College advised the Commissioner that any information produced by or for the Committee was produced by the OIS. The Committee was considered to be entirely independent of the Colleges as it did not:

"report to any body or individual, in the sense of being accountable to, or subject to control or direction by, any body or individual other than its own membership."

23. The Commissioner was advised that whilst the Committee would occasionally report to other persons, including the Colleges in the sense of providing information or advice or recommendations, it had not sought or been granted authority to act on behalf of the colleges as a whole or individually.
24. In relation to information provided to the OIS by the individual colleges, the College advised the Commissioner that it considered such information to be held by the OIS on behalf of the College. However, in relation to information created by the OIS, for e.g. Minutes of the Bursars' Committee which were produced by the OIS itself, the College contended that this information was not held by the College as it was created and held by a separate legal entity, that is the OIS. It maintained that :

"It does not follow that information created and owned by a company is held on behalf of each or any of its members."

25. The Commissioner accepts that this should not be used a simple determinative factor but status of its members is a relevant consideration as to whether the information is held.
26. As part of the enquiries undertaken the complainant has advised the Commissioner that the Bursar of the College to whom the request was made is also the Chair of the Bursars' Committee. The complainant has stated that, in the role of Chair, the Bursar of this College is likely to have held a copy of these minutes.
27. As part of its response to the Commissioner the College has confirmed that the Bursar uses information obtained from the Committee to inform her role as Bursar and this was evidenced by a clause in her contract of employment with the College which stated:

"The Bursar is responsible for:

- *Bringing to Council's attention developments likely to have significant implications for the College's financial position and providing the information and analysis to enable Council to make financial decisions."*

28. The College has also provided the Commissioner with full details as to the separate roles that the Bursar holds in relation to her membership of the Bursars' Committee both as Chair of this Committee and also Director of the OIS. It has argued that as she is separately employed by both she has duties and obligations in respect of both and it does not follow that information that she possesses in one capacity on an organisations behalf is held or available to her in respect of another role which is held by her.
29. In relation to information from the Bursars' Committee (either from the Committee or generated by the OIS) that comes into the possession of the Bursar, the College advised that the information may be used by the Bursar for college purposes, downloaded from the OIS and read and then deleted without extraction of information
30. The College has advised that the Bursar of the College attends the Bursars' Committee as an employee of the OIS and represents the College in her role as Bursar. In relation to her position as Bursar of the College, the College confirmed that should the Bursar leave her role at the College her membership of the Committee would cease. Likewise if she were unable to attend a meeting of the Committee it would be for the Committee to decide whether a substitute could attend on her behalf.
31. It maintains that information from the Bursars' Committee held by the OIS was not held on behalf of the College. It stated the role of the OIS was to provide a range of administrative and secretarial services to its members. It considered that information generated by this body, as opposed to being deposited by the separate colleges, was not held on behalf of the colleges themselves but was the property of the OIS.
32. In coming to his decision the Commissioner is mindful of his previous decision (FS50124622)² which considered the position of the Bursars' Committee and its minutes in relation to a FOIA request. In this matter the University had sought to argue that minutes of the Bursars' Committee were held by members of the committee in their "personal capacity" and not as employees of the University.

² http://ico.org.uk/~media/documents/decisionnotices/2009/FS_50124622.ashx

33. The Commissioner stated at paragraph 46, that whilst the files may not be part of the public authority's own central filing system, he was of the opinion that the employee concerned attended the committee meetings on behalf of the public authority as its employee and not in their own right as an independent member of the public. It followed that the papers obtained from this committee meeting would be used as a reference in respect of their duties as an employee of the public authority.
34. In this matter the College has confirmed that information obtained from the Bursars' Committee by the Bursar of the College would be used to inform the decisions she made in her capacity as Bursar of the College.
35. The Commissioner is of the view that as an invitee to the Committee in her own right as Bursar of the College she would be entitled to minutes of the Committee meetings either in hard copy or by access to the electronic repository maintained by OIS. It would follow that this information would be used by the Bursar in her role at the College and inform her decision making.
36. Additionally, there is the position of the OIS. This has been established as a body set up to deal with the needs of the Bursars' Committee, its sub-committees and other Committees of the University due to the increase in the volume of work. It was set up by persons with strong links to the University, including members of the Bursars Committee; is funded by the Colleges of the University; and the Guarantors, Members and Directors include Bursars, Lecturers and Tutors of the University.
37. In the previous decision of FS50124622, the Commissioner noted at paragraph 81 that he did not accept that the University could set up a Committee which conducted business of the University which it subsequently chooses not to consider under the FOIA. He considered the steps of the Committee of trying to exempt itself from the Act to be not acceptable or within the spirit of the Act when it was clearly conducting "University" type business.
38. In this matter the issue is the Minutes of the Committee which have been produced by the OIS on behalf of the Committee. The Commissioner is of the view that the fact that the Minutes are produced by a separate legal entity does not mean that they are not held on behalf of the Colleges and/or University. In this situation the OIS has been set up, is staffed and funded by those with very strong links to the Colleges, and the information sought (that is the Minutes

of the Bursar's Committee and sub-committees) has already been determined by the Commissioner as information which would be held by employees of the University. As previously, the Commissioner finds that the attendees at the meetings would use the information recorded in the Minutes to inform their work and decision making.

39. The OIS would appear to work for the Colleges of the University of Cambridge and the Colleges of the Cambridge Theological Federation alone. It produces documentation at the behest of the Committees it serves and acts as a repository for information provided to it by the different colleges. Its directors have strong links with the University, being current employees holding roles of Bursars and Academics; and both the OIS and the Bursars Committee are funded by the individual colleges. In addition, the OIS' website address is closely linked to the University - <http://www.ois.cam.ac.uk/> and its main webpage states the following:

"The Office of Intercollegiate Services is responsible for the servicing of the principal intercollegiate Committees, with the exception of the Senior Tutors' Committee, which is at present serviced by the Education Section of the University's Academic Division. All intercollegiate committees may, however, call on the services of the Office."

40. Additionally, as part of his enquiries the Commissioner has had sight of a job advert for the Head of the OIS placed by the colleges of the University in a national newspaper³ in 2009 as follows:

*"The Cambridge Colleges have recently established an Office of Intercollegiate Services, which is the overarching body responsible for supporting the activities of the principal intercollegiate committees (the Colleges' Committee, the Bursars' Committee, and, as required, the Senior Tutors' Committee). The Colleges wish to appoint a Head of the Office to act as the focal point of contact, providing support and advice for the officers of the intercollegiate committees and individual members of their committees....The postholder will be an **employee of the Colleges** and will be responsible to the Standing Committee of the Colleges' Committee through its Chairman."* [Commissioner's emphasis]

41. The members of the Committee are predominantly Bursars employed by the individual colleges and it is clear that the Bursars' Committee and sub-committees are vehicles for University and College business. Its decisions and recommendations are likely to affect University

³ <http://jobs.thetimes.co.uk/job/364727/head-of-office-of-intercollegiate-services>

policy and its importance and influence would appear to be evidenced by the need for a separate secretariat to be set up to manage its workload. This secretariat was set up and is financed by all of the colleges of the University.

42. The Commissioner is of the view that the Bursars Committee and its sub-committees cannot be said to be a forum or members type club for the informal exchange of ideas and general discussion which is not a part of the University. He finds that those attending the meetings of this Committee and sub-committees do so in their position as employees as not in their personal capacity. It follows that the Minutes produced for this Committee are therefore held by employees of the Colleges in their capacity as employees not individuals and the ability of College employees (i.e. Bursars) to access these Minutes, albeit from a separate body, means that this information is held on behalf of the colleges and University by this body. The fact that these Minutes are only held electronically and access is restricted to a limited number of individuals does not prevent these documents being held on behalf of the College.
43. Having taken account of all the circumstances the Commissioner finds that the information is held by the College for the purposes of FOIA. The Commissioner finds that the College did not comply with section 1(1)(b) of the FOIA.

Right of Appeal

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

First-tier Tribunal (Information Rights)

GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

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

45. 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.
46. 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

Steve Wood
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