

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 December 2022

Public Authority: University College Birmingham
Address: Summer Row
Birmingham
B3 1JB

Decision (including any steps ordered)

1. The complainant has requested information relating to IT outages. University College Birmingham (UCB) asked for clarification in relation to part 1 of the request, it denied holding information in relation to part 2 of the request and provided information in response to parts 3 and 4 of the request.
2. UCB breached section 16 FOIA in the handling of part 1 of the request however it correctly denied holding information requested at part 2 under section 1(1)(a) FOIA. UCB also breached section 10 in the handling of this request as it did not respond within the statutory time for compliance.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide advice and assistance in accordance with its obligations under section 16 FOIA in relation to part 1 of the request.
4. The public authority 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 FOIA and may be dealt with as a contempt of court.

Request and response

5. The complainant made the following information request on 4 October 2021:

"How many issues are there related to the IT department ? How many outages occur daily and are they logged please ?

How many IT staff have been on sick leave and for how long over the last 5 years ?

How many IT staff have left over the last 5 years and what is the reason why they have left ?"
6. UCB responded on 19 October 2022. In relation to part 1 of the request it asked the complainant to clarify the question, it said it did not hold the information requested at part 2 of the request and said that it was unable to provide the information requested at parts 3 and 4 due to its UK GDPR data protection responsibilities.
7. The complainant requested an internal review on 20 October 2022. UCB provided the outcome to its internal review on 16 November 2022. It provided the information requested at parts 3 and 4 of the request.

Scope of investigation

8. The Commissioner has considered whether the UCB complied with its obligations under section 1(3) and 16 FOIA in respect of part 1 of the request and whether or not UCB was correct to deny holding the information requested at part 2 under section 1(1)(a) FOIA. He has also considered whether UCB complied with section 10 FOIA.

Reasons for decision

Part 1

9. Section 1(3) FOIA states that:

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.

10. Section 16 FOIA states that:

(1) It shall be the duty of a public authority to provide advice and assistance, so far as it would be reasonable to expect the authority to do so, to persons who propose to make, or have made, requests for information to it.

(2) Any public authority which, in relation to the provision of advice or assistance in any case, conforms with the code of practice under section 45 is to be taken to comply with the duty imposed by subsection (1) in relation to that case.

11. The code of practice under section 45 explains that:

2.6 There may be instances when a public authority needs to contact an applicant to seek clarification either regarding their name or the information they are seeking in order for the request they have made to meet the requirements set out in section 8 of the Act.

2.7 If a public authority considers the applicant has not provided their real name the public authority can make the applicant aware it does not intend to respond to the request until further information is received from the applicant. For example, this may be the case when an applicant appears to have used a pseudonym rather than their own name.

2.8 There may also be occasions when a request is not clear enough to adequately describe the information sought by the applicant in such a way that the public authority can conduct a search for it. In these cases, public authorities may ask for more detail to enable them to identify the information sought.

2.9 Where a public authority asks for further information or clarification to enable the requester to meet the requirements of section 8, the 20 working day response period will not start until a satisfactory reply constituting a valid request is received. Letters should make clear that if no response is received the request will be considered closed by the

public authority. Two months would be an appropriate length of time to wait to receive clarification before closing a request.

12. In the request for internal review, the complainant made clear that he did not understand what clarification UCB was seeking.

13. In this case UCB has explained to the Commissioner that:

“The term “issues related to the IT department” is too broad for a response within the timeframe provided by the Act (section 12). Our response did not definitively refuse the request, but asked for the individual to provide clarification. Without that clarification, it was not possible for the UCB to determine whether a response was possible, or whether the question related to information which was held by the University.”

This explanation as to the difficulties UCB was having in understanding what information the complainant was seeking was not however communicated to the complainant when UCB asked for clarification.

14. In this case whilst UCB informed the requester of their requirement for clarification under section 1(3) FOIA, UCB’s request for clarification did not comply with the code of practice as it did not specify the further detail required to enable them to identify the information sought. Therefore UCB breached section 16 in its handling of this request.

Part 2

15. Section 1(1)(a) FOIA states that:

“(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,”

16. In this case UCB explained that daily outages of its IT systems do not occur in the way the question implies and are therefore not logged.

17. As daily outages of UCB’s IT system do not occur in the way the question implies, on the balance of probabilities the Commissioner is satisfied that UCB does not hold the requested information.

Section 10

18. As UCB did not respond to the request within twenty working days, it breached section 10 FOIA.

Other matters

19. Once UCB has provided advice and assistance in relation to part 1 of the request, the complainant should then provide the clarification required to UCB so it is able to provide a response to part 1 of the request. Given UCB's explanation that IT system outages do not occur in the way part 2 of the request implies, again the advice and assistance provided in relation to part 1 of the request may also assist the complainant to obtain the information they are seeking at part 2. This is because parts 1 and 2 of the request would appear to be inextricably linked and indeed in the request for internal review the complainant only referred to three parts of the request (linking parts 1 and 2 together).

Right of appeal

20. 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

21. 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.
22. 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.....

Gemma Garvey
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Information Commissioner's Office
Wycliffe House
Water Lane
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Cheshire
SK9 5AF