

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 30 September 2021

**Public Authority:** The Governing Body of Birkbeck - University of London

**Address:** Malet Street  
Bloomsbury  
London  
WC1E 7HX

### **Decision (including any steps ordered)**

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1. The complainant has requested information about the number of former students that completed the Certificate of Higher Education for subjects allied to Life Sciences (certificate of HE) and then entered directly on to the second year of a degree course at other institutions. Birkbeck University of London (the university) denied holding the requested information.
2. The Commissioner's decision is that on the balance of probabilities the requested information is not held.
3. The Commissioner does not require any steps to be taken as a result of this decision.

### **Request and response**

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4. On 3 March 2020, the complainant wrote to the university and requested information in the following terms:

*"I am writing to officially request some information regarding the destinations of students who have completed your certificate of higher*

*education in life sciences. Specifically I would like to know how many have gone on to study a full-time degree elsewhere, starting at year 2 (not year 1). Ideally I'd like this info for at least the past ten years, or as far-back as your records go. You can anonymise their names to avoid data problems."*

5. On 24 March 2020, the university responded and denied holding the requested information. It sign-posted the complainant to the Higher Education Statistics Agency (HESA) website and said that it may be able to assist him with the information he is seeking.
6. On 25 March 2020, the complainant replied expressing dissatisfaction with the university's response. On 27 March 2020, the complainant wrote to the university seeking a response. On 30 April 2020, he wrote to the university again and asked it to carry out a review of the request.
7. Between 1 June 2020 and 7 September 2020, the complainant wrote to the university 11 times chasing the outcome of the review. This included raising the matter via the 'Student Complaints' process and also with the university's Data Protection Officer.
8. On 19 October 2020, the Information Commissioner wrote to the university and asked it to complete the review within 10 working days.
9. On 6 November 2020, the university carried out the review and wrote to the complainant upholding its original decision.

### **Scope of the case**

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10. On 29 September 2020, the complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Commissioner has considered whether, on the balance of probabilities, the requested information is held by the university.

### **Reasons for decision**

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12. Section 1 of 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."*

13. The Commissioner has sought to determine whether, on the balance of probabilities, the university holds any information which falls within the scope of the request. She will apply the civil test of 'the balance of probabilities' in line with the approach taken by the Information Rights Tribunal when it has considered the issue of whether information is held by a public authority.
14. In deciding where the balance of probabilities lies in this case, the Commissioner will consider explanations provided by the university, together with searches it has carried out and any other information offered, which is relevant to her determination. She will also consider any comments made by the complainant.

*The complainant's view*

15. The complainant initially said that he believes the university holds the information he requested because, he attended a presentation (at the university) that included information about where students who had completed the certificate of HE went on to study and the subjects they studied, e.g., X number of students went to UCL, X to Imperial College, X studied biochemistry, X studied medicine etc.
16. The complainant later said that he believes the university holds the information because it stated in the course information for the Certificate of HE on the university's website that, on completion of the course students can enter directly on to the second year of a degree at other institutions.

*The university's position*

17. The university said that the complainant previously raised the issue that he was informed that the certificate of HE would provide access directly on to the second year of degree courses at other institutions. This matter was dealt with as a complaint and the university provided him with an official response. It said that the certificate of HE does not allow direct entry on to the second year of a degree course at other institutions.

18. In regard to the complainant's request, the university confirmed that it had made enquiries with the relevant school's administration team, that is the Department of Biological Sciences (in which the certificate of HE course is managed), who also raised the matter with a senior and more experienced member of staff. The team completed searches of their SharePoint site, course folders, personal drives, and the Assistant School Manager's files and no information within scope of the request was found to be held. The school also confirmed that it does not formally record information about where students who have completed the Certificate of HE have entered directly on to the second year of a degree course at another institution.
19. The university conducted wider searches for the information that involved searches of other departments within the university, including External Relations, Registry, Careers Office, Planning, and Birbeck Student Information System. This included searches of electronic folders, SharePoint sites, personal drives and corporate student records systems. The latter contains data on all applicants, current students and alumni and is held in accordance with the university's retention schedule.
20. The university confirmed that the certificate of HE does not allow entry on to the second year of an undergraduate programme at other institutions, that its formal records management policy does not require it to collect or retain information within the scope of the request, and that there is no business need for it to collect this type of information.
21. The university said that, 'more broadly speaking', if an Academic requested leaver progression data from UCAS, the information would be provided anonymised and would generally be deleted once the information is no longer required, as there is no requirement to hold the information in line with its retention policy (as the information is anonymised). It said that if the Academic chooses to use such information in a presentation to potential students or during a course induction within a PowerPoint or simply verbally then this is done at the 'Academic's discretion'.
22. The Commissioner asked the university to explain what information was shown to the complainant at the presentation that he attended. The university consulted with the relevant academic staff responsible for the certificate of HE course concerned. The Programme Director of the course provided a statement stating that he does not recall any student entering directly on to the second year of a degree course at other institutions following the completion of the course. Courses students were, however, informed that they could potentially enter in to the second year of the BSC programmes at the university.

23. The Programme Director also located the presentation and associated information (a spreadsheet of the number of students who went on to study at other institutions) it says was shown to the complainant and is the cause of the 'misunderstanding'. It said that the spreadsheet shows the number of students (who completed the certificate in HE) that applied to study at various institutions and the subjects they applied for, entering at year one of the degree courses, not year two. This information is anonymised. It said that the documents do not contain information within the scope of the request and provided the Commissioner with copies of them.
24. The university added that the information the complainant may be seeking is anecdotal discussions on graduates. This anecdotal information is not held in a recorded format and would likely only have referred to specific students rather than the entire student population from the specific course concerned.

*The Commissioner's position*

25. In taking in to account the likelihood of the existence of the requested information, the Commissioner notes that the complainant has specifically requested the number of students that entered in to the second year of degree courses at other institutions. She notes that this differs to the number of students who generally went on to study a degree at other institutions entering at year one, which, is information that is typically and/or more likely to be held by higher education institutions, and is in fact held by the university in this case.
26. The Commissioner notes that there is no evidence that the university said that on completion of the certificate in HE course concerned, students could enter directly on to the second year of a degree course at other institutions. She also acknowledges the likelihood that the information would exist even if the complainant had been told this, specifically, that this would still not have placed a mandatory requirement on the university to collect and retain information within the scope of the request.
27. The Commissioner notes that the school responsible for the course has confirmed that it does not formally record information about students that complete the course and directly enter in to the second year of a degree at other institutions, and therefore the university does not appear to have a business need to collect and retain information within the scope of the request.

28. The Commissioner also notes that as part of the searches carried out, the university consulted with both the administration and academic staff of the school that is responsible for the course concerned. She also notes the extent of the searches carried out by the university, including; of course folders, personal drives, files, systems, internal information / document management sites, and the corporate student record system, and the likelihood that they would identify any relevant information. She also notes that the university extended the parameters of its searches beyond the relevant school and included searches of the wider university and the extent of those searches.
29. The Commissioner has viewed the presentation and associated information the university says was shown to the complainant. She notes that the only reference within the presentation to the certificate in HE allowing students access on to the second year of a degree course, is specifically in relation to the university's own degrees and not those of other institutions. She also notes that the presentation itself does not contain information about which institutions previous students applied to or what subjects they applied for, and that this information is in the associated document that was used alongside the presentation, which, the university has confirmed relates to students who entered the first year of degrees at those institutions.
30. The Commissioner is also reminded that the university suggested that the information the complainant is seeking, maybe relating to anecdotal discussions on graduates, that would have referred to specific students, would not have constituted a general statement that all students completing the certificate in HE could go on to enter directly on to the second year of a degree course, and that such discussions are not held in a recorded format.
31. The Commissioner notes that although the complainant said that during a presentation he was provided with information about the institutions former (certificate of HE) students went on to study at and the subjects they studied, he did not expressly state that the information indicated that the students entered directly on to the second year of the courses in these institutions. Moreover, she notes that the supporting document to the presentation provided by the university, shows the number of students that did indeed apply for degree courses at other institutions and the subjects they studied, but entering at year one and not year two of the degree programmes.
32. For the reasons given above, the Commissioner is satisfied that, on the balance of probabilities, information showing the number of students that completed the certificate of HE and then entered directly on to the

second year of a degree course at other institutions, is not held by the university.

## Other matters

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### *Internal review*

33. The Commissioner cannot consider the amount of time it took a public authority to complete an internal review in a decision notice because such matters are not a formal requirement of the FOIA. Rather they are matters of good practice which are addressed in the code of practice issued under section 45 of the FOIA.
34. Part VI of the section 45 Code of Practice states that it is desirable practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by the FOIA, the Commissioner considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may take longer but in no case should the time taken exceed 40 working days; it is expected that this will only be required in complex and voluminous cases.
35. In this case, the university explained that the delay in providing the internal review was due to the review being received in March 2020, during the start of the first COVID lockdown, which, impacted its Freedom of Information service. Also, staff training to deal with FOIA requests was taking place in the department during this time.
36. Although the Commissioner offers her sympathies to public authorities and the strain placed on their resources by the pandemic, she would like to take this opportunity to remind the university of the expected standards and that it should ensure that it aims to complete its future reviews within her recommended timescale of 20 working days.



## Right of appeal

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37. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

38. 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.
39. 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

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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