

Freedom of Information Act 2000 (Section 51)

Information notice

Date: 11 September 2023

Public Authority: The Governing Body of the University of Birmingham

Address: Edbgaston
Birmingham
B18 2TT

Section 51

Under section 51 of the Freedom of Information Act 2000 (FOIA), which is set out below, the Information Commissioner (the Commissioner) has the power to serve a notice on a public authority requiring it to furnish him with any information he requires to enforce the requirements of FOIA.

51. – (1) If the Commissioner –

(a) has received an application under section 50, or

(b) reasonably requires any information–

(i) for the purposes of determining whether a public authority has complied or is complying with any of the requirements of Part I, or

(ii) for the purposes of determining whether the practice of a public authority in relation to the exercise of its functions under this Act conforms with that proposed in the codes of practice under section 45 and 46,

he may serve the authority with a notice (in FOIA referred to as “an information notice”) requiring it, within such time as is specified in the notice, to furnish the Commissioner, in such form as may be so specified, with such information relating to the application, to compliance with Part I or to conformity with the code of practice as is so specified.

Circumstances leading up to this Notice

1. The Commissioner first engaged with the University of Birmingham (the University) about its compliance on 6 June 2023, having decided to contact a number of universities to gain an insight of the FOIA compliance picture in the higher education sector. It was asked to assess its compliance with FOIA and EIR timeframes, using key questions the Commissioner had put together and his response rate calculator.
2. The University responded promptly, on 21 June 2023, providing its performance data over the period of 1 June 2022 to 31 May 2023. The data showed the University's compliance over this period as 61%. It showed that the University had completed 412 requests over this period but 204 were out of time. The University's response also revealed that the date of its oldest outstanding request was 7 January 2020 and it had 361 requests (as of the date of its response) over 12 months old.
3. The University's response revealed that 18 of the 21 internal review requests received over this period were responded to within the recommended timeframe, showing a compliance rate for internal reviews of 86%.
4. A meeting was held on 26 July 2023 with the University to discuss its performance further.
5. The University explained that the backlog began during covid when there was a lot of uncertainty and staff previously relied on to assist with the processing of requests were deployed to other business areas and to supporting students. The University also lost four staff from an already small team due to internal restructuring. It considered that as a large University with a medical school and also being research intensive, the volume of and complexity of requests it receives perhaps compared to other universities is significant.
6. As a result of these factors, combined with the increasing volume of incoming FOIA requests in more general terms, a backlog arose. Nevertheless it recognised the importance of its obligations to FOI and meeting its legal requirements. The University described how it had taken positive steps already to improve performance and tackle the backlog. It had taken measures to replace staff and recruit additional resource as quickly as possible. It was also in the process of implementing strategic changes to ensure its FOIA process is more streamlined. It had made positive steps to reducing the backlog over the last 12 months in parallel with new requests that come in.

7. Despite these measures the University still only demonstrated 61% compliance for the period 1 June 2022 to 31 May 2023 for those requests received during that time. It also still had a significant backlog of requests dating back to 2020. The age profile of this backlog as at 21 July 2023 was as follows:

- 2020 178 outstanding requests
- 2021 95 outstanding requests
- 2022 20 outstanding requests

8. The Commissioner recognised the steps the University had already taken to address its outstanding backlog of requests. The University had engaged positively with the Commissioner and demonstrated its willingness to work with him. However, the volume of outstanding requests and its age profile was unacceptable.

9. The Commissioner decided to proceed to an Enforcement Notice, which would require the University to take the necessary steps to clear the backlog by a specified time. The University were advised that this would follow in due course.

10. A further meeting was held with the University on 24 August 2023 to discuss this further. The Commissioner was informed by the University that it had deployed extra resource to the backlog and had almost reduced it to zero. It anticipated being at zero the following week.

11. The Commissioner decided that an Enforcement Notice was no longer necessary but instead he now required to see the information detailed in paragraph 12 below. In accordance with section 51(1)(b)(i) of FOIA and 51(2), the reason the Commissioner requires this information is to establish whether or not the University has now complied with its obligations under Part 1 of FOIA in relation to the backlog of requests referred to in paragraph 7.

Information required

12. In view of the matters described above the Commissioner hereby gives notice that in the exercise of his powers under section 51 of FOIA he requires that the University shall, within 30 calendar days of the date of this notice, furnish the Commissioner with a copy of the following information:

- All responses issued for the information requests that were outstanding for the year 2021, including a copy of the information request itself for each, as detailed in paragraph 7.
- All responses issued for the first 50 information requests that were outstanding from 2020, including a copy of the information request itself for each, as detailed in paragraph 7.

Failure to comply

13. Failure to comply with the steps described above may result in the Commissioner making written certification of this fact to the High Court (or the Court of Session in Scotland) pursuant to section 54 of FOIA, and may be dealt with as a contempt of court.

Right of appeal

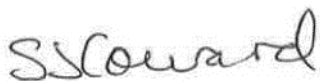
14. There is a right of appeal against this information notice to the First-tier Tribunal (Information Rights). Information about the appeals process can be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Email: grc@Justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

15. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this information notice is sent. If Notice of Appeal is served late the Tribunal will not accept it unless it is of the opinion that it is just and right to do so by reason of special circumstances.

Signed:



Samantha Coward
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