

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 January 2013

Public Authority: The Governing Body of Kingston University
Address: River House
53-57 High Street
Kingston Upon Thames
KT1 1LQ

Decision (including any steps ordered)

1. The complainant made a freedom of information request to Kingston University for a list of the workplace email addresses of all its staff. The University refused the request under the exemption in section 36(2)(c) of FOIA (prejudice to the effective conduct of public affairs).
2. The Commissioner has investigated the complaint and found that section 36(2)(c) is engaged and the public interest in maintaining the exemption outweighs the public interest in disclosure. The Commissioner requires no steps to be taken.

Background

3. The complaint concerns a request made to Kingston University for staff email addresses. The Commissioner would like to highlight at the introduction to this Decision Notice that this is a repeat of a request which the complainant had previously made to this University and other higher education institutions in April 2010. The Commissioner issued a Decision Notice in respect of that earlier request in which he had upheld the University's application of the section 36(2)(c) exemption to withhold the information under case reference FS50315973¹. The
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¹ [http://www.ico.gov.uk/~media/documents/decisionnotices/2011/fs_50315973.ashx](http://www.ico.gov.uk/~/media/documents/decisionnotices/2011/fs_50315973.ashx)

Commissioner also notes that the complainant subsequently appealed against a decision notice involving an identical request to another institution where he had also decided that section 36(2)(c) prevented disclosure. In that case the First Tier Tribunal upheld the Commissioner's decision². The Commissioner considers that the circumstances since the earlier request have not changed and therefore his decision would be the same as in the previous case. The Commissioner does not consider it a good use of his resources to revisit the same arguments in full in this decision notice and has instead outlined the University's reasons for refusing the request and, where appropriate, has referred to his earlier decision for a fuller explanation of the arguments.

Request and response

4. On 15 April 2012 the complainant made a request to the University for the workplace email addresses of all its staff.
5. The University responded to the request on 15 May 2012 when it confirmed that it held the requested information but that it was exempt from disclosure under section 36(2)(c) of FOIA (prejudice to effective conduct of public affairs). It concluded that the public interest in maintaining the exemption outweighed the public interest in disclosure.
6. The decision to refuse the request was subsequently upheld at the internal review stage.

Scope of the case

7. On 30 July 2012 the complainant contacted the Commissioner to complain about the University's decision to refuse his request.

²[http://www.informationtribunal.gov.uk/DBFiles/Decision/i584/%5b2011%5d_UKFTT_EA201_10061_\(GRC\)_2011-10-06.pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i584/%5b2011%5d_UKFTT_EA201_10061_(GRC)_2011-10-06.pdf)

Reasons for decision

8. Section 36(2)(c) provides that information is exempt from disclosure if, in the reasonable opinion of the qualified person, disclosure would, or would be likely to, prejudice the effective conduct of public affairs.
9. When deciding if the exemption is engaged the Commissioner has to first establish that an opinion was given on the application of the exemption by a proper qualified person. In this case the Commissioner has established that the qualified person for the University, the Vice Chancellor Professor Julius Weinberg, gave his opinion on the application of the exemption on 14 May 2012.
10. In order to determine whether section 36(2)(c) is engaged the Commissioner must then consider:
 - whether the prejudice claimed relates to the specific subsection of section 36(2) that the FSA is relying upon;
 - the nature of the information and the timing of the request; and
 - the qualified person's knowledge of or involvement in the issue.
11. In this case the Commissioner understands that it is the qualified person's opinion that disclosure would be likely to prejudice the effective conduct of public affairs because it would be likely to cause an adverse effect to the University's core functions. In a submission to the Commissioner the qualified person explained that it was his view that disclosing the information would lead to the University receiving more spam emails which would adversely affect the University through extra time and resources spent dealing with the emails. Also, it was considered likely that disclosure could lead to 'phishing attacks' or scam emails which could cause disruption to services.
12. In order to provide a reasonable opinion the qualified person was provided with a submission setting out the rationale for applying the section 36(2)(c) exemption as well as the Commissioner's guidance on the section 36 exemption and a copy of the Decision Notice issued in respect of the complainant's previous request. The qualified person also received a copy of the complainant's arguments as to why he believed the exemption was not engaged.
13. The Commissioner has recently issued guidance on section 36 of the FOIA. With regard to what can be considered a 'reasonable opinion' it states the following:

"The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is 'In accordance with reason; not irrational or absurd'. If the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable."

14. It is important to note that when considering whether section 36(2)(c) is engaged the Commissioner is making a decision not on whether he agrees with the opinion of the qualified person, but whether it was reasonable for him or her to reach that opinion.
15. Having reviewed all of the information placed before the qualified person the Commissioner is satisfied that only relevant arguments were considered and that the qualified person was not influenced by irrelevant considerations. He is satisfied that it was reasonable to conclude that since disclosure under FOIA is to the world at large it would lead to the University receiving a greater number of unwanted emails which would adversely affect its ability to carry out its core functions.
16. The Commissioner does not intend to consider in detail the arguments for why the exemption is engaged except to say that he finds the opinion a reasonable one. However, he would say that in reaching his decision he has taken the following arguments into account.
 - The University has evidenced the problems caused by spam emails and phishing activity received into the University email system.
 - Email is crucial to the University's core business as all its key services are dependent on it. Disruption to its email service would be very difficult to manage at key times.
 - The Commissioner accepts that the University should be entitled to organise itself so that the correct members of staff receive the correct emails to prevent both duplication and wastage of its limited resources.

The complainant's submission

17. Before he goes on to consider the public test the Commissioner should say that he is aware that the reason the complainant has chosen to repeat his request is that since the Commissioner's previous decision he has conducted additional research which has led him to conclude that the previous decision was flawed. Specifically, the complainant has asked a number of higher education institutions who previously disclosed to him a list of their staff email addresses or who already publish a high proportion of staff email addresses, whether they had experienced any prejudice to the effective conduct of public affairs

through the publication of this information. The complainant clearly believes that the responses he has received indicate that there is likely to be no prejudice resulting from disclosing the requested information.

18. The Commissioner has considered the evidence provided by the complainant but has seen nothing that would lead him to diverge from his previous position of upholding section 36(2)(c). In particular the Commissioner notes that of the institutions which had disclosed a list of staff email addresses or published a higher proportion of email addresses, the majority did not hold the information he requested and so were unable to say whether they had suffered any prejudice to the effective conduct of public affairs.
19. In any event, the Commissioner is mindful that the focus of his decision is what the effect would be on this particular institution if the information were disclosed, not what prejudice may or not occur at other public authorities where the circumstances will necessarily be different.
20. The Commissioner is satisfied that section 36(2)(c) is engaged and so has gone on to consider the public interest test, balancing the public interest in maintaining the exemption against the public interest in disclosure.

Public interest test

21. The University relied on the same reasons as it had in the previous case for arguing that the public interest in maintaining the exemption outweighed the public interest in disclosure. For his part the complainant focused his submission on why he believed the exemption was not engaged, rather than the public interest test. Therefore, the Commissioner shall refer to the public interest analysis in the previous case. The Commissioner has not reproduced those arguments in full here but has adopted the analysis from that decision when summarising his conclusions below.
22. As outlined in the previous case, the Commissioner has found that the public interest favours maintaining the exemption because disclosure of the list would undermine the channels of communication and lead to a consistent loss of time from the public authority's core functions. Disclosure would also leave the University and its staff more open to phishing attacks and the resulting problems that may be suffered.
23. The Commissioner accepts that disclosure would serve the public interest in terms of greater transparency and accountability but finds that when balanced against what is a fairly severe prejudice, whose

extent and frequency would be potentially unlimited, the public interest favours maintaining the exemption.

24. The Commissioner has decided that in all the circumstances of the case the public interest in maintaining the section 36(2)(c) exemption outweighs the public interest in disclosure.

Right of appeal

25. 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: 0116 249 4253
Email: informationtribunal@hmcts.gsi.gov.uk
Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

26. 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.
27. 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

**Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
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