

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

### **Decision notice**

**Date:** 8 April 2014

**Public Authority:** The Governing Body of Liverpool Hope University

**Address:** Hope Park  
Liverpool  
L16 9JD

### **Decision**

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1. The complainant has requested copies of the lists of students graduating from Liverpool Hope University (the University) between 2000 and 2004 together with the date from which a particular member staff was employed by the University. The University provided the start date of the member of staff but withheld the graduation lists under section 40(2) on the basis that the information constitutes third party personal data, the disclosure of which would breach the data protection principles as set out in the Data Protection Act 1998 (DPA).
2. The Commissioner's decision is that the University was entitled to withhold the information under section 40(2).
3. The Commissioner does not require the public authority to take any further action in this matter.

### **Request and response**

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4. On 7 October 2013, the complainant wrote to the University and requested information in the following terms:  
"1. I want copies of published graduation lists for 2000, 2001, 2002, 2003 and 2004 for Liverpool Hope University College.

2. I want to know the date that [a named member of staff] was employed by Liverpool Hope University College or Liverpool Hope University"
5. The University responded on 1 November 2013. It provided the date on which the named member of staff started to work at the University but withheld the graduation lists under section 40(2), the exemption relating to the disclosure of third party personal data.
6. Following an internal review the University wrote to the complainant on 17 November 2013. It continued to withhold the graduation lists under section 40(2).

### **Scope of the case**

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7. The complainant contacted the Commissioner on 18 December 2013 to complain about the way his request for information had been handled. He argued that he had made the same requests to other universities in the past and those requests had been complied with.
8. The Commissioner considers that the issue which needs to be decided is whether the graduation lists can be withheld under section 40(2).

### **Reasons for decision**

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#### **Section 40(2) – third party personal data**

9. Section 40(2) of FOIA provides that information which constitutes the personal data of someone other than the person making the request is exempt if its disclosure would contravene the DPA. In this particular case the University has claimed that disclosing the information would breach one of the data protection principles.
10. Before looking at the data protection principles in more detail it is necessary to consider whether the graduation lists constitute personal data. Personal data is defined in section 1 of the DPA as being data which identifies a living individual and relates to that individual.
11. The term 'data' is also defined in the DPA. It includes information held electronically, information held in hard copy with the intention of being recorded electronically and information held in, what is referred to as, a 'relevant filing system' (a manual filing system structured by reference to individuals in such a way as it allows information about that individual to be retrieved easily).

12. As part of his investigation the University provided the Commissioner with a sample of the withheld information. The information provided consisted of a copy of the graduation brochure for one of the years in question. From the copy it appears that these documents are held manually and simply list the students graduating under the different degrees they were awarded, eg Bachelor of Science (Health and Physical Recreation) with Honours. As such the Commissioner finds that the information does not fall within any of the definitions of data so far discussed.
13. However section 68(2)(a) of the FOIA amends the definition of data so that it includes information recorded in any form. In light of this the Commissioner is satisfied that the information constitutes data. He is also satisfied that the information, which names individual graduates and states what degree they were awarded, both identifies and relates to individuals. The information was between 9 and 13 years old at the time of the request and given the age at which the majority of students graduate the Commissioner considers it safe to assume that it relates to living individuals. The Commissioner is therefore satisfied that the information constitutes the personal data of the graduates named in the brochures.
14. The University has argued that disclosing the graduates' personal data would breach the first principle which states that personal data shall be processed fairly and lawfully and in particular, shall not be processed unless one of the conditions set out in Schedule 2 is met. When considering the first principle the Commissioner will start by looking at whether the processing is fair. If the disclosure would be unfair the information is exempt.
15. When considering fairness the Commissioner will take account of the possible consequences of the disclosure on the individuals and the reasonable expectations of the data subjects. Finally the Commissioner will consider any legitimate interest in the public having access to the information and the balance between these and the rights and freedoms of the data subjects. When looking at these issues it is important to remember that under the FOIA we are considering a disclosure to the world at large.
16. In terms of the consequence to the individuals it is not immediately obvious how the disclosure would have any tangible detriment to the data subjects.
17. Nevertheless the Commissioner considers that the graduates would not expect this information to be disclosed to the public. The University has explained that the information is only held within the brochures that were produced for each of the particular award ceremonies. At the time

the students actually attended their graduation ceremony they would have understood that details of their degree would appear in the brochure and that it would be freely available to those attending the ceremony and perhaps more widely within the student community. However in practice this disclosure would be fairly limited. Copies may have been kept as souvenirs of a celebratory event by the students or their families, but the availability of the brochure more generally would be for a limited period only. The University has stated that although the complainant had described the information as the 'published' graduation lists, the information is not in fact published. It does not appear on the University's website and does not form part of any other publication.

18. Therefore the disclosure that happened in the context of the award ceremony is very different in character than a disclosure under the FOIA. A disclosure under the FOIA could in effect create a permanent public record of the students' degree qualification which could be used as a source of reference. The Commissioner considers that such a disclosure would be intrusive. Individuals are free to choose who they disclose the history of their education to and on what basis; it should not be freely available.
19. The University has advised the Commissioner that the requested information would relate to approximately 6,000 students. It is quite probable that a number of those students will now be employed in the public sector. One factor that the Commissioner considers when looking at reasonable expectations is whether the information relates to some one's public or private life. As a rule, individuals performing a public role should have a greater expectation that, with the advent of the FOIA, information relating to that role could be made public. However considering the numbers involved, the only realistic way of assessing the expectations of the graduates is to think about them collectively rather than attempting to speculate on which students may now be public officials and to then try and differentiate between them and those in the private sector. Furthermore the Commissioner would reject any argument that public officials should expect that the details of their qualifications to be made public as a general rule. Such information would be still regarded as confidential between the employee and their employer's personnel department.
20. Finally in assessing fairness the Commissioner has looked at the legitimate interest in disclosing the graduation lists to the public and the rights and freedoms of the data subjects. The Commissioner is aware that the complainant has a private business interest in establishing whether particular students graduated from the University in the given years. However it is important to remember that a disclosure under FOIA is a disclosure to the world at large and the test relates to whether there is a public rather than a private interest.

21. The Commissioner cannot identify any clear legitimate interest in making this information available. There is a public interest in individuals being properly vetted for jobs and in not misrepresenting their qualifications. However the Commissioner is satisfied that, generally, employers adopt appropriate procedures when recruiting staff. Therefore the information does not need to be disclosed to meet that need.
  22. In conclusion the Commissioner finds that the intrusive nature of the disclosure, together with the lack of any identifiable reason why the information needs to be made public, means disclosing the graduation lists would be unfair to the students involved.
  23. Since the disclosure is unfair the Commissioner has not gone on to look at whether the disclosure would be lawful or whether it would meet any of the conditions set out in Schedule 2 condition. He is satisfied that because the disclosure is unfair it would contravene the first data protection principle. Section 40(2) is engaged.
  24. Section 40(2) is an absolute exemption, ie there is no requirement to consider the public interest test set out at section 2 of the FOIA. The exemption is engaged and the University was correct to withhold the information.
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## Right of appeal

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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: [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)

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**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**