

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

### **Decision notice**

**Date:** 7 June 2016

**Public Authority:** University of Westminster  
**Address:** 309 Regent Street  
London  
W1B 2HW

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

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1. The complainant has requested information relating to a student he believes attended the University.
2. The Commissioner's decision is that the University was correct to apply section 40(2) to some of the requested information. He therefore does not require the University to take any steps.

#### **Request and response**

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3. On 16 February 2016 the complainant wrote to the University and made a request for information.
4. The exact wording of the complainant's request is contained in a confidential annex attached to this notice. The Commissioner considers it is not possible to include this in the main body of the notice, as the wording itself is exempt from disclosure under section 40(2) of the FOIA.
5. The University responded on 15 March 2016 and provided the complainant with some of the information that fell within the scope of his request. It withheld the remaining information under section 21 and section 40(2).
6. The complainant contacted the University on 15 March 2016. The complainant disputed the University's application of section 40(2) to some of the requested information.

7. Following an internal review the University wrote to the complainant on 12 April 2016. It maintained its position that it was correct to apply section 40(2) to some of the requested information.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 13 April 2016 to complain about the way his request for information had been handled. Specifically, the complainant believes the University is no longer bound by the restrictions of the Data Protection Act 1998 (DPA) and therefore section 40(2) of the FOIA does not apply.
9. The Commissioner will consider the University's application of section 40(2) of the FOIA in the next section of this notice. The majority of the Commissioner's analysis is contained in a confidential annex attached to this notice, as it is felt that the analysis itself reveals personal data to which section 40(2) of the FOIA applies.

### **Reasons for decision**

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10. Section 40(2) of the Act states that information is exempt from disclosure if it constitutes the personal data of a third party and its disclosure under the Act would breach any of the data protection principles or section 10 of the DPA.
11. Firstly, the Commissioner must consider whether the requested information is personal data. Personal data is defined in Section 1 of the DPA as follows:

*"personal data" means data which relate to a living individual who can be identified -*

  - (a) from those data, or*
  - (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,*

*and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."*
12. The University explained why it considers the requested information constitutes personal data and why it is still bound by the DPA in relation to this particular request. The Commissioner agrees with the University's

approach and accepts that the requested information falls within the definition of personal data, as outlined above.

13. The next consideration is whether disclosure would breach any of the data protection principles outlined in the DPA. The Commissioner considers the first data protection principle is of most relevance here and this is worded as follows:

*"Personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless -*

*(a) at least one of the conditions in schedule 2 is met, and*

*(b) in the case of sensitive personal data, at least one of the conditions in Schedule 3 is also met."*

13. The Commissioner has decided in this case that disclosure of the requested information would be unfair and unlawful and therefore in breach of the first data protection principle outlined in the DPA. He is unable to explain in detail why in the main body of this notice for the reasons explained in paragraph 9 above.
14. Although there may be legitimate public interest arguments in favour of disclosure, the Commissioner has decided that these are outweighed by the distress and upset disclosure could cause and the unwarranted intrusion into the private life of a young individual.
15. For the above reasons, the Commissioner has concluded that the University was correct to rely on section 40(2) of the FOIA in this case.

## Right of appeal

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16. 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)

17. 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.
18. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**