

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 March 2024

Public Authority: The Governing Body of Royal Holloway
University of London

Address: Egham
Surrey
TW20 0EX

Decision (including any steps ordered)

1. The complainant has requested Royal Holloway University (the University) to disclose the number of unique locations, both private dwellings and non private dwellings, which have been deemed a chronic issue in terms of antisocial behaviour, broken down by calendar month and year. The University disclosed some information but withheld the remainder citing section 40(2) of FOIA.
2. The Commissioner's decision is that the University is not entitled to rely on section 40(2) of FOIA in this case.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
 - Disclose the remaining withheld information to the complainant in relation to part b) and c) of the request.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 16 May 2023, the complainant wrote to the University and requested information in the following terms:

“As a stakeholder in the Memorandum of Understanding (MOU) on information sharing signed by Surrey Police, Royal Holloway University and Runnymede Borough Council, Royal Holloway University has had an obligation to work with the other stakeholders to find a resolution to chronic issues caused by particular individuals or locations as set out in paragraph 5 of the MOU.

Since the MOU was signed by Royal Holloway University:

- a) How many unique individuals have been identified as causing a chronic issue and in which calendar month & year was each such individual first identified?
- b) How many unique locations that are private dwellings have been identified as causing a chronic issue and in which calendar month & year was each such location first identified?
- c) How many unique places that are not private dwellings (e.g. public house or street) have been identified as causing a chronic issue, what is the name of each such location and in which month & year was each such location first identified?”
6. The University responded on 13 June 2023. It disclosed the requested information, with the exception of the calendar month and year in relation to part b) and the location, calendar month and year in relation to part c). The University relied upon section 40(2) of FOIA to withhold this information.
7. The complainant requested an internal review on 22 June 2023. They do not agree that any individuals could be identified from the withheld information.
8. The University carried out an internal review and notified the complainant of its findings on 23 August 2023. It upheld its initial application of section 40(2) of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 6 September 2023 to complain about the way their request for information had been handled. They disagree that any individuals can be identified from the withheld

information and state that the University has failed to explain how it has reached this view. They do not believe section 40(2) of FOIA therefore applies and that the information should be disclosed.

10. The Commissioner considers that the scope of his investigation is to establish whether the remaining withheld information is exempt from disclosure under section 40(2) of FOIA.

Reasons for decision

Section 40 personal information

11. Section 40(2) of FOIA provides that information is exempt from disclosure if it is the personal data of an individual other than the requester and where one of the conditions listed in section 40(3A)(3B) or 40(4A) is satisfied.
12. In this case the relevant condition is contained in section 40(3A)(a)¹. This applies where the disclosure of the information to any member of the public would contravene any of the principles ('the DP principles') relating to the processing of personal data, as set out in Article 5 of the UK General Data Protection Regulation ('UK GDPR').
13. The first step for the Commissioner is to determine whether the withheld information constitutes personal data as defined by the Data Protection Act 2018 ('DPA'). If it is not personal data then section 40 of FOIA cannot apply.
14. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, he must establish whether disclosure of that data would breach any of the DP principles.

Is the information personal data?

15. Section 3(2) of the DPA defines personal data as:

"any information relating to an identified or identifiable living individual".

16. The two main elements of personal data are that the information must relate to a living person and that the person must be identifiable.

¹ As amended by Schedule 19 Paragraph 58(3) DPA.

17. An identifiable living individual is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of the individual.
18. Information will relate to a person if it is about them, linked to them, has biographical significance for them, is used to inform decisions affecting them or has them as its main focus.
19. The University confirmed that the pool of persons who are likely to have complained about antisocial behaviour in a particular location (whether a private dwelling (part b) of the request) or non private dwelling (part c) of the request) is very limited, as generally, they would reside near that location, or, in the case of the non private dwellings were present at the time of the event/situation complained about. It explained that the complainant themselves has made complaints to the University about private dwellings and non private dwellings. They are also the co-ordinator of a website, which has particular interest in alleged student antisocial behaviour in the local community and the administrator of the associated WhatsApp group.
20. The University strongly believes (as its knows the complainant is connected to at least one of the other complainants) that the complainant will know the details of the complaints submitted by others, for example the date the complaint was made and what property or location was being complained about.
21. For part b) of the request and private dwellings, the University is of the view that the withheld information will lead to the complainants being identified, the properties about which they complained about, and by extension, the identification of the tenants as students of the University and that household (members of which are recognisable minimally on sight by the complainants).
22. The University considers the withheld information is therefore information relating to the complainants and by extension the tenants as students and is therefore third party personal data.
23. For part c) of the request, the University has said the withheld information is the personal data of the complainants. It explained that because the complainant complained themselves a number of times and is working closely with others that have complained, there is a strong possibility that the complainant will be able to work out which complaint(s) led to the non private dwelling or location being identified as a chronic issue and therefore the complainant.

24. It commented that for part c) it does not consider the withheld information is the personal data of the perpetrators of the disturbance because for non private dwellings or public locations it does not consider it is possible for them to be identified.
25. The Commissioner queried the timeframe from complaints received and the location or property being deemed a chronic issue. The University explained that because of the nature of student lets, in general the 'clock is reset' each September, but a property will still be regarded as a chronic issue if there are continued complaints across two sets of tenants – whilst also being aware that complaints may be due to low tolerance on part of neighbours. It said that in the majority of cases a chronic issue is decided quickly – usually when there are a number of complaints in a short period of time and it appears that the advice that the University and community partners have provided at the first report is not being heeded. However, it stated that there are many variables in each case – level of disruption, number of complaints and complainants, tolerance levels, expectations both realistic and unrealistic, student response and so on – that the process is not formulaic in the way that is perhaps expected by residents.
26. The Commissioner has considered the University's arguments and he has decided that the withheld information is not personal data – either of the complainants or the tenants as students of the University (part b) of the request).
27. The complainant is already aware of the complaints they have made and those of others, if these have indeed been shared. The University has explained itself that it is not just one complaint which will have led to a private dwelling or non private dwelling or location being identified as a chronic issue. There are various factors at play and the use of the word 'chronic' suggests the continuing of or ongoing nature of antisocial behaviour. Its the accumulation of the number of complaints, complainants, tolerance levels, expectations and student response which will led to a private dwelling or non private dwelling or location being deemed a chronic issue. Each will be considered on a case by case basis and it will be a judgement based decision that it taken by the University.
28. The University has also explained how, although these decisions are made quickly, they do still take time to decide and the withheld information discloses no information on when the University felt the threshold was met in a given case to deem it a chronic issue.
29. The Commissioner does not agree that if a private dwelling or non private dwelling is deemed a chronic issue, that this is the personal data of the complainant(s) who initially raised concerns about that property or location. Again, it is not just that information (one complaint for

example) which will have led to that decision being made. It is a decision the University has reached based on a number of variables – the number of complaints and complainants, tolerance levels, expectations and so on - and the accumulation of all those factors. It is not directly linked back to any one complaint or any one factor.

30. In terms of part b) of the request and the potential identification of the tenants as students of the University, the Commissioner notes that some of the withheld information is quite old and students tend to move frequently around either student accommodation or rental properties. Students can also be at a property for various reasons and not themselves be a tenant. The withheld information does not provide any details of who the tenants were/are at the relevant time or indeed if it was those tenants involved in the antisocial behaviour complained about. Equally, the Commissioner does not consider the simple sight of a person is identification – we often visually see people but do not know who they are. The complainant could also do this without the disclosure of the withheld information.
31. When applying an exemption, the onus is on the public authority to demonstrate how it applies. For section 40(2), more specifically establishing first if the withheld information is personal data, a public authority must be able to demonstrate how a motivate intruder is able to identify a third party from the withheld information and any other information otherwise available to them. In this case, the University has failed to do that, for the reasons explained above.
32. The Commissioner is not satisfied that the withheld information relates to and identifies any complainant or tenant or student of the University. It does not relate to them, it does not identify them and the complainant and others working with them cannot learn anything new or additional to what they already know. He has therefore concluded that the withheld information does not fall within the definition of 'personal data' in section 3(2) of the DPA. As the withheld information is not personal data, section 40(2) of FOIA does not apply and it should be disclosed.

Right of appeal

33. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

34. 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.
35. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Samantha Coward
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