

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 October 2024

Public Authority: Governing Body of Manchester Metropolitan University

Address: All Saints Building
Manchester
M15 6BH

Decision (including any steps ordered)

1. The complainant has requested information on communications and reports between Manchester Metropolitan University (the University) and Horus Security Consultancy. The University provided emails and communications but withheld some assessment reports and a report on the University's implementation of the Prevent duty under section 40(2).
2. The Commissioner finds that with the exception of two paragraphs at the end of section six of the implementation report and appendix 2, the information in this document is not personal data and section 40(2) has been incorrectly applied. For the two paragraphs and the appendix referred to, section 40(2) is engaged and the information has been correctly withheld.
3. For the assessment reports the Commissioner finds that the University is entitled to rely on section 40(2) to withhold the information as there is no lawful basis for processing.
4. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
 - Disclose the implementation report with the exception of the last two paragraphs of section 6 and appendix 2.

5. The University must take these steps within 30 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

6. An initial information request was made to the University on 27 September 2023 in the following terms:

“Please provide copies of all correspondence and communications that mentions, or refers to, Horus Security Consultancy. I would expect this to include correspondence and communications between the university and the company, but also bulletins, briefings, reports, alerts and invoices produced by Horus Security Consultancy.”
7. The University requested clarification of the time period the request should cover on 4 October 2023 and this was provided on 24 October 2023, stating it should be information from 1 January 2021.
8. A response was sent on 8 December 2023 confirming information was held and provided redacted copies of communications and documents. Information was redacted primarily under section 40(2). Section 31 was applied to redact Horus’ bank details.
9. The complainant requested an internal review of this decision on 13 December 2023. The University responded on 15 December 2023 asking for clarification as to what part of the response the complainant was dissatisfied with and stating the request for internal review would be ‘on hold’ until this was received. The University followed this up on 5 February 2024 and the complainant responded on 29 February 2024 to explain they did not think the public interest had been correctly considered.
10. An internal review was conducted and the outcome communicated to the complainant on 2 April 2024. The internal review upheld the University’s decision.

Scope of the case

11. The complainant contacted the Commissioner on 21 May 2024 to complain about the way their request for information had been handled.

12. The complainant informed the Commissioner they did not wish to challenge the use of section 31 to redact Horus' bank details. They also stated they were not challenging the redaction of names of University or Horus staff from the documents. As such the Commissioner considers the scope of his investigation is to determine if the University has correctly relied on section 40(2) to withhold all remaining information in scope of the request.

Reasons for decision

Section 40 – personal data

13. Section 40(2) of FOIA allows a public authority to withhold information that constitutes the personal data of someone other than the requester, and if disclosing that information would contravene any of the data protection principles¹ set out under UK data protection law.
14. The two main elements of personal data are that it must relate to a natural person (i.e. a living individual), and that the person must be identifiable from the information (either directly or indirectly).
15. By way of background, the University engages Horus in situations where it needs support gathering information about an event and/or external speaker to ensure that appropriate arrangements can be put in place. Consultancies, such as Horus, are utilised to undertake research and provide insights and their recommendations are put to senior decision-makers at the University. The University is clear that it does not engage Horus for any investigatory work in relation to staff or students.
16. In this case the withheld information is contained in reports – assessment reports on speakers/events and a report by Horus to the Executive Board on the University's implementation of the Protect duty.
17. The information in the Horus reports has been withheld in full under section 40(2). The Commissioner notes that the assessment reports do contain information that is obviously personal data ie names, background information, discussions of individuals, speakers and events. There is also information in these reports that is not obviously personal data, for example discussions of current events but the University argues that as the individuals concerned were unaware that background

¹ The data protection principles are set out in Article 5(1) of the UK General Data Protection Regulation and section 34(1) of the Data Protection Act 2018.

checks were being done even disclosing the more general current events parts of these reports could lead to identification of the individuals concerned.

18. The Commissioner accepts there is a risk of identification even from the more mundane, factual information on current events/affairs. Details of ongoing situations could lead a motivated individual to use this to look at who may be currently (or was at the time) conducting speeches or lectures on these topics or what events may be, or may have been, scheduled related to this. As such the Commissioner accepts the assessment reports in their entirety can be classified as personal data.
19. In terms of the implementation report; the Commissioner has looked at the detail in this report and does not consider that the majority of this could be said to be personal data as it evaluates the University's practices and procedures. The final two paragraphs of section six do contain specific details of events that the Commissioner accepts could lead to the identification of individuals and are personal data. Similarly information in appendix 2 could also lead to the identification of individuals.
20. For the remaining parts of the Horus report on the Implementation of the Prevent Duty the Commissioner finds that section 40(2) has not been shown to be engaged and this information should now be disclosed.
21. The Commissioner is satisfied the other two paragraphs in this report, its appendix 2 and the assessment reports are personal data within the definition contained in section 3(2) of the DPA.
22. He has therefore gone on to consider whether the disclosure of this information would contravene the data protection principles.

Would disclosure contravene the data protection principles?

23. The fact that information constitutes personal data does not automatically exclude it from disclosure under FOIA. The second element of the test under section 40(2) is to determine whether disclosure would contravene any of the data protection principles.
24. The most relevant data protection principle in this case is the one under Article 5(1)(a) of the UK GDPR, which states:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject".

25. In the case of an FOIA request, the personal data is processed when it is disclosed in response to the request. This means that the information can only be disclosed if doing so would be lawful, fair and transparent.
26. For disclosure to be "lawful", there must be a "lawful basis" for that processing. If there is no lawful basis under data protection law, the personal data cannot be disclosed. The available lawful bases for processing are listed in Article 6(1) of the UK GDPR. The disclosure must also be generally lawful (i.e. not in contravention of any other laws).
27. Of the six lawful bases listed under Article 6(1) of the UK GDPR, the ones most likely to apply to the disclosure of personal data under FOIA are those under Article 6(1)(a) and Article 6(1)(f):
 - (a) the individual to whom the requested information relates has given consent to the disclosure under FOIA, or
 - (f) the disclosure of the requested information is necessary for the purposes of legitimate interests pursued by the public authority or by a third party [e.g. the requester], except where such interests are overridden by the interests or fundamental rights and freedoms of the individuals to whom the requested information relates.
28. As the individuals to whom the requested information relates have not consented to its disclosure in this case, the Commissioner has gone on to consider whether the "legitimate interests" lawful basis under Article 6(1)(f) would apply to the disclosure.
29. When considering whether Article 6(1)(f) applies to the disclosure of personal data, public authorities must consider:
 - whether there is a legitimate interest being pursued,
 - whether disclosure of the information is necessary to satisfy that interest, and
 - whether the legitimate interest is overridden by the rights and freedoms of the individuals to whom the information relates.
30. The Commissioner recognises that there is a legitimate interest in understanding how public authorities are complying with their Prevent duties. Prevent is one of the key pillars of the Government's overall counter-terrorism strategy (CONTEST) and the duty requires specified public authorities, such as education bodies, to help prevent the risk of

people becoming terrorists or supporting terrorism. The Prevent duty is included in the Counter-Terrorism and Security Act 2015 at section 26².

31. The University's website contains information on its obligations under section 26³, including a privacy notice setting out what information it may collect and how it will be used.
32. The complainant considers if the withheld information is discussing a high-profile speaker then there is a legitimate interest in disclosing the information. They state that as Horus is a private intelligence company used by Universities there is a need to understand how they monitor students and speakers and to scrutinise the extent of surveillance activities used by the University.
33. The Commissioner considers the complainant is pursuing a legitimate interest in understanding in more detail how the University employs a private security firm to undertake analysis of individuals and events and the extent of the surveillance, if any, that is undertaken. This information is not in the public domain and there does not appear to be a less-intrusive way of achieving the legitimate interest so disclosure of the withheld information would be necessary to meet that interest.
34. In terms of the two paragraphs from the implementation report the legitimate interest accepted by the Commissioner to apply to the assessment reports does not similarly apply to this information. These paragraphs relate to specific incidents involving students and disclosing this information would not increase public understanding of how the University complies with its Prevent duties or how it uses private firms to assist with monitoring, surveillance and/or threat assessment. For the information in these two paragraphs the Commissioner does not consider there is a legitimate interest argument and this information should be withheld.
35. The Commissioner has gone on to consider whether the legitimate interest being pursued by the complainant is overridden by the interests or fundamental rights and freedoms of the individuals to whom the information relates in relation to the information in the assessment reports.

Balance between legitimate interests and the data subject's interest or fundamental rights and freedoms

² [Counter-Terrorism and Security Act 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

³ [Prevent Duty | Manchester Metropolitan University \(mmu.ac.uk\)](https://www.mmu.ac.uk)

36. To appropriately balance the legitimate interests in disclosure against the data subjects' interests or fundamental rights and freedoms, it is necessary to consider the impact of disclosure. For example, if the data subject would not reasonably expect the information to be disclosed to the public under FOIA, or if such disclosure would cause unjustified harm, their interests or rights are likely to override the legitimate interests in disclosure.
37. In considering this balancing test, the Commissioner has taken into account the following factors:
 - the potential harm or distress that disclosure may cause;
 - whether the information is already in the public domain;
 - whether the information is already known to some individuals;
 - whether the individuals to whom the information relates expressed concern about its disclosure; and
 - the reasonable expectations of the individuals to whom the information relates.
38. In the Commissioner's view, a key issue is whether the individuals concerned have a reasonable expectation that their information will not be disclosed. These expectations can be shaped by factors such as an individual's general expectation of privacy and the purpose for which they provided their personal data. It is also important to consider whether disclosure would be likely to result in unwarranted damage or distress to that individual.
39. The University explained that Horus' methodology is to use open source and social media reporting to provide briefings. They use qualitative research and discreet techniques to obtain information that is publicly available. The complainant has argued that the withheld information is therefore likely already in the public domain and known to people so there is not likely to be any detriment to the individuals that would outweigh the legitimate interests in this case.
40. The Commissioner accepts this point. If the information is all gathered from open sources then it will be harder to argue that the individuals concerned would be disadvantaged by disclosing the reports. However, the individuals involved in the reports have not been made aware that such reports exist or would be compiled. The University has confirmed that external speakers do not have any expectation that this kind of processing might occur or that security/background checks will take place and there would be no expectation that such information would be put in the public domain.

41. The issue for the Commissioner though is whether the legitimate interest in the information is sufficient to outweigh the rights and freedoms of the individuals. It is not enough to simply state that the individuals would not expect this.
42. On this point the University argues that disclosure would impact the individuals' right to privacy in Article 8 of the European Convention on Human Rights and this would, in turn, cause distress, embarrassment, reputational damage and discrimination. The University also considers there is a risk that disclosing assessment reports on these individuals could impact the likelihood of other University's wanting to work with them to deliver external speaking engagements if they are considered high risk in terms of potential protests. The University states the purpose of these assessments is to ensure events can be delivered safely, not to stop events taking place.
43. In making a decision the Commissioner has closely examined the information in the assessment reports and notes they are largely factual in detail, with only very small comments added in by Horus. The facts appear to all be based on publicly available information so there is nothing that is not already known. The main issue is that the University has not made the individuals aware that such assessments may take place or have taken place and whether revealing this would impact the individuals themselves.
44. The Commissioner's view is that individuals who are taking part in events or speaking engagements on topical issues that generate fierce debates are likely to have some expectation that assessments on safety will take place. There is a duty on Universities to ensure that events can take place safely and that the right to free speech is respected and producing assessment reports to weigh up any safety concerns about events is part of this process. Whether this should be transparent or not, and whether this should be conducted by private security firms is not an issue for this notice.
45. Should the information be disclosed the University's primary argument is that there could be an impact on the individual's ability to deliver other events or speaking engagements. The Commissioner does not consider this to be a very likely risk. The assessment reports are relevant to a specific time and the overall verdict on risk will be based on the current situation. This will change over time. It may be that risks increase or decrease but should the individuals concerned be in a position where they are considered for other events in the future the Commissioner would expect other institutions would conduct their own assessments based on the information they have available at that time and not on a previous assessment in different circumstances.

46. However, knowing that such reports have been compiled without their knowledge and that open source data has been used is likely to cause some distress to the individuals. As open source data is used, such as news reports and social media there is a possibility some of the information in the reports will be subjective as posts on social media sites offering views may not represent the full picture or spectrum of opinions.
47. The Commissioner considers there will be a level of distress to the individuals concerned from disclosure of their information in this format. Whilst the information may all be publicly available it is not available in this form ie compiled into a threat assessment report. Whilst it is not unreasonable to expect speakers at events to expect such assessments will be made, it is likely beyond reasonable expectations to expect it to take place in this way and to then have this information placed in the public domain.
48. The Commissioner is aware this argued distress is hard to quantify but balanced against this the Commissioner does not consider the legitimate interest in the information to be particularly high. The Commissioner acknowledges the legitimate interest in understanding how these reports are produced by a private firm and the methodology used. However, he considers this legitimate interest can be met to a large extent without disclosure of the reports themselves as the University has already confirmed that the information is all open source and no covert methods were used. Disclosing the reports in full will show the methodology used by Horus in more detail but the Commissioner does not consider the legitimate interest in this is enough to outweigh the distress to the individuals from having this information in this format put into the public domain when they were unaware it existed.
49. As such, in conclusion the Commissioner finds that for the information in the assessment reports there is no Article 6 basis for processing so disclosure of the information would be unlawful.

Right of appeal

50. 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

51. 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.
52. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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