

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 December 2024

Public Authority: The Governing Body of the University of Hull
Address: Cottingham Road
Hull HU6 7RX

Decision (including any steps ordered)

1. The complainant has requested information about academic staff declaring as White at the University of Hull ('the University'). The University disclosed some information and has relied on section 40(2) of FOIA to withhold the remaining information. This exemption concerns personal data.
2. The Commissioner's decision is as follows:
 - The University hasn't fully addressed the complainant's request for information about White academics in the University as a whole and so hasn't complied with section 1(1) and section 10(1) of FOIA.
 - The requested information about White academics in two specific Schools and a specific Faculty to which the University has applied section 40(2) of FOIA is special category personal data and the University is correct to withhold it.
3. The University must take the following steps to ensure compliance with the legislation:
 - provide a response that complies with FOIA to the request for the fellowship status and qualifications of White Lecturers across the University for March 2024; and
 - provide a response that complies with FOIA to the request for the fellowship status and qualifications of White Professors, Readers,

Senior Lecturers and Lecturers across the University for March 2022 and March 2020.

4. The University must take this step 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

5. In February and March 2024, the complainant had submitted requests to the University for information about White and ethnic minority academic staff in the University. The University addressed these requests as follows.
6. On 12 March 2024, the University provided the following information about White and British Chinese or Asian Chinese staff, across the University and in the School of Nursing and Midwifery and the Faculty of Health Sciences (its reference 3101):
 - the percentage of British Chinese or Asian Chinese (academic) staff employed
 - the percentage and numbers of both groups – White and British or Asian Chinese - who were Senior Lecturers, Readers and Professors, across the University and in the School and Faculty
 - the percentage and numbers of White Senior Lecturers, Readers and Professors without a PhD (in three instances the University had indicated '<5') in the School and Faculty; and
 - the percentage and numbers of White Senior Lecturers, Readers and Professors without Senior Fellow Higher Education Academy (HEA) status (in one instance the University has indicated '<5') in the School and Faculty.
7. The information provided was a 'snapshot' and took account of the situation at the time of the request in March 2024.
8. The University says it then also provided information about "BAME staff" – the percentage of "BAME" academic staff across the University, the percentage of these staff who were Senior Lecturers, Readers and Professors, and the percentage and number of these without a PhD and without Senior Fellow HEA status.

9. Where the University and the complainant have used it, the Commissioner has reproduced the term "BAME" as it would be confusing for him to use a different term.
10. To clarify the information they were seeking, on 27 March 2024 the complainant submitted a further request for information to the University – in table form - about the ethnicity, positions, highest qualifications and fellowship status with the HEA of White, "BAME" and Chinese academic staff, for March 2020, 2022, and 2024, in the Schools of Nursing and Midwifery and Paramedical and Advanced Practice, and the Faculty of Health Sciences.
11. On 26 April 2024 the University responded to that request (its reference 3123). It disclosed some information – a breakdown by percentage of White and ethnic minority academics in the University as a whole, in the Schools of Nursing and Midwifery and Paramedical and Advanced Practice, and the Faculty of Health Sciences, for March 2024, March 2022 and March 2020. The University didn't provide a breakdown by type of academic and, where the figure was less than 5, the University withheld the specific figure under section 40(2) of FOIA.
12. The University noted that its employees have the option not to declare their ethnicity. As such the figures provided didn't include individuals who had preferred not to confirm their ethnicity. The Commissioner notes that this would potentially be the case for many of the figures the University has disclosed.
13. On the same day, 26 April 2024, the complainant wrote to the University and said that it hadn't provided the numbers and percentages for the highest qualifications, and fellowship status with the HEA that they'd requested.
14. On 29 April 2024, the complainant wrote to the University again and requested information in the following terms, which was, in effect, a new request:

"To address the concerns of identifiable results, please kindly limit the release of information on White academics only."
15. Following an internal review the University wrote to the complainant on 21 May 2024. It acknowledged that although some information about academics' positions and qualifications is in the public domain – for example on its staff directory - this didn't include information about their ethnicity. The University has also confirmed to the Commissioner that not all academics proactively publish information about their qualifications or HEA status.

16. The University said it had considered disclosing the requested data "at the requested level along with ethnicity [ie the request of 27 March 2024] including the refinement of White only [ie the request of 29 April 2024]." It confirmed that owing to the small numbers involved, it would be possible to "work back" and identify both "White and BAME" staff. The University confirmed that it therefore maintained its reliance on section 40(2).
17. The University also noted that FOIA doesn't oblige a public authority to create new information "as per the table provided" ie the table the complainant had asked the University to complete. It said that although it holds the information within its records it isn't held and broken down "in this way". The University said it had tried to facilitate the request and had provided the information that it was able to provide.
18. In correspondence to the Commissioner on 7 November 2024, the complainant confirmed,

"I wanted information on the fellowship status and PhD qualifications of all academics in the University, the Faculty of Health Sciences, Nursing /Midwifery department and Paramedic and Advanced Practice department. I only wanted information for year 2019 to year 2023.

This was declined due to University's concerns about releasing information on non-white colleagues which can become identifiable due to the small numbers. Hence I negotiated and limited my request to the same information about the majority (Whites)."
19. By "academics" the Commissioner understands the complainant to mean the Professors, Readers, Senior Lecturers and Lectures requested in the table they sent to the University on 27 March 2024 which they subsequently refined to just White academics in those roles.
20. The University has confirmed to the Commissioner that it only provided percentage figures and not numbers as well, where both had been requested, because some of the numbers were extremely low and it considered that the percentages would provide sufficient detail. The University applied section 40(2) to the numbers and the percentage figures that are less than 5.
21. Because it wasn't clear from its initial submission to him, the Commissioner also asked the University whether it didn't hold fellowship status and qualifications for the White academics at all, or whether it held the information but, because of the way it holds information in its records, it would take too long to compile this specific information.
22. The University confirmed that it holds this information, for all academics and its concern is the potential disclosure of personal data.

Reasons for decision

23. Based on their complaint to the Commissioner and the complainant's subsequent clarification at paragraph 18, this reasoning focusses on the refined request of 29 April 2024, which concerns academics declaring as White.
24. The Commissioner will consider, first, whether the University has responded to the request for the fellowship status and qualifications of White Professors, Readers, Senior Lecturers and Lecturers across the University for March 2024, March 2022 and March 2020.
25. The Commissioner will then consider whether the University is entitled to rely on section 40(2) of FOIA to withhold the numbers and percentages associated with fellowship status and qualifications of White academics in FHS, the School of Nursing and Midwifery and the School of Paramedical and Advanced Practice, for the same periods.

Section 1 – general right of access to information held by public authorities

26. Under section 1(1) of FOIA a public authority must (a) confirm whether it holds the information an applicant has requested and (b) communicate the information if it's held and isn't exempt information.
27. Section 10(1) obliges the authority to comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
28. As noted, the complainant had said that they were seeking the fellowship status and PhD qualifications of all academics in the University but noted that they'd subsequently refined that down to White academics only.
29. In response to the earlier request (the University's reference 3101), for the period March 2024, the University had provided the complainant with:
 - the percentage and number of White academics across the University who were Senior Lecturers, Readers and Professors
 - the percentage and number of White Senior Lecturers, Readers and Professors across the University who didn't have a PhD; and
 - the percentage and number of White Senior Lecturers, Readers and Professors across the University without senior fellow HEA status.

30. In its response 3123 to the current request, the University has also disclosed the percentage of White "academics" across the University for March 2024, 2022, and 2022. It has told the Commissioner that it's also previously disclosed the numbers of White "academics" across the University for these periods. The Commissioner understands that by "academics" in that response the University has included the four groups that the complainant requested in their table: Professors, Readers, Senior Lecturers and Lecturers.
31. With the above information, it's possible to deduce the number of White Professors, Readers and Senior Lecturers across the University who do have a PhD and who do have senior fellow HEA status, for March 2024, even though no specific figure for this group has been provided. This can be done by subtracting the number of White academics who don't have a PhD and the number of White Academics who don't have senior fellowship status, from the total number of White Academics.
32. As such, the Commissioner is satisfied that the University has addressed this element of the complainant's request, as articulated at paragraph 18, for those three groups of academics.
33. However, the University hasn't previously disclosed the information at paragraph 29 for March 2022 and March 2020, or in relation to Lecturers.
34. The complaint has requested – in numbers and percentages - the fellowship status and qualifications of White Professors, Readers, Senior Lecturers and Lecturers for March 2024, March 2022 and March 2020 across the University as a whole.
35. The University has provided the numbers and percentages in relation to the fellowship status and qualifications of White Professors, Readers and Senior Lecturers across the University for March 2024.
36. The information that remains outstanding is numbers and percentages relating to the fellowship status and qualifications of White Lecturers across the University for March 2024, and the same information for all four groups of White academics for March 2022 and March 2020.
37. Because the complainant requested certain information that the University hasn't provided a response to, the University hasn't fully complied with section 1(1) and 10(1) of FOIA.

Section 40 – personal data

38. Because of the small numbers involved and the granularity of the requested information, the University has applied section 40(2) of FOIA to the numbers and percentages associated with fellowship status and qualifications of White academics in FHS, the School of Nursing and Midwifery and the School of Paramedical and Advanced Practice. This is information that the complainant is also seeking.
39. Under section 40(2) of FOIA information is exempt from disclosure if it's the personal data of an individual other than the applicant and disclosure would contravene any of the principles relating to the processing of personal data that are set out in Article 5 of the UK General Data Protection Regulation (UK GDPR).
40. The most relevant principle is Article 5(1)(a). This states that:

"Personal data shall be processed lawfully, fairly and in a transparent manner in relation to the data subject."
41. The Commissioner has first considered whether the withheld information can be categorised as other individuals' personal data and, if appropriate, whether it's special category data.
42. Personal data is defined as information that relates to a living individual and from which the individual can be identified.
43. On 26 April 2024, for March 2020, 2022, and 2024, the University disclosed the percentage of White and ethnic minority staff for all academics, FHS academics, Nursing and Midwifery academics and Paramedical and Advance Practice academics. As noted, for some of the percentages, the University had stated '<5' because the figures involved were small. As also noted, the University had previously also disclosed the numbers for White Professors, Readers and Senior Lecturers across the University.
44. It should be noted that the information relating to ethnicity here is the information that employees have chosen to declare to their employer, the University. Ethnicity is about how an individual sees themselves and their heritage; it isn't defined by how other people see them.
45. The University has noted that the request is for a breakdown academics declaring as White, according to their positions (Lecturer, Senior Lecturer, Readers and Professors) Senior Fellowship status and PhD qualifications. The request is also for the breakdown of the Faculty of Health Sciences (FHS), School of Paramedical and Advanced Practice

and the School of Nursing and Midwifery academics and specific dates March 2020, 2022, and 2024.

46. In its substantive submission to the Commissioner, the University said that its HR team spent a great deal of time trying to populate the table the complainant had sent to it on 27 March 2024. It was only once the table was populated that the degree of risk of identifying individuals at the level requested was clear. The populated table showed both numbers and percentages, including figures less than 5, which, when broken down to the level requested, would, the University said, clearly identify individuals working within the departments, in some areas especially.
47. The University went on to say that because the complainant had requested numbers, it felt they [or someone else] could still work out the numbers in one area because it had already disclosed the percentages and the number of White individuals. As an example, the University discussed the figures for one of the departments and what these figures would reveal but the Commissioner hasn't included that example in this notice.
48. The University noted that the request being considered was seeking to drill down to very low numbers - subsets of subsets of staff. It explained why it wouldn't be possible even to disclose '0' in some instances as this would still identify, and disclose the ethnicity of, certain members of staff.
49. In addition to his initial letter to the University, the Commissioner had a number of subsequent communications with the University about the request and the withheld information, by email and by phone.
50. The University has provided the Commissioner with examples of the information it's withholding, for the two Schools and the Faculty, which he's considered.
51. For the two Schools and the Faculty the information being withheld is the number and percentage of White Professors, Readers, Senior Lecturers and Lectures with Senior Fellowship (SF) and PhD, with PhD only, with SF only and with no SF or PhD.
52. The Commissioner has first considered the examples of information from the Schools of Nursing and Midwifery and Paramedical Advance Practice. For these Schools, in the majority of instances the numbers are very small and fewer than five. In three instances the number is greater than five.
53. The University has noted the breakdown by role and qualifications that has been requested here. Taking account of these factors, the

information that it has provided previously, the small numbers involved and what may already be known to the complainant or others, it is concerned that disclosing the figures would enable someone to deduce information about specific academics. By piecing information together, it would be possible to work out who the academics are, what their qualifications are, whether they have senior fellowship and, of most sensitivity, what their declared ethnicity is. For example, if someone knows that every Professor in a specific department, who has a PhD, identifies as White, as soon as they identify a Professor in that department, who has a PhD, they will know that that Professor identifies as White.

54. Having reviewed these information examples, the Commissioner agrees that the University is correct to be cautious, because of the small numbers involved and the granularity of the requested information.
55. Article 9 of the UK GDPR defines 'special category' as being personal data which reveals racial, political, religious or philosophical beliefs, or trade union membership, and the genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation.
56. Having considered the wording of the request, and viewed a sample of the withheld information, the Commissioner finds that the requested information is special category data. He has reached this conclusion on the basis that the information would reveal individuals' declared ethnicity.
57. Special category data is particularly sensitive and therefore warrants special protection. It can only be processed, which includes disclosure in response to an information request, if one of the stringent conditions of Article 9 can be met.
58. The Commissioner considers that the only conditions that could be relevant to a disclosure under FOIA are conditions (a) (explicit consent from the data subject) or (e) (data made manifestly public by the data subject) in Article 9.
59. The Commissioner has seen no evidence or indication that the individuals concerned have specifically consented to this data being disclosed to the world in response to FOIA request or that they have deliberately made this data public.
60. As none of the conditions required for processing special category data are satisfied there is no legal basis for its disclosure. Processing the special category data associated with the two Schools would therefore

breach principle (a) and so this information is exempt under section 40(2) of FOIA.

61. The Commissioner has finally considered the FHS. This Faculty is larger than the two Schools that he's considered and so more of the figures are greater than five.
62. However, the Commissioner has also considered the information that has already been disclosed. This includes the total number and percentage of White Professors, Readers and Senior Lecturers (University reference 3103) and the percentage of White academics (ie the total of the above three groups and, in addition, Lecturers) and the same group of academics of other ethnicities in this Faculty for March of the three years requested (University reference 3123). And he's considered the granular nature of the information being requested; that is, the request concerns four different groups of academics in FHS and each of the groups is further divided into four sub groups related to their qualifications and fellowship status.
63. The Commissioner is persuaded that, if the FHS information were to be disclosed, it would potentially disclose the declared ethnicities of specific members of academic staff; both White staff and staff of other ethnicities (the complainant has previously requested and been provided with relevant information about "BAME" and Chinese academics).
64. Someone, particularly someone working within the University or within FHS and who is familiar with FHS's current and previous staffing, could piece together the disclosed information with information that's previously been disclosed. They could also piece it together with information they may already know or could find out about certain staff, including for example, their qualifications or fellowship status.
65. The Commissioner considers that in this way would be possible to identify specific members of academic staff and therefore identify the ethnicity they declare as. Where the numbers associated with White academics are greater than five, this could still indirectly disclose the sensitive personal data of staff who declare as other ethnicities.
66. The Commissioner is therefore satisfied that the information relating to FHS that the University is withholding can also be categorised as sensitive personal data. For the reasons discussed above, he finds that there's again no legal basis for disclosing this information. Processing the special category data associated with the Faculty of Health Sciences would breach principle (a) and so this information is also exempt under section 40(2) of FOIA.

Other matters

67. The Commissioner would like to put on record his thanks to the University for its engagement and cooperation in this investigation and for responding to his various queries quickly.

Right of appeal

68. 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

69. 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.
70. 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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