

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

### **Decision notice**

**Date:** 01 February 2019

**Public Authority:** The Governing Body of the University of Hertfordshire

**Address:** University of Hertfordshire  
B204 College Lane  
Hatfield  
Hertfordshire  
AL10 9AB

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

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1. The complainant requested information relating to the Clinical Psychology Programme. The University of Hertfordshire (University) refused to provide the requested information citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so.
2. The Commissioner's decision is that the University has correctly applied section 40(2) of FOIA to the withheld information.
3. The Commissioner does not require the public authority to take any steps as a result of this decision notice.

### **Request and response**

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4. On 11 April 2018 the complainant made the following request for information:

*'I request the University of Hertfordshire provide information in respect of the 'Clinical Psychology Programme' commencing (i) 2016, (ii) 2017, (iii) 2018, as follows for each year separately:*

*(1) The number of applications received - detailing (a) the number of Male applicants and Female; and (b) the number of Disabled Persons.*

*(2) The number of persons shortlisted for interview, detailing (a) the number of offers to Males and number of offers to Females; and (b) the number of Disabled Persons.*

*(3) The number of persons offered employment as Trainee Clinical Psychologists - detailing (a) the number of offers to Males and number of offers to Females; and (b) the number of Disabled Persons; and (c) detailing in each case whether NHS-funded or Fee-paying?*

*(4) The number of acceptances - detailing (a) the number of Males and the number of Females; and (b) the number of Disabled Persons; and (c) detailing in each case whether NHS-funded or Fee-paying?*

*(5) The number of applicants in the following Age groups:*

*20-29*

*30-39*

*40-49*

*50-59*

*60 and above.*

*(6) The number of interviews offered to persons in the following Age groups:*

*20-29*

*30-39*

*40-49*

*50-59*

*60 and above.*

*(7) The number of offers to persons in the following Age groups:*

*20-29*

*30-39*

*40-49*

*50-59*

*60 and above.*

*(8) The number of acceptances by persons in the following Age groups:*

*20-29*

*30-39*

*40-49*

*50-59*

*60 and above.*

*(9) The highest qualification (and degree classification) held for each person offered entry to the Clinical Psychology Programme.'*

5. On 15 May 2018 the University disclosed the information but in line with their procedure for small numbers it showed these as '<7' to reduce the risk of identifying individuals.
6. On 15 May 2018, the complainant queried the answer provided for question 9, disputed that the small numbers would identify individuals and requested clarification on why the numbers of offers differed each year and statutory reporting requirements.
7. The University provided an internal review response on 16 July 2018 disclosing the requested information for question 9 and providing the requested clarification. It cited section 40 (personal data) of FOIA to refuse to provide the small numbers that had been suppressed.

### **Scope of the case**

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8. The complainant contacted the Commissioner on 17 July 2018 to complain about the way his request for information had been handled. He argued that the specific number of persons selected (at various stages) would not identify individuals and that other Authorities *'recruiting persons for the exact same employment programme in other healthcare regions have readily provided full details of the numbers in each category'*.
9. The Commissioner considers the scope of this case to be to determine if the University has correctly applied section 40(2) FOIA to the withheld information.

### **Reasons for decision**

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#### **Section 40(2) Personal information**

10. The public's right of access to the personal data of third parties is in effect governed by the Data Protection Act. At the time the request was made and dealt with by the University the relevant Data Protection Act was the 1998 Act. Since that time the Data Protection Act 2018 has come into force and section 40(2) of the FOIA has been amended to accommodate the changes it has introduced. However the Commissioner's role is to determine whether the University correctly applied the legislation that was in force at the time it was handling the request.
11. At that time section 40(2) of the FOIA provided that a public authority is entitled to refuse a request for information which constitutes the

personal data of someone other than the person making the request, if disclosing that information would breach any of the data protection principles set out in Schedule 1 of the Data Protection Act 1998 (the DPA).

## **Section 40(2)**

12. In order to rely on the exemption provided by section 40(2), the requested information must therefore constitute personal data as defined by the DPA. Section 1 of the DPA defines personal data 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.’
13. Secondly, and only if the Commissioner is satisfied that the requested information is personal data, she must establish whether disclosure of that data would breach any of the data protection principles under the DPA.
14. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner’s considerations below have focused on the issue of fairness.

### **Is the withheld information personal data?**

15. As explained above, the first consideration is whether the withheld information is personal data. The information requested is the specific small numbers suppressed by the University in the provided table of information relating to male, female and disabled applicants for the 15 places per year on the 'Clinical Psychology Programme' over the last 3 years. The University has stated that it suppresses all small numbers to 'less than 7' on all statistic related FOIA requests.
16. The Commissioner has been provided with the withheld information and notes that some of the smaller figures can be calculated from the other figures. For example, subtracting the female number of places offered in

2016 (17) from the total (20) gives the male total which has been suppressed (3). As this figure (3) can be calculated from the other figures, it has in effect already been disclosed. However, this is not the case for the numbers of places offered to, or accepted by, candidates who disclosed a disability. Therefore, the Commissioner will focus her investigation on the suppressed numbers that cannot be deduced, in particular, the small number of applicants who disclosed a disability.

17. The Commissioner's guidance on what is personal data<sup>1</sup> states that if information 'relates to' an 'identifiable individual' it is 'personal data' regulated by the DPA.
18. The information in this case doesn't directly identify individuals. However, because the name of an individual is not known, it does not mean that an individual cannot be identified. The aforementioned guidance states the following:

'A question faced by many organisations, particularly those responding to Freedom of Information requests, is whether, in disclosing information that does not directly identify individuals, they are nevertheless disclosing personal data if there is a reasonable chance that those who may receive the data will be able to identify particular individuals.'

It also states:

'The starting point might be to look at what means are available to identify an individual and the extent to which such means are readily available. For example, if searching a public register or reverse directory would enable the individual to be identified from an address or telephone number, and this resource is likely to be used for this purpose, the address or telephone number data should be considered to be capable of identifying an individual.

When considering identifiability it should be assumed that you are not looking just at the means reasonably likely to be used by the ordinary man in the street, but also the means that are likely to be used by a determined person with a particular reason to want to identify individuals. Examples would include investigative journalists, estranged partners, stalkers, or industrial spies.'

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<sup>1</sup><https://ico.org.uk/media/for-organisations/documents/1554/determining-what-is-personal-data.pdf> & [https://ico.org.uk/media/for-organisations/documents/1549/determining\\_what\\_is\\_personal\\_data\\_quick\\_reference\\_guide.pdf](https://ico.org.uk/media/for-organisations/documents/1549/determining_what_is_personal_data_quick_reference_guide.pdf)

19. The Commissioner directed the University to the recent first tier tribunal decision which considered the suppression of small numbers [http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1995/Miller,%20Claire%20EA-2016-0265%20\(20.04.17\).pdf](http://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i1995/Miller,%20Claire%20EA-2016-0265%20(20.04.17).pdf) and the Upper Tribunal decision which upheld the decision that individuals would not be identified if the small numbers were disclosed. (Information Commissioner v Miller – GIA/2444/2017 (EA/2016/0265))
20. The University considered that the very small number of applicants to the programme demonstrates that there is only a small number of clinical psychology practitioners nationally: *'it could be easy for a clinical psychology practitioner, or indeed anyone with particular knowledge of this field, to identify applicants to the programme.'*
21. Although FOIA is motive blind, it is relevant to note that the complainant has a specific interest in, and knowledge of, this programme. The University stated that in 2018 the complainant was refused a place on this programme and since then has regularly corresponded, and made requests for information, about this programme.
22. It is clear to the Commissioner that the information in this case 'relates to' some of the 15 individuals per year on the Clinical Psychology Programme at the University. The Commissioner accepts the University's point that there is a relatively small circle of professional Clinical Psychologists, and associated medical professionals, and this increases the potential for colleagues to have some knowledge of where an individual trained and qualified which could assist identification.
23. Given the overall small numbers in the University's programme (15 per year), the nature of the request (for a detailed breakdown of candidates), and the personal knowledge of the complainant about this programme, the Commissioner considers that it is reasonable to assume that the individuals from such a small population could be identified if the suppressed numbers were disclosed.
24. Therefore, the Commissioner is satisfied that the requested information in this case constitutes personal data. The Commissioner notes the recent Upper Tribunal decision but in this case considers that disclosure of the suppressed numbers (that cannot be deduced from the other figures) could potentially lead to identification of the individuals.

### **Sensitive personal data**

25. Any consideration of fairness must first determine whether the requested information is defined as sensitive under the DPA. Section 2 of the DPA defines sensitive personal data as information which relates to:

- (a) racial or ethnic origin
- (b) political opinions
- (c) religious beliefs
- (d) trade union membership
- (e) physical or mental health
- (f) sexual life
- (g) criminal offences, sentences, proceedings or allegations.

26. Most of the withheld information (that cannot be calculated from the provided figures) falls into category (e) of sensitive personal data as it relates to applicants who have disclosed a disability. As such, by its very nature, this has been deemed to be information that individuals regard as the most private information about themselves.

### **Would disclosure breach the Data Protection Principles?**

27. The Data Protection Principles are set out in Schedule 1 of the DPA. The first principle and the most relevant in this case states that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
28. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual, the potential consequences of the disclosure and whether there is legitimate public interest in the disclosure of the information in question.

### **Reasonable expectations**

29. The University considers all of the redacted information to be personal data belonging to third parties. Applicants are told by the University that their application will be treated in the '*strictest of confidence*' and the information used for very limited purposes. In particular, the equal opportunities data is collected and collated by the Clearing House for postgraduate courses in Clinical Psychology which clearly states that the information will be anonymised and that consent is required: '*Some categories with small numbers are grouped together to maintain anonymity*'. (see the website <http://www.leeds.ac.uk/chpccp/equalopps.html>)
30. The University provided the Commissioner with a sample of the equal opportunities form used to collect the information. The form states that it is used to produce anonymised data and candidates are asked to give their consent for 3 specific areas.
31. The Commissioner understands that the University does not routinely make public the withheld information.

### **Consequences of disclosure**

32. Disclosure is unlikely to be fair if it would have unjustified adverse effects on the individuals. In this case the University has stated that the suppressed information relates to the applicant's private lives. The figures relate to demographic and private information (including whether they disclosed a disability) concerning the successful (or not) application for this specific Clinical Psychology Programme at the University.
33. The Commissioner is satisfied that the individuals would have a reasonable expectation that the disputed information would not be placed into the public domain by disclosure under the FOIA. Therefore she considers that disclosure of this information (especially the suppressed information that cannot be deduced, that is, the small numbers relating to applicants who had disclosed a disability) would be an unfair invasion of the privacy of the individuals, and as such may cause them some distress.

### **Balancing the rights and freedoms of the individual with the legitimate interests in disclosure**

34. Given the importance of protecting an individual's personal data, the Commissioner's 'default' position in cases where section 40(2) has been cited is in favour of protecting the privacy of the individual. Therefore, in order to find in favour of disclosure, it would need to be shown that there is a more compelling interest in disclosure which would make it fair to do so.
35. The complainant has argued that '*There is an overriding Public Interest in enabling the Public to determine in detail whether (as it appears) the University of Hertfordshire is compliant with Statutory Legislation when selecting persons for Publicly Funded employment.*'
36. The Commissioner accepts that there is a legitimate interest in the overall transparency in the way a public authority such as the University conducts its business. However, in this case, the Commissioner is not convinced that the specific information requested, is of sufficient wider public interest to warrant overriding the protection of the third party personal and sensitive personal data.
37. Having considered the University's submission and the views of the complainant the Commissioner is satisfied that the complainant's arguments for disclosing the specific information in this case are not as compelling as those that the University has put forward for protecting the individuals' personal data.

*The Commissioner's conclusion*

38. There is always some legitimate public interest in the disclosure of any information held by public authorities. This is because disclosure of information helps to promote transparency and accountability amongst public authorities.
39. However, having considered all the circumstances of this case, the Commissioner finds that disclosing the withheld information would contravene the first data protection principal because it would be unfair, and that the application of section 40(2) was correct.

## Right of appeal

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40. 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)

41. 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.
42. 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**  
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