

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 February 2019

Public Authority: Court of Governors
Address: University of the Arts London
272 High Holborn
London
WC1V 7EY

Decision (including any steps ordered)

1. The complainant has requested a copy of the information that the University provided in response to another request under the FOIA from a journalist regarding the delivery of the MA Dramatic Writing course. The University withheld some of the requested information, citing the exemption under section 40(2) (third party personal data) of the FOIA as its basis for doing so.
2. The Commissioner's decision is that the University correctly applied section 40(2) of the FOIA, and that the University is not required to take any steps.

Background

3. The Commissioner understands that on the 10 and 11 December 2017 the national media reported on the problems with the MA Dramatic Writing course at Central St Martins College, University of the Arts London, in particular that in the academic year 2016-2017, the MA Dramatic Writing course fell below its usual standards and that, as a result, students on the course were reimbursed their fees.

Request and response

4. On 13 December 2017, the complainant wrote to the University and requested information in the following terms:

"I was interested in reading the FoI response that formed the basis of the story in the Times about Drama Centre which I'm sure you're aware of. Is it possible to have a pdf or is this a request I should make to the university's FoI department? I know other bodies have a disclosure log of recent FoI responses but couldn't find it on the UAL website if it exists."

5. The University responded on 15 January 2018. It stated that because it had received a number of enquiries about this matter, it had published the relevant information on its website, and provided the complainant with the link to the information.
6. The complainant requested an internal review on 15 January 2018. In particular, she asked whether the 'news' story link the University provided her is the press release in response to the FOIA request provided to the journalist, or formed the exact copy of the information provided to the journalist. The complainant also asked the University to explain why it took the full 20 working days to respond to her request if the information was already available on the University's website from 11 December 2017.
7. Following an internal review, the University wrote to the complainant on 19 January 2018. It apologised for the time it took to respond to the complainant's initial request. The University stated that this was because the request was received at a busy period leading up to the Christmas and New Year holidays where it had received a number of other FOIA requests to process.
8. The University stated that it had published the committee minutes of meetings, redacted complaints, and specimen settlement letter on the website, and that it was this material that it was referring to in its response to the request on 15 January 2018. The University went on to explain that the material was placed alongside UAL's statement on the MA Dramatic Writing course, published on 11 December 2017. It stated that it amended the page to show that the statement and material were published on separate dates.
9. The University stated that the material it published on its website is what was supplied to the journalist, but with some further redactions. It explained that the journalist requested the student complaints in the complaint form format, which it clarified were redacted to remove the identity of complainants. However the University went on to explain

that, upon review, it believed that the redactions were not sufficient to protect the identity of individuals and the confidentiality of the information. It decided that the complaints should not be published or shared further in the original format to reduce the risk to privacy as much as possible. The complaints were therefore further redacted prior to publication. The University also further redacted the meeting minutes before publishing them on its website for the same reason.

10. As the complainant in this case was also one of the complainants whose complaint to the University was disclosed to the journalist, the University provided her with a copy of her own specific complaint as it was sent to the journalist, as this particular complaint was her own personal data.

Scope of the case

11. The complainant contacted the Commissioner on the 25 January 2018 to complain about the way her request for information had been handled.
12. The complainant was initially concerned that the information the University supplied to the journalist was more, or different, than just the press statement on its website.
13. The Commissioner wrote to the complainant on the 5 November 2018, outlining the University's submission and providing a preliminary view of the complainant's initial concern that, the reason for the supplied information being different to that provided to the journalist was because the University had made further redactions to the information due to it containing the personal data of students.
14. In terms of taking the matter forward, the Commissioner gave the preliminary view that she could consider the University's reliance on the personal data exemption (section 40 of the FOIA) to withhold some of the information that was supplied to the journalist. However, the Commissioner reminded the complainant that the Commissioner had already considered a separate complaint from the complainant under the Data Protection Act 1998 (the DPA 1998) about the University disclosing the complainant's personal data to the journalist in response to the journalist's FOIA request, and had found that an infringement of the DPA 1998 had likely taken place. The Commissioner therefore advised the complainant that it was likely that she would uphold the University's decision to withhold the personal data of students from its response to the complainant's request under the FOIA, given that she had already found it likely that the original disclosure to the journalist was in breach of the DPA 1998.

15. On 14 November 2018, the complainant responded to the Commissioner's preliminary view, asking her to outline what any further/continued investigation would cover, and what further matters could be investigated as part of this case.
16. On 22 November 2018, the Commissioner responded and reiterated that she could look at whether the University was entitled to rely on section 40(2) (third party personal data) of the FOIA to withhold the personal data of students from its response to the complainant's FOIA request.
17. The section 40(2) exemption provides that any third party personal data is exempt from disclosure, if that disclosure would contravene any of the principles set out in Schedule 1 of the DPA 1998. Although the DPA 1998 has been superseded by the General Data Protection Regulation and Data Protection Act 2018, the request was made on the 13 December 2017 and the University responded on the 15 January 2018 when the DPA 1998 was still in force. It is therefore the Commissioner's view that the DPA 1998 was the appropriate legislation to take into account, when considering whether the University was entitled to rely on section 40(2) of the FOIA to refuse to provide the withheld information.
18. The Commissioner explained to the complainant that the University had accepted that a breach of the DPA 1998 had taken place when responding to the journalist's original FOIA request, as it had failed to sufficiently redact the personal data of the students to whom the complaints in that response related.
19. The Commissioner explained that as the disclosure of the students' personal data had already been found to breach the DPA 1998, it was likely that her decision would be that the University had correctly applied section 40(2) of the FOIA to withhold the students' personal details in response to the complainant's FOIA request.
20. On 28 November 2018, the complainant responded to the Commissioner confirming that she wanted the Commissioner to continue the investigation.
21. The Commissioner therefore considers that the scope of this case is to determine whether the University is entitled to rely on section 40(2) of the FOIA as a basis for refusing to provide the withheld information.

Reasons for decision

Section 40(2) – third party personal data

22. Information is exempt from disclosure under section 40(2) of the FOIA if it constitutes third party personal data (i.e. the personal data of anyone other than the individual making the request) and either the first or the second condition in section 40(3) is satisfied.

Is the withheld information personal data?

23. In order to rely on the exemption provided by section 40(2) of the FOIA, the requested information must constitute personal data as defined by data protection legislation. As explained in paragraph 17 above, the Commissioner considers the DPA 1998 was the relevant data protection legislation at the time the request was received and responded to by the University. The Commissioner has therefore considered the definition of personal data under the DPA 1998.

24. Section 1 of the DPA 1998 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'.

25. The University has confirmed that it considers all of the withheld information to be personal data. It has stated that it considers the withheld information to be the personal data of complaining students, other students and some University staff.
26. The Commissioner understands that the withheld information in this case is comprised of student complaint forms and committee minutes of meetings. The student complaint forms identify the students by name, their contact details and details of the students' complaint. The committee minutes of meetings identify students by name and the concerns they have about the delivery of the MA Dramatic Writing course. The committee minutes of meetings also contain details of other students and refer to University staff.

27. Each of the complaint forms contains information that could identify the student making the complaint, either by name or by a description of what happened. The University explained to the complainant in the outcome of the internal review that the journalist had requested the student complaints in the complaint form format, which the University states were redacted to remove the identity of the students. The University went on to explain that, upon reviewing the information provided to the journalist, it believed that the redactions made were not sufficient to protect the identity of the students. As a result, the University decided that the complaint forms should not be published or shared further in the original format. The University therefore published a summary of the complaints. The University also explained that it further redacted the committee minutes of meetings for a similar reason.
28. As with the complaint forms, the committee minutes of meetings contain information that could identify the students and University staff, either by name or by a description of what had happened in particular cases.
29. In view of this, the Commissioner considers the withheld information to be personal data.

Would disclosure breach the data protection principles?

30. The data protection principles are set out in Schedule 1 of the DPA 1998. The first principle, which is the most relevant in this case, requires that personal data should only be disclosed in fair and lawful circumstances. The Commissioner's considerations below have focused on the issue of fairness.
31. 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

32. The University considers that it would not be in the reasonable expectations of the individuals concerned to have the withheld information disclosed in response to an FOIA request and potentially to the world at large.
33. The University has stated that the complainants would reasonably expect that their complaints would remain private and confidential.
34. The University has stated that it did not seek to obtain the consent of the individuals concerned as it considered that the anonymisation of the information would be sufficient to protect the identity of the individuals.

35. The University believes that asking for the consent of the individuals' concerned would undermine the original confidence in which the information was shared and determined under the first data protection principle. The University has accepted that information released to the journalist should have been withheld and it stated that it did not want to compound its error by releasing it again in response to the complainant's request.
36. Whilst a public authority may seek the view of the individuals concerned about whether their personal data should be disclosed, it is not obliged to do so.
37. In this case, the individuals who submitted complaints, and the other students and University staff referred to in the complaint forms and committee minutes of meetings, have not consented to the disclosure of their personal data. Considering the nature of the withheld information, the Commissioner is of the view that the disclosure of the withheld information would not be within the reasonable expectations of the individuals to whom that information relates.

Consequences of disclosure

38. Disclosure of the information is unlikely to be fair if it would have unjustified adverse effects on the individuals concerned. Although individuals may generally regard the disclosure of personal information about them as an intrusion into their privacy, this may often not be a persuasive factor on its own, particularly if the information relates to their public role rather than their private life.
39. The University considers that the release of the withheld information would be an invasion of the individuals' privacy and as such may cause them some distress.
40. The University did not provide the Commissioner with any specific evidence in support of its claim that the release of the withheld information may cause the students and University staff distress.
41. However, the Commissioner considers that the individuals involved would have passed their information to the University in good faith and in confidence, and would have expected the information only to be used to investigate and resolve the concerns that were raised about the delivery of the MA Dramatic Writing course at the University.

Balancing the rights and freedoms of the data subject with the legitimate interests in disclosure

42. The Commissioner accepts that the legitimate public interest in disclosure includes the general public interest in transparency, public

interest in the issue the information relates to, and any public interest in disclosing the specific information. An informed and involved public helps to promote good decision making by public bodies and ensures trust and confidence in the governance and processes within those bodies.

43. However, 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.
44. The complainant has not specified in any of her submissions to the Commissioner any legitimate public interest in disclosing the withheld information.
45. In the University's initial submission to the Commissioner, it stated that it recognises that the disclosure of the information, in the MA Dramatic Writing course complaint, is in the legitimate interest of the student body and the public, and therefore it took steps to publish the information on the University's website, including a summarised account of the complaints on its website.
46. In this case, whilst the Commissioner accepts that the specific information requested may be of interest to the complainant, she is not convinced that its disclosure of the withheld information is of sufficient wider public interest to warrant overriding the rights and expectations of privacy of the individuals to whom that information relates.
47. In the circumstances of the case the withheld information identifies the students and their concerns about the delivery of the MA Dramatic writing course, and University staff are referred to within those concerns. There is a general expectation that details of personal issues would remain private between the students and University staff. However, the Commissioner accepts that there is a legitimate interest in the public being assured that the University addressed the concerns that have been raised about the delivery of the MA Dramatic Writing course, particularly as the students on the course were reimbursed their fees.
48. That being said, the Commissioner notes that the University published a summarised account of the complaints from the complaint form on its website. The Commissioner also notes that the University published the committee minutes of meetings with the names of students and University staff redacted on its website. The Commissioner considers that any arguments in favour of disclosure are somewhat diminished by the information the University has published on its website.

49. In view of the above, the Commissioner has concluded that to disclose the withheld information would be unfair and in breach of the first principle of the DPA 1998. The Commissioner therefore finds that the University has correctly applied section 40(2) of the FOIA to the withheld information.
50. Finally, the Commissioner recognises that, as the withheld information was previously disclosed to the journalist, the complainant may believe that it should now be disclosed to her as it has already been made public, even if that original disclosure was in breach of the DPA 1998. However, the Commissioner accepts the University's argument that continued disclosure of this information would compound the breach of the DPA 1998.

Right of appeal

51. 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

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

52. 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.
53. 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

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