

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)
Decision notice**

Date: 01 May 2012

Public Authority: The Governing Body of Liverpool John Moores University

Address: Kingsway House
Hatton Garden
Liverpool
L3 2AJ

Decision (including any steps ordered)

1. The complainant has requested copies of emails sent by a former lecturer at Liverpool John Moores University (the "University"). The Commissioner's decision is that any information described by the request is not held for the purposes of FOIA or the EIR. He does not therefore require the University to take any steps as a result of this notice.

Request and response

2. On 3 March 2011 the complainant requested:
"...copies of all emails sent by [the former lecturer] from his LJMU account."
3. The University responded on 27 May 2011. It stated that it was refusing to disclose the requested information, citing section 40(2)(third party personal data) of FOIA.
4. The University provided the outcome of its internal review on 5 August 2011, in which it maintained its original position.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
6. During the course of the investigation, the complainant has advised the Commissioner that the information he is seeking can, in broad terms, be summarised as those records that are linked to the former lecturer's work with the Global Warming Policy Foundation (GWPF), even if the GWPF is not explicitly mentioned in the relevant email or attachments.
7. It has therefore been agreed that the Commissioner should focus on the information covered by this definition. In reaching his determination, however, the Commissioner has been mindful of the complainant's concerns that the definition is not interpreted too narrowly.

Reasons for decision

8. In being informed of the scope of the complaint (see above), the University has revised its position under the legislation. Rather than seeking to rely on section 40(2) of FOIA as grounds for withholding the information, the University has instead argued that it does not hold the relevant information under the provisions of FOIA. This is because, the University claims, any emails it has stored would be held solely on behalf of another person, namely the former lecturer. As such, it would not be subject to the legislation.
9. The Commissioner has therefore gone on to test the revised position advanced by the University.

What is the appropriate access-regime?

10. The disputed information refers predominantly to emails stored on the former lecturer's email account at the University.
11. The Commissioner has viewed emails stored on the former lecturer's email account at the University and has concluded that, if the information were found to be held then, some of it would constitute environmental information for the purposes of the EIR. In particular, the Commissioner considers that some but not all of the requested information is information on the state of the elements of the environment and would therefore be covered by the definition set out at regulation 2(1)(a) of the EIR.
12. However, the Commissioner would point out that the underlying issue of whether information is held by a public authority will involve the same considerations under both the EIR and FOIA. Specifically, the

Commissioner will find that requested information is not subject to FOIA or the EIR where a case can be made to show that a public authority is only holding the information solely on behalf of, say, a staff member as a private individual and not for its own purposes.

Is the disputed information held by the University?

13. In making his finding, the Commissioner has considered that a key determining factor is whether the University had any interest in, or control over, the disputed information. The Commissioner has asked the University the following questions in this respect –

- Did the former lecturer work with GWPF in an entirely private capacity or is the fact of his position and profession at the University a reason why he became involved in the work?
- Did any of his work on issues connected to GWPF have an impact on, or feed into, the topics covered by his teaching? Furthermore, did the work underpin, or provide additional research for, any project which the former lecturer undertook on behalf of the University?
- Did the former lecturer's work in this area reflect positively on, or enhance the status of, the University?
- Did the University use any of the products of the former lecturer's work in this area in any way for its own purposes?

14. The Commissioner has been provided with a description of the role of the former lecturer at the University. He has also been given assurances that the requested information described by the complainant did not arise from, or enter into, the former lecturer's work at the University, nor was the information used by the University for its own purposes.

15. Finally, he has seen correspondence between the lecturer and the University in which the University makes it clear that there should be no affiliation between the lecturer's work for the GWPF and the University. Although this dates from after the date that some of the withheld information was created, the Commissioner has no evidence to suggest that the University endorsed any affiliation before this time.

16. The Commissioner is satisfied, based on the submissions received and his own observations, that the University and the former lecturer were both of the belief that the former lecturer was acting in a private capacity and outside the scope of his employment when he sent the emails. It is, then, the Commissioner's view that the public authority had no interest in, or control over, the requested information.

17. The Commissioner has therefore had no option but to conclude that the requested information is not held by the University under regulation 5 of the EIR or section 1 of FOIA.

Other matters

18. In his [published guidance](#) for the higher education sector, the Commissioner highlighted the importance of good records management by stating the following –

“Having an effective records management strategy and complying with information rights legislation contributes to good governance of work across institutes. Employees, including academics and researchers should be made fully aware of the legislation and its implications and the need to manage and organise their information effectively. JISC have produced the useful [Records Management infokit](#) which provides a comprehensive starting point in understanding the benefits to managing information specific to the higher education sector.”

19. The Commissioner has perceived in this case that insufficient care was taken by the former lecturer to ensure that a clear demarcation was drawn between those communications relating to his role with the University and those communications he considered to be private. Any line of division has been further blurred by what is, as the complainant has reasonably argued, the former lecturer's failure to disassociate his role with the University from his role with the GWPF.
20. Despite this, the Commissioner is content that the disputed information is not held by the University; ultimately, it was not the decision of the University to blur this line. Nevertheless, the Commissioner would expect a public authority to be particularly vigilant when it comes to educating its staff about records management. Each staff member should be clear about what an organisation's communication infrastructure can be used for. They should also be aware of the organisation's definition of 'private' correspondence and the circumstances under which such correspondence is acceptable.
21. The Commissioner therefore believes that it would be helpful for the University to reappraise its approach to records management, making certain as far as possible that its staff are aware of, and adhering to, the principles outlined above.

Right of appeal

22. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

23. 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.
24. 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

Lisa Adshead
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