

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 27 November 2013

Public Authority: London School of Economics
Address: Houghton Street
London
WC2A 2AE

Decision (including any steps ordered)

1. The complainant has requested information about an MSc research project: the names of the student and supervisor, details of the project and a copy of the published paper.
2. The London School of Economics (LSE) refused to disclose the requested information, citing the exemption under section 40(2) of the FOIA (third party personal data) as its basis for doing so. Following an internal review, the LSE also cited section 40(3) (contravenes any of the data protection principles or likely to cause damage or distress) and the condition in section 40(4) (exempt from subject access right).
3. The Commissioner's decision is that the information is exempt under section 40(2) by virtue of section 40(3)(a)(i).
4. The Commissioner does not require the public authority to take any further action.

Request and response

5. On 28 May 2013, the complainant wrote to the London School of Economics and requested information in the following terms:

*Could you please supply the name of the researcher undertaking the project, the name of the project supervisor and details of the project itself (perhaps an outline prepared for funding purposes or for applicants for the research position?).
I would also like to get hold of a copy of any outputs (thesis or published*

papers). Could you please supply citations for any papers and, for any thesis, advise how I can get hold of a copy or examine it.

6. The LSE responded on 24 June 2013. It stated that, as a postgraduate dissertation, the requested information qualified as a piece of examined work which would be treated as personal data under the Data Protection Act (DPA). As such it was exempt from release, under section 40(2) of the FOIA.
7. Following an internal review the LSE wrote to the complainant on 23 July 2013, upholding its original position. It also now cited the two conditions aligned to section 40(2): section 40(3) arguing that to release the information would distress the student and supervisor, and section 40(4) as the information was personal data to which the data subject themselves (the student in this case) did not have the right to access.

Scope of the case

8. The complainant contacted the Commissioner on 23 July 2013 to complain about the way their request for information had been handled.
9. The Commissioner has focussed his investigation on the LSE's decision to refuse the request under section 40(2) by virtue of section 40(3). He has also considered section 40(4).

Reasons for decision

10. The Commissioner recognises that the information request is made up of distinct elements, including the names of two different individuals. However, he considers that all the elements are intrinsic to, and form part of, the dissertation, and that the same considerations apply to each element. This has informed his approach to the following analysis.

Section 40(2) exemption

11. For this exemption to apply, the information must be the personal data of a third party (ie someone other than the requester) and either of the two conditions at section 40(3) and section 40(4) must have been met.
12. The Commissioner has first considered whether any of the information that the LSE has withheld under section 40(2) is the personal data of a third party.

13. Under Schedule 7, section 9 of the DPA, one category of personal data is described as information "*recorded by candidates during an academic, professional or other examination*".
14. Under Schedule 7, section 8, paragraph (5), the DPA defines an 'examination' as "*any process for determining the knowledge, intelligence, skill or ability of a candidate by reference to his performance in any test, work or other activity*".
15. A dissertation is a written thesis, often based on original research, which is submitted as part of a taught master's degree. It is a form of assessment that indicates an individual's capabilities as a student and researcher.
16. Applying the definition at paragraph 14 therefore, the Commissioner's view is that this MSc dissertation - and the administration around it - can be categorised as the personal data of a third party ie the student. Therefore section 40(2)(a) has been correctly applied.
17. The Commissioner has next considered whether either of the two conditions at section 40(3) and section 40(4) has been met.

Section 40(3) condition

18. The condition at section 40(3)(a)(i) applies where disclosure of the information to a member of the public would contravene any of the data protection principles.
19. The Commissioner has therefore considered whether disclosing the information would breach the first data protection principle: that personal data "*shall be processed fairly and lawfully...*".
20. When considering whether disclosure would be unfair, and thus contravene the first principle, the Commissioner takes three factors into account.
 - What reasonable expectation does the individual have about what will happen to their personal data?
 - Has the individual given their consent to disclosure?
 - What might be the likely consequences resulting from disclosure?
21. The LSE has argued that those involved in writing and supervising the dissertation would have a reasonable expectation that their personal data would not be made publically available.
22. Since examination processes are conducted in confidence, it could reasonably be expected that exam scripts and dissertations would not

then be shared outside this process. Furthermore, the student concerned has not consented to their personal data being disclosed.

23. The Commissioner therefore tends to agree with the LSE's position and considers that it would be unfair to release any personal data connected to the dissertation: neither the names of individuals involved in its production, nor any aspect of the dissertation itself.
24. The dissertation's subject matter is also high profile and controversial and there is a risk that the information will be published through online social media, where it may attract negative comment. The Commissioner considers that this is likely to add to any damage or distress felt by those who have had their personal data made public.
25. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the information if there is an overriding legitimate interest in disclosure to the public. Under the first principle, the disclosure of the information must be fair to the data subject, but assessing fairness involves balancing their rights and freedoms against the legitimate interest in disclosure to the public.
26. 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.
27. The LSE has argued that the student needs to feel confident that their work won't be subject to public scrutiny; the supervisor can feel reassured that they won't be subject to personal repercussions through having been publically identified; and the student's work won't be open to plagiarism.
28. The LSE has not provided any arguments in favour of disclosing the information, but the Commissioner considers that such arguments exist. The public interest is served by open and accountable higher education (HE) institutions where the quality of its students' and supervisors' work is available for scrutiny and to inform others' research, for example.
29. However, information on HE institutions' performance and reputation is published in various rankings, and new research is also publically available in published journals. For these reasons, the Commissioner considers that the possible arguments for disclosing the specific information in this case are not as compelling as those put forward for protecting the individuals' personal data.

30. On balance therefore, the Commissioner is satisfied that in this case, the legitimate public interest would not outweigh the interests of the data subject. The Commissioner therefore considers that section 40(3)(a)(i) could be correctly applied to this request.

Section 40(4) condition

31. This condition should also be read alongside the section 40(2) exemption. It states that information is exempt if it is a category of personal data to which the data subject themselves does not have access under the DPA.
32. The criterion for engaging the condition in 40(4) is that the data subject does not have the *right* to obtain the same information themselves, because of a DPA exemption.
33. To meet the condition it is not necessary for the data subject to have actually submitted a subject access request and to have been refused.
34. Furthermore, the condition can be met even if the data subject has actually received the information; the public authority may have exercised its discretion to give the information to the data subject, even though the data subject did not have the right to obtain it.
35. One category of personal data to which the data subject does not have the right to access, is information "*recorded by candidates during an academic, professional or other examination*", a category of information that has been discussed in paragraphs 13 - 16.
36. While it may appear incongruous, the student would not have the right to the requested information under the DPA, despite being the data subject and the author of the dissertation. Paragraphs 32- 34 provide more detail on this.
37. The Commissioner is satisfied that the section 40(4) condition that the LSE has also cited has also therefore been met.
38. Since the requested information can be categorised as personal data and either of the conditions at section 40(3) and section 40(4) can be applied, the Commissioner considers the section 40(2) exemption is engaged and the information is exempt from disclosure to a third party.

Other matters

39. In their correspondence with the LSE, the complainant cited guidance on dissertations and the FOIA, produced by JISCLegal in 2005, to support their argument that the requested information should be released.
40. The guidance quotes an anonymous email from the ICO from 2004 which advises that dissertations are not personal data. This advice is now superseded by the ICO's current guidance on Section 40(4)¹.

¹ [ICO \(May 13\) 'Information Exempt from the Subject Access Right \(Section 40\(4\) and Regulation 13\(3\)\)'](#)

Right of appeal

41. 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

42. 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.
43. 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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