

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 April 2022

Public Authority: Council of the University of Exeter
Address: Prince of Wales Road
Exeter
Devon
EX4 4SB

Decision (including any steps ordered)

1. The complainant has requested information on the number of students returning to the University of Exeter ("the University") following temporary relocation due to a bomb. The University stated some information was not held and other information was exempt under section 21 as it was reasonably accessible to the requester.
2. The Commissioner's decision is that the University does not hold the information at parts a) – c) of the request but that the University was not entitled to rely on section 21 in relation to part d) of the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Provide the information requested at part d) or issue a fresh response without reliance on section 21.
4. The public authority must take these steps within 35 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. On 6 March 2021 the complainant made a request to the University for information in relation to a 'Devon Live' article from 5 March 2021 about student relocation due to a recent bomb. The request was for the following information:
 - "a) what number of students have returned to the university,
 - b) how many students are currently in university accommodation (including any that may still be relocated due to the bomb) and
 - c) which courses are those that have returned to the university on
 - d) which courses are currently being delivered by the University by in-person teaching?"
6. The University responded on 22 March 2021. For parts a) – c) the University stated the information was not held due to the manner in which students were returning to halls. It stated it was not possible to have definitive numbers. For part d) the University cited section 21 of the FOIA and provided a link to its website where the information was accessible.
7. The complainant requested an internal review on 24 March 2021. For parts a) – c) the complainant pointed out there was no exemption for inaccurate information and stated that a refusal under the FOIA must state the section of the Act being relied upon. With regard to part d), the complainant stated the link led to a document dated 3 March 2021 and referred to what the situation would be from 8 March 2021. The complainant argued the request was for the current situation i.e. the situation on 6 March 2021 so section 21 could not be applied to this information.
8. The University conducted an internal review and provided the outcome to the complainant on 27 April 2021. For parts a) and b) the University continued to state that the information could not be compiled as the University has no control over students who return without informing the University. For part b) the University also suggested, even if it could calculate the number, it would exceed the cost limit under section 12 of the FOIA. For parts c) and d) the University argued the link provided answered the question and section 21 still applied.

Scope of the case

9. The complainant contacted the Commissioner on 29 April 2021 to complain about the way their request for information had been handled.
10. The Commissioner considers the scope of his investigation to be to determine if the University holds information in scope of parts a) and b)

of the request and if section 21 has been correctly applied in relation to parts c) and d) of the request.

Reasons for decision

Section 1 – information held

11. Section 1 of the FOIA states that:

“Any person making a request for information to a public authority is entitled – (a) to be informed in writing by the public authority whether it holds information of the description specified in the request, and (b) if that is the case, to have that information communicated to him.”

12. The complainant disputes the position of the University that the information requested in parts a) and b) is not held or it would exceed the cost limit to provide. The Commissioner has first considered if the information is held before considering any further points regarding the cost of compliance.

13. In cases where a dispute arises over the extent of the recorded information held by a public authority at the time of a request, the Commissioner, following the lead of a number of First-tier Tribunal decisions, applies the civil standard of the balance of probabilities. In essence, the Commissioner will determine whether it is likely, or unlikely, that the public authority held information relevant to the complainant's request.

14. The Commissioner will consider the complainant's evidence and arguments. He will also consider the actions taken by the University to check whether the information is held and any other reasons offered by the University to explain why the information was not held. In addition, he will consider any reason why it is inherently likely or unlikely that the requested information is not held.

15. For clarity, the Commissioner is not expected to prove categorically whether the information is held, he is only required to make a judgement on whether the information is held on the civil standard of proof of the balance of probabilities.

16. As part of his investigation, the Commissioner wrote to the University requesting its submissions. The Commissioner's questions were focused on ascertaining why the University considered the requested information could not be provided, particularly in understanding how the University keeps track of students that are attending or actively at the University at any given time.

17. To be clear, the information in consideration here is the number of students who had returned to the University following the discovery of the bomb and the number of students in University accommodation including those still relocated due to the bomb.
18. The University's initial response to these requests was to state that due to the manner in which students were returning to halls following changing government guidance in relation to the pandemic it did not hold for certain or have accurate data to answer these requests. The internal review response again reiterated that it could not reliably estimate the numbers as it had no control over students who had travelled back to the University without informing them. The University referred to section 12 and the cost of compliance in relation to part b) of the request and the ability to reliably estimate the numbers currently in student accommodation.
19. The University has further explained that during the pandemic students were living in various places and joining lectures from local student accommodation, their family homes, friend's houses and from other countries due to pandemic regulations and government guidance.
20. The University states it delivered blended learning during the pandemic; combining on-premise and online teaching. It states that students who were living in local student accommodation could have been in isolation for various reasons or chosen to use alternative teaching methods. Therefore, students could have attended lectures, seminars, and other related educational delivery without being physically at the University.
21. The University explained it does not monitor students coming in and out of their accommodation. If students join lectures it cannot distinguish if the student is on the University campus but in isolation in student accommodation or if the student is at their family home or is an international student attending virtually from a global location.
22. The University has created some confusion in its responses by stating it would take a disproportionate amount of time to respond to these parts of the request. It stated that data would be incomplete and could be misleading and that to gain accurate data it would have to survey students and thus create a dataset to answer the request as this data would have to be created to meet the request rather than being data the University routinely collects.
23. The Commissioner's role is to make a decision based on whether, on the balance of probabilities, relevant recorded information was held by the University.

24. The Commissioner appreciates that the complainant considers the University should hold the information. However, it is not for the Commissioner to judge whether information should be held, but to decide on the balance of probabilities whether it actually is held.
25. FOIA concerns the right of access to recorded information from public authorities. It does not require public authorities to create bespoke answers to questions that have been posed – they must simply identify the relevant information that they hold in recorded form.
26. In this case the Commissioner considers that the University has confused matters by referring to the disproportionate time it would take to obtain accurate information. Accuracy is not a consideration for the Commissioner. That being said, the Commissioner does not expect a public authority to invest time in surveying students to find out their physical whereabouts as this is information that is not routinely collected, rightly or wrongly, and is therefore not held by the University.
27. The pandemic created unique circumstances with virtual learning becoming commonplace. Whilst it is reasonable to assume the University would have a record of the number of students in local accommodation on campus it does not have the ability to state whether the students are physically there at a given time. Many University's continued to charge fees and accommodation costs to students regardless of their physical attendance/residence on campus during the pandemic. Added to this, is the temporary relocation of any student physically in University accommodation due to the bomb and it is reasonable to see why the University cannot answer the request as it has no record of where students are at all times and if they have returned to University accommodation. As has already been mentioned, attendance at lectures cannot be seen as an indicator of a student's location due to the way in which teaching was delivered at the time.
28. Initially the University stated the response to part c) of the request – what courses those that had returned to University are on – was also information the University did not hold. It later stated that this was information accessible to the complainant by other means. The Commissioner has considered this part of the request and is of the view that if the University does not hold information on the number of students who have returned to the University and its accommodation then it also cannot hold information on what courses those that have returned are on, as to work this information out the University would first have to know the numbers and names of those that had returned.
29. In the absence of evidence to the contrary, the Commissioner is satisfied that the University has provided plausible and convincing explanations that it has carried out the necessary steps to conclude

whether it held the information requested by the complainant. Therefore, the Commissioner concludes that, on the balance of probabilities, the information requested at parts a) - c) is not held by the University.

Section 21 – information reasonably accessible by other means

30. Section 21 of the FOIA states that:

“(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.”

31. The purpose of section 21 is to protect the resources of public authorities. Public authorities do not have to respond to requests for information where the requester could have found the requested information elsewhere. Section 21 also acts as an incentive for public authorities to be proactive in publishing information as part of their publication schemes.
32. It is reasonable for a public authority to assume that information is reasonably accessible to the applicant as a member of the general public until it becomes aware of any particular circumstances or evidence to the contrary.
33. Part d) of the request asked what courses were currently being delivered by the University by in-person teaching. The University provided a link¹ to a webpage with a coronavirus update for students dated 3 March 2021 that listed the in-person courses that would resume from 8 March 2021.
34. The complainant argued that the information was requested on 6 March 2021 and the link provided gave details of the courses that would resume from 8 March 2021 so this was not the information requested. The University has not expanded on its argument any further than what it stated in its internal review response that the information was still relevant at the date the request was made.
35. The Commissioner disagrees with the University's interpretation. The complainant made it clear they wanted to know what courses had resumed in-person teaching at the date of the request i.e. before 8 March 2021. Whilst it could be inferred from the update that no course

¹ [Message from the Registrar to students 3/03/21 | Coronavirus \(COVID-19\) – information and advice | University of Exeter](#)

had resumed in-person before 8 March 2021 this is not entirely clear. The update states "universities will be able to offer **some** additional face-to-face teaching to students on programmes that require specialist facilities." This may suggest that some courses had resumed in-person teaching prior to 8 March 2021 and were being taught in-person at the date of the request on 6 March 2021.

36. As such the Commissioner does not consider the link provided gives a definitive answer to part d) of the request. It may be that the answer is simply that no in-person courses were being taught at the date of the request but this is not explicitly clear in the link provided. Therefore, the Commissioner does not consider the information was reasonably accessible to the complainant and the University was not entitled to rely on section 21 of the FOIA.

Right of appeal

37. 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

38. 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.
39. 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

Jill Hulley
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