

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 June 2023

Public Authority: Council of the University of Kent
Address: The Registry
Canterbury
Kent
CT2 2NZ

Decision (including any steps ordered)

1. The complainant requested a copy of a specific training module in use in September 2021 and the current version of the module. The University of Kent (the University) initially stated that it did not hold some of the information requested and other information was exempt under section 43 (commercial interests) of the FOIA. During the course of the Commissioner's investigation the University disclosed some additional information. The complainant disputed that the University had provided a copy of the module in use in September 2021. The Commissioner's decision is that the University does not hold a copy of the training module in use in September 2021. However, the Commissioner also finds that the University breached section 10 of the FOIA in its handling of the request. The Commissioner does not require any steps to be taken.

Request and response

2. On 25 October 2022, the complainant wrote to University and requested information in the following terms:

"This is a request, pursuant to the Freedom of Information Act 2000, for interactive access to

- (a) the version of the Expect Respect e-module that was in use on 30 September 2021, and
 - (b) the version of the Expect Respect e-module that is currently in use, if different from (a)".
3. The University responded on 22 November 2022. It stated that it did not hold information relating to part (a) of the request and that some of the information in the current Expect Respect e-module (part (b) of the request) was exempt under section 43 of the FOIA.
4. On 23 November 2022 the complainant requested an internal review of the University's handling of the request. They disputed the University's position that it did not hold a copy of the module in place in September 2021. The complainant accepted that section 43(2) applied to some parts of the module currently in use but pointed out that as the University had not applied any exemptions to the remainder of the current module the information should be disclosed.
5. The University provided the outcome of its internal review on 20 December 2022. It upheld its position that it did not hold a copy of the module in use in September 2021 and stated that it did not consider the request for a copy of the current module to be a valid request under the FOIA as the request was for a training tool as opposed to recorded information. The University also pointed out that removal of the exempt information from the current module would require it to create a new training module ie new information, which was not required under the FOIA

Scope of the case

6. The complainant contacted the Commissioner on 29 December 2022 to complain about the way their request for information had been handled.
7. During the Commissioner's investigation, the University provided an online copy of the training module which was in use in September 2021 and the current version of the module. Following this disclosure the complainant wrote back to the University stating he did not think the online version of the module in place in September 2021 was accurate as they had previously received screen shots of this module in response to an earlier FOIA request.
8. In light of the above, the Commissioner's investigation into this complaint is to determine whether the University holds a copy of the training module in place in September 2021. The Commissioner has also

considered procedural matters relating to the University's handling of the request.

Reasons for decision

Section 1 – general right of access

9. Section 1 of FOIA states that any person making a request for information is entitled to be informed by the public authority whether it holds that information and, if so, to have that information communicated to them.
10. As stated earlier in this notice, during the Commissioner's investigation the University provided the complainant with an online version of the training module in use in September 2021 and the current version. Following this, the complainant wrote back to the University stating that the September 2021 version of the module provided differed to screenshots of the same module that the University had provided in relation to an earlier FOIA request they had submitted.
11. The University advised that a copy of the Expect Respect Module in use on 30 September 2021 is not held within any archives. A copy of the module in use on 31 August 2021 was archived within Moodle (a tool used by the University to build and internally publish training modules) at the end of the 2020/21 academic year, in line with standard practices. In the intervening period, more specifically in June and July 2022, changes were made directly to the live version of the module. As such, the University explained that no version of the module that was in use on 30 September 2021 is held.
12. The University confirmed that it does not take backups of any Moodle training modules. As such it does not hold snapshots of the way a module looked or existed at a particular point in time. The University stated that the content of all Moodle modules can be edited at any time during the academic year.
13. The University explained that when a module editor removes any content from a module, the date it is deleted and the section of the module that it was removed from is recorded and the item itself is then put into a recycle bin.
14. The University provided a detailed explanation of the steps it had taken to restore the version of the module in place in September 2021. It confirmed that steps were taken to restore deleted content held in the recycle bin from the Expect Respect module in Moodle 2021.

15. The University explained why the online version it had recently provided may differ from the screenshots of the actual module in use that it had previously provided to the complainant. The Commissioner has not repeated these explanations in full within this notice. However, he notes the University's explanations focus primarily on the fact that recycle bins and logs only contain limited information about the module content that was deleted or edited. For example:

- The logs do not record whether module content was 'hidden' from the view of the user accessing the module. As such some information on the online version of the module provided may have been hidden from student view and potentially were never available/visible to students accessing the module in the 2021/22 academic year.
- Not all deletions or revisions to activities or resources are recorded within logs. As an example, the log does not contain records of when a document, activity or section title is edited.
- The detail that the logs record varies depending on the type of content. "Most of the content on the Expect Respect module comprises of activities and resources that are not recorded on the logs in a high level of detail; the log will only show if someone 'viewed' and/or 'updated' the activity or resource. If someone edits the content, this is just logged as "the user with ID [XXX] updated the 'page' activity", there is no information held as to what content was updated (if anything, simply opening the activity or resource in edit mode and saving with no changes creates a log entry that it was 'updated')."
- "When an item is deleted, the logs for that item are also erased, and these don't get restored when the item is restored from the recycle bin". As such, although the University restored everything that had been deleted after the 30th September 2021, some items may have been created after that date. As such the items would not have been available to students on the 30th September 2021. However, as the recycle bin only shows the date the item was deleted and not the date the item was created, the University has no way of identifying any information in the recycle bin which was created after 30 September 2021.
- Some of the content might be duplicated in places.

16. The University explained that the logs for the module in question are extremely large as each action, for example a user accessing a resource, creates a new entry on the log. As the modules are accessible to all students, this means that the logs are extremely unwieldy to use.

17. The University also explained that the restoration process that it undertook to reinstate the module in use on 30 September 2021 restored any deleted content into the module section number that it was originally deleted from. This means that:

“if the sections have been reorganised since the item was deleted, an item will be restored into the wrong section. For example, a section titled "What Is Diversity and Why Does It Matter?" may be "section-2", and a section below it titled "(Anti-)Racism" may be "section-3". If the sections are reorganised, so say "(Anti-)Racism" is moved to appear above "What Is Diversity and Why Does It Matter?" in the module content, then "(Anti-)Racism" becomes "section-2" and "What Is Diversity and Why Does It Matter?" becomes "section-3". The technical team had to check all the content manually once it was restored to make a best guess as to where things should go if they appeared to be in the wrong section”.
18. The University confirmed that when it provided the online version of the module in use in September 2021 in order to include all possible content that may have formed part of the module in use, all sections/items held in the recycle bin were restored. The University explained that the process used did not reinstate any amendments made to the text or images that remain in the module as they are overwritten with the 'Save and display' button. As such whilst it was possible to restore, pages, interactive content and links (elements which make up the module) that had been deleted, if they had been edited in any way prior to the deletion, that editing cannot be undone.
19. Because of the way that the module is held, updated and amended, the University maintains that it does not hold an exact copy of the module in use on 30 September 2021. What it has now provided to the complainant to date is the closest version it is able to reproduce.
20. In scenarios where there is some dispute between the amount of information which a public authority says it holds, and the amount of information that a complainant believes is held, the Commissioner, following the lead of a number of First-tier Tribunal (Information Rights) decisions, applies the civil standard of the balance of probabilities.
21. In other words, in order to determine such complaints, the Commissioner must decide whether, on the balance of probabilities, a public authority holds any - or additional - information which falls within the scope of the request (or was held at the time of the request).
22. Having taken into account the University's explanations regarding the way in which the module is held, updated and amended, the Commissioner is satisfied that, on the balance of probabilities it does not hold a copy of the module that was in use on 30 September 2021. As

such, he finds that the University complied with its obligations under section 1 of the FOIA in relation to part (a) of the requests.

Section 10 – time for compliance

23. Section 10(1) of the FOIA requires that a public authority complies with section 1(1) promptly and in any event not later than 20 working days following the date that a request was received. Section 1(1) states that a public authority should confirm whether it holds relevant recorded information and, if so, to communicate that information to the applicant.
24. In this case the request was submitted on 25 October 2022 and the University did not disclose the non-exempt information in the current version of the Expect Respect module (part (b) of the request) until after he commenced his investigation. As the University failed to comply with section 1(1)(b) within the required timescale the Commissioner finds that it breached section 10(1) of the FOIA.

Right of appeal

25. 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

26. 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.
27. 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

Joanne Edwards
Senior Case Officer
Information Commissioner's Office
Wycliffe House
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