

St John's College, Cambridge, CB2 1TP

from Dr Mark Nicholls, Head of Information Services and Systems

(01223) 338661

amn1000@cam.ac.uk

30 April 2019

Dear Mr Edwards,

Thank you for your email message of 4 April 2019, in which you requested an internal review of the College's response to your request under the Freedom of Information Act 2000 ("FOIA").

In line with the College's standard procedures for responding to requests for information under the FOIA, I have considered whether the College dealt with your request in accordance with its obligations under the FOIA, taking into account all factors relevant to the issue.

In particular, I considered:

- The terms of your request for information dated 28 February 2019 (the "Request").
- The information held by the College within the scope of the Request.
- The College's original response of 28 March 2019 (the "Response").
- The College's obligations under the FOIA.
- Best practice guidance of the Information Commissioner's Office ("ICO"), including its published guidance "*Personal information (section 40 and regulation 13)*", dated 1 April 2019, Version 2.1 (the "Guidance").

Background

The Request

Your original request, dated 28 February 2019, was as follows:

'Dear St John's College, Cambridge, Please see a repeat of my previous request with my full name added. Hopefully this was not just delaying tactics.

'Dear St John's College, Cambridge,

'Under the terms of the Freedom of Information Act 2000, would you be so kind as to provide the following information for all undergraduate applicants in the 2018/19 admissions cycle applying for History at St John's College:

'1. By Applicant, A-level taken and predicted grade by A-level 2. Whether or not the applicant was called for an interview (y/n) 3. The score for the written exam 4. The interview scores (1-10) 5. The overall score (1-10) 6. Whether the applicant was invited to interview (y/n) 6. Whether an offer was made (by St John's) (y/n) 7. Whether the applicant was pooled (y/n) 8. Whether a pool offer was made from another college (y/n)

'May I suggest the data be grouped in a single table, with one row per applicant (anonymized) and columns containing the data from Q1-8.

'If any part of this request requires further clarification, do not hesitate to contact me.

'Yours faithfully,

'Rob Edwards'

The Response

The College replied on 28 March 2019 as follows:

'Dear Mr Edwards,

Thank you for your Freedom of Information request regarding 2018/19 History Applicants.

To comply with your precise request would require the processing of the personal data of applicants for a purpose other than that for which it was obtained and would therefore conflict with the Data Protection Principles. However, the following information is supplied which we hope will prove useful.

*A levels taken by applicants for History: History, Mathematics, English Literature, Russian, German, Religious Studies, Economics, Latin, Philosophy, Sociology, Drama & Theatre Studies, Politics, Biology, Chemistry. All applicants taking A levels were predicted at least A*AA.*

The pre-interview assessment scores were as follows:

- Those invited for interview ranged from 1.0 to 9.0 for section 1 and from 3.5 to 10.0 for section 2*
- Those placed in the Winter Pool ranged from 2.8 to 6.4 for section 1 and from 4.5 to 10.0 for section 2*

- *Those made offers ranged from 3.2 to 9.0 for section 1 and 5.0 to 8.0 for section 2.*

The interview scores for all candidates invited for interview ranged from 4.0 to 9.0. Those candidates made offers ranged from 6.0 to 9.0, those candidates placed in the Winter Pool ranged from 5.0 to 9.0 and those candidates rejected ranged from 4.0 to 9.0.

We placed 7 candidates in the Winter Pool and 2 received offers from other Colleges.

If you are dissatisfied with my response you may seek an internal review in writing setting out the grounds for review. It will be dealt with by a College Officer. Should you not be satisfied with the outcome of the review, you will have a right of appeal to the Information Commissioner by writing to him at Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF.

Yours sincerely

Angela McKenzie'

Request for internal review

Your request for a review read as follows:

'Dear Freedom of Information Officer,

The information has been provided by the University at a course level (following an identical request) , I am requesting the same, anonymised data, at a college level. The University has referred me to the college , yourself, to provide this information.

Furthermore the data collected by yourselves during the application process is being used to inform decisions and a request for the data , anonymised and therefore not disclosing any personal information, falls within Data Protection guidelines, is a reasonable request and the College is required to provide this information.

Therefore on both these counts I am wholly dissatisfied that the college's decision on the matter and would like this reviewed, and hopefully resolved to my satisfaction in order to prevent significant time and effort being invested when the matter is further referred on.

Yours sincerely,

Rob'

The internal review outcome

I have now read the relevant paperwork, and have undertaken the review requested. In so doing, I have considered carefully the two points that you raise as grounds for that request, as well as the correctness or otherwise of the College's initial response more broadly.

The first of your points questions the discrepancy between the University's response and the College's, made in response to what is purportedly an 'identical request'.

The second asserts that the provision of anonymised data in response to a request for data collected during, and informing decisions made as a result of, the University of Cambridge undergraduate admissions process accords with data protection principles and might be seen as an appropriate response to a reasonable request.

In January 2019, you asked the University to disclose data:

"...for all undergraduate applicants in the 2018/19 admissions cycle applying for History at Cambridge:

1. By Applicant, A-levels subjects taken and predicted grade by A-level 2. College applied to 3. Whether or not the applicant was called for an interview (y/n) 4. The score for the written exam 5. The interview scores (1-10) 6. The overall score (1-10) 7. Whether the applicant was invited to interview (y/n) 8. Whether an offer was made (by their first choice college) (y/n) 9. Whether the applicant was pooled (y/n) 10. Whether a pool offer was made from another college (y/n)

May I suggest the data to be grouped in a single table, with one row per applicant (anonymised) and columns containing the data from Q1-9..."

For the purpose of the review, I accept that the question that you asked of the University was in substance the same question asked of the College.

In response to the question asked of the University, you were provided in February 2019 with data relating to a large cohort of applicants, some 615 in all, and I observe too that the information was provided in a significantly different format to that which you requested, albeit that it is possible to "piece together" aspects of the two tables disclosed via the dummy identifier numbers utilised by the University. Not all information requested was held or disclosed by the University; for example you were not provided with interview and selection scores (i.e. Question 4).

By contrast, you sought from the College detailed contextual data relating to a relatively small number of applicants, fewer than thirty in total, with nine ultimately being offered places to read

History. You recognized in your request the need for anonymity, but if the College were to provide you with the data requested then it is my view that anonymity is not possible. The Guidance advises that *'If an individual cannot be directly identified from the information, it may still be possible to identify them. You must consider all the means reasonably likely to be used to identify an individual'* (p. 9). In the particular context of a Cambridge college, anyone knowing that, for instance, an applicant read a particular A Level combination and applied to St John's College, is likely to be able to identify further personal data by a straightforward process of logical elimination and error.

Section 40 does not contemplate an absolute exemption in all cases. Personal data may still be disclosed under certain circumstances. However, I believe that the College acted lawfully, correctly and reasonably in responding to your request in the way that it did, since in my view the disclosure of this personal data would contravene Data Protection Principle (a): that 'personal data shall be processed lawfully, fairly, and in a transparent manner in relation to the data subject'.

For disclosure to be lawful, there must be engaged an Article 6 lawful basis for processing the personal data. The only such lawful basis which may potentially apply here is basis (f), that it is *'necessary for the purposes of legitimate interests pursued by the controller or by the third party, except where such interests are overridden by the interests or fundamental rights and freedoms of the data subject which require the protection of personal data, in particular where the data subject is a child'*.

This exception is important here. You suggest in your request for an internal review that the specific purpose is to reveal ways in which the University and Colleges use such data to inform decisions. However, there are other ways to answer, or to partially answer, your questions that would interfere less with the privacy of individuals. I note too that several of these data subjects are children, or were children at the time of providing personal data to the College and / or the request, and I carry in mind the special duty of care imposed upon data controllers and data processors in respect of children's data.

In the interest of thoroughness, however, I will now assume that disclosure of all the information detailed in your request is indeed necessary to meet a pressing social need. The question of whether or not basis (f) applies then turns on a balancing test: does the legitimate interest in disclosure outweigh the interests or fundamental rights and freedoms of the data subject which require the protection of personal data? That test involves consideration of many factors, helpfully listed at and after p. 20 of the Guidance. Among other points, one must assess the reasonable expectation of the individual data subjects, many of whom are young – most of them indeed under eighteen – who cannot be considered to be active in public life, and who have given no explicit consent to the universal dissemination of such data. It is reasonable to assume they would expect their personal data provided for the purpose of application for an academic place would not be made publically available to the world at large (as is the effect of disclosure under the FOIA). It is of relevance in that regard to note the following provisions on p. 27 of the Guidance:

‘Likewise, individuals in a job application process would expect the information about how well they performed in interview or how they were graded during any assessments would not be made public.

‘You should take into account whether the individual provided the information with an expectation of confidence, taking into account the nature of their relationship with you.’

The University and College Policies and Privacy Notices (<https://www.joh.cam.ac.uk/data-protection>) contain no suggestion that we will disclose personal data in a potentially non-anonymised form in response to Freedom of Information enquiries relating to applications for admission through the annual undergraduate admissions round.

I note that the College, recognising that there is a legitimate public interest in the broader Cambridge admissions process, supplied you under cover of its original Response with aggregated data intended to be of some use to you, while preserving the anonymity of the data subjects. I have considered carefully whether further partial disclosure could be given on a similar alternative basis as part of this internal review response, and have concluded that it is appropriate to provide some further information relating to overall assessment scores from each interviewer, which is enclosed under cover of this letter. These scores, recorded and retained after interview, also reflect the written work submitted as part of an application and the pre-interview assessment marks. However, in ascertaining what disclosure can be given lawfully, I have taken into account the analysis above in ensuring that it would not be possible to “match together” the disclosure provided by the University and identify applicants/students of the College. I do not consider that it is lawful or correct for the College to disclose, for example, *associated* written scores in the form you have requested, which could then be “matched” to the data sets provided by the University and would then enable the public to identify that (for example) an applicant / student who read A Levels “X, Y and Z” achieved particular assessment outcomes. To do so would be an unwarranted intrusion of the individual’s privacy.

I therefore conclude that, subject to the additional disclosure given under cover of this letter:

- **On balance, the legitimate interest does not outweigh the interests and rights of the individual and accordingly, legitimate interests cannot be used as a lawful basis for processing data.**
- **Since no other lawful basis applies, disclosure would be unlawful and would therefore contravene Data Protection Principle (a).**
- **The decision of 28 March 2019 is upheld, on the basis that the outstanding information you have requested comprises personal data of applicants, the release of which to the public would be an unwarranted infringement of those individuals’ rights under the Data Protection Act 2018 / General Data Protection Regulation.**

- The statutory exemption from disclosure provided by section 40 of the FOIA therefore applies.

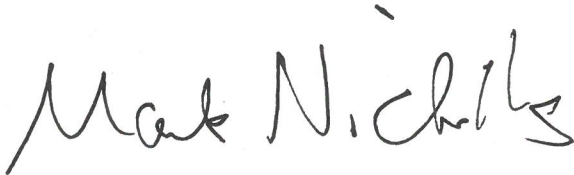
Complaints procedure

This letter concludes the College's response to your Request.

If you are unhappy with the service that you have received in relation to your request, and wish to make a complaint or request a review of the decision, you should write directly to the Information Commissioner's Office. The Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK 9 5AF

Yours sincerely,

A handwritten signature in black ink, reading "Mark Nicholls". The signature is written in a cursive style with a large, stylized 'M' and 'N'.

