

Reference: GS/JD



Information Commissioner's Office
Promoting public access to official information
and protecting your personal information

Brian Summers
Registrar & Secretary
University of East Anglia
Norwich
NR4 7TJ

29 January 2010

Dear Mr Summers

I write in reply to your letter of today's date, faxed to me this morning and copied to the Commissioner.

I think it is important first to distinguish the current situation from your previous experience of dealing with the ICO on an FOI complaint. Complaints are made under section 50 of the Act following refusal by the public authority. If they require a full investigation, we allocate them to a complaints officer and, unless they are resolved informally, a decision notice is issued. The decision notice is the Commissioner's statutory adjudication on a complaint.

In the present case, the section 50 complaint has not yet been fully investigated and there will be exchanges of correspondence between the ICO and UEA as those investigations progress. Unless there is agreement on an informal resolution, a decision notice will be issued. This process is likely to take some months.

Meanwhile, the ICO has been alerted by the complainant and by information already in the public domain via the media, to a potential offence under section 77 of the Freedom of Information Act. The prima facie evidence from the published emails indicate an attempt to defeat disclosure by deleting information. It is hard to imagine more cogent prima facie evidence. Given that this was in the public domain and has been discussed in the media and on various websites over a number of weeks, the ICO's view, as I indicated when we spoke yesterday, is that the University must have understood that the question whether an offence under section 77 had been committed would be looked at. In the event, the matter cannot be taken forward because of the statutory time limit.

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I can confirm that the ICO will not be retracting the statement which was put out in my name in response to persistent enquiries from the Sunday Times journalist, Mr Leake. He was specifically seeking a statement as to why the ICO was not prosecuting under section 77 in this case. The statement was not inaccurate and the ICO is not responsible for the way in which the media and others may interpret or write around an ICO statement.

In response to the specific points which you think should be clarified in a further press statement:

1. As stated above, no decision notice has yet been issued and no alleged breaches have yet been put to the University for comment. That matter has yet to be addressed, but it will be over the coming months.
2. The fact that the elements of a section 77 offence may have been found here, but cannot be acted on because of the elapsed time, is a very serious matter. The ICO is not resiling from its position on this.
3. The ICO's position is as stated in point 2 above. The statement may be read to indicate that. Under section 77, an offence may be committed by an individual, not necessarily the public authority itself.
4. Errors like this are frequently made in press reports and the ICO cannot be expected to correct them, particularly when the ICO has not itself referred to penalties or sanctions in its own statement.

For all the above reasons the ICO will not be issuing a further press statement covering these points. The ICO does not wish to encourage further media reports on the matter, indeed our original press statement was only drafted for one journalist in response to a specific enquiry.

The ICO will not, therefore, be taking any further action in response to your letter, but we will, of course, be following up on the section 50 complaints in due course.

Yours sincerely

A handwritten signature in black ink that reads 'Graham Smith'. The signature is written in a cursive, flowing style.

Graham Smith
Deputy Commissioner