**Dealing with Subject Access Requests**

## 1 Summary

Satswana has now had to support customers with many situations where this new right has been "weaponised" in a similar manner to Freedom of Information requests. We detail below some of the thoughts we have developed that may help you, but the trigger for this paper was the decision by the Information Commissioners Office in the case against the University of Worcester. In an area where there is very little case law or precedent so far, it is our belief that this decision supports a degree of "executive privilege" that our customers might usefully consider.

## 2 Details of the case

As published in The Times 9.10.18

An MP wrote to Universities asking for the names of all academics teaching about Brexit, details of the syllabus and the course they taught. Worcester refused to comply and received seven other similar requests (a 'bombardment' tactic that is seen too often from single interest groups.) One asked for all emails on the Vice Chancellors account that contained the word Brexit.

The University rejected it and said that the request was sinister.

The applicants complained but the University stance was supported by Elizabeth Denham, the Commissioner as follows:

"If the University is required to put this information into the public domain, the Commissioner agrees that those views would be likely to be much more cautious and risk averse in the future and those concerned would be inhibited from providing a free and frank exchange of views for the purposes of deliberation".

## 3 Analysis

This is just one case, but in our view an important and common sense precedent. Does a disappointed applicant for a job have the right to see all the deliberations about them? Not it would appear if the result was to inhibit "providing a free and frank exchange of views for the purposes of deliberation".

Similarly, within the confines of a case conference for a special needs environment there is a clear need for a "free and frank exchange" that is not constrained by a concern that the discussions would be exposed to public scrutiny.

If an Institution, of any sort, is asked a question that is clearly political, or has a strong slant to a specific single interest group, are you obligated to go to the considerable cost and inconvenience of providing them with all your internal correspondence and

 

discussions – regardless of their relevance to the question? Before this challenge by the University the stock answer was yes. Perhaps that answer can now be considered again in the light of the circumstances of the request?

## 4 Other protective suggestions

When dealing with Law there are no certainties, and whilst this case may give organisations a welcome option to consider whether it can be a defence, anything that frustrates the original "transparency" objectives of either FOI or SAR will almost certainly produce a different determination from the Commissioner. As a consequence every request should be assumed to have to be dealt with in full.

Thus we list the following thoughts from our experience so far:-

1. Very sadly too many applications prove to be a last effort to create a communications channel. We have lost count of the number of times we have heard "we only wanted to get somebody to listen". So our first recommendation is to establish simple communication. "Can we meet and talk about this and establish what it is you really want?" Often the disconnect is when key people change jobs
2. As with the above, most requests are impossibly general, being copied from the sort of "catch all" drafting that you can find on the Internet. It is fair to ask whether they can save everybody's time (including theirs) if you can answer the key point that they are driving at, rather than a wholesale fishing expedition.
3. Equally, if they are not helpful with 2 above, then you can normally extend the delivery time scale in a fair manner. We have seen arrogant demands for performance within a timescale, but a publicly funded body (for instance) will very rarely have the luxury of resources to respond. The art of the possible must come into it, thus an application during a holiday period may necessarily have to wait for staff to be available.
4. Remember please that if you do not keep data, then you cannot provide it. We suggest that there will be a dramatic re-think to retention policies over the next few years and a planned and automated deletion of information limits your liability.
5. Similarly move to keep your data in a single place, preferably digitally. If you rely on paper, backed up by digital, with significant conversations over email, then you must spend time extracting data from three places. We suggest that in five years' time we will only have one digital source in a document collaboration area.
6. On retention, consider whether you remain the same legal entity, or whether your status has changed. Do you have a liability to retain the data of a prior entity?
7. Finally, for now, there is the significant challenge of how you approach redacting information before supplying it to an applicant. You must redact

 

any information that refers to another person other than the applicant if it discloses their personal information. You might redact statements that you consider to be executive privilege. Printing out the information, redacting it, copying it so that the redaction cannot be revealed before supplying it with 100% accuracy will challenge any organisation; avoid it if at all possible!

## 5 Vexatious Requests

To conclude, please consider whether the applicant is being reasonable. The Law does give them rights, which must be respected, but we have seen instances fuelled by extreme anger, or some similar emotion, which means that nothing you do is good enough, everything provided is wrong and inadequate. If they go too far then you do have the right to cry 'enough'. Of course what exactly is enough is not defined, so please involve Satswana at that stage. That is an area we are delighted to assist you with.