

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 12 July 2021

**Public Authority:** The Governing Body of Imperial College London  
**Address:** South Kensington Campus  
London  
SW7 2AZ

### **Decision (including any steps ordered)**

---

1. On behalf of another individual, the complainant – a firm of solicitors - has requested information about undergraduate admissions from Imperial College London ('ICL'). ICL released some information and advised that some information is not held in an easily extractable format. ICL withheld the remaining information under section 36(2)(c) of the FOIA (prejudice to effective conduct of public affairs) and considers the public interest favours maintaining the exemption.
2. The Commissioner's decision is as follows:
  - ICL is entitled to withhold the information requested in question 16 of the request under section 36(2)(c) of the FOIA and the public interest favours maintaining this exemption.
3. The Commissioner does not require ICL to take any remedial steps.

### **Request and response**

---

4. As part of wider correspondence to ICL, on 24 April 2020 the complainant submitted 15 numbered requests for information.
5. In their correspondence the complainant also requested the following:

"Additionally, the Applicant requests disclosure of all internal documentation retained on file in relation to her application including guidance for decision-makers, e-mails, notes, memoranda and any other correspondence that led to the decision to refuse admission. This includes disclosure of her score in the entrance examination, which has not been provided to her."

6. In correspondence to the complainant on 6 May 2020, ICL summarised the request as being the following:

1	How many applications were received for a place on the Course?
2	How many students were invited to interview for a place on the Course?
3	How many places were offered on the Course?
4	Of those invited to interview, how many applicants had obtained the same and lower A Level grades or predicted grades as this Applicant?
5	Of those offered places on the Course, how many applicants had obtained the same and lower A Level grades or predicted grades as this Applicant?
6	Of those invited to interview, how many applicants had obtained the same and lower marks in the departmental entrance examination as this Applicant?
7	Of those offered places on the Course, how many applicants had obtained the same and lower marks in the departmental entrance examination as this Applicant?
8	What percentage of all applications received for a place on the Course were made by foreign national students?
9	What percentage of applicants invited to interview were foreign national students?
10	What percentage of applicants offered a place on the Course were foreign national students?
11	What percentage of all applications received for a place on the Course were made by female students?
12	What percentage of applicants invited to interview were female?
13	What percentage of applicants offered a place on the course were female?
14	How many applicants had been invited to interview prior to this Applicant's application being considered?
15	How many applicants had been invited to interview after this Applicant's application had been considered?

7. ICL categorised the request at paragraph 5 as question 16, summarising it as:

"16. Admissions guidelines for admission panel"

8. On 6 May 2020, the complainant confirmed to ICL that they were content with its summary of their request, including question 16.
9. ICL responded to the above request on 29 May 2020. It released some information and advised that some information is not held in an easily extractable format. With regard to question 16, ICL withheld the requested information under section 36(2)(c) of the FOIA.

10. ICL's response concluded by advising the complainant to request an internal review if they were not satisfied with the response.
11. The complainant requested an internal review on 25 June 2020. They did not receive a review and the matter was passed to the Commissioner. On 17 February 2021 ICL advised the Commissioner that it did not intend to carry out an internal review on this occasion.

## **Scope of the case**

---

12. The complainant first contacted the Commissioner on 1 October 2020 to complain about the way their request for information had been handled.
13. The Commissioner understands that through their correspondence to her dated 18 May 2021, the focus of the complainant's complaint is ICL's reliance on section 36(2)(c) to withhold the information they requested in question 16. The Commissioner has therefore considered ICL's application of that exemption and the associated public interest test.
14. Finally, the Commissioner has considered ICL's handling of the internal review process, under Other Matters.

## **Reasons for decision**

---

### **Section 36 – prejudice to the effective conduct of public affairs**

15. Section 36 differs from all other prejudice exemptions in that, in most cases, the judgement about prejudice must be made by the legally authorised, qualified person for that public authority.
16. Other than for information held by Parliament, section 36 is a qualified exemption. This means that even if the qualified person considers that disclosure would cause harm, or would be likely to cause harm, the public interest must still be considered.
17. Section 36(2)(c) of the FOIA says that information held by a public authority is exempt information if, in the reasonable opinion of a qualified person, disclosing the information would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.
18. DfE has provided the Commissioner with a copy of the information it is withholding under the section 36(2)(c) exemption. It is an 'application scoring' document.

19. To determine, first, whether ICL correctly applied the exemption under section 36(2)(c), the Commissioner must consider the qualified person's opinion as well as the reasoning that informed the opinion. Therefore, in order to establish that the exemption has been applied correctly the Commissioner must:
  - ascertain who was the qualified person or persons
  - establish that an opinion was given by the qualified person
  - ascertain when the opinion was given; and
  - consider whether the opinion was reasonable.
20. In this case, the qualified person (QP) was Professor Alice P Gast, ICL's President. The Commissioner is satisfied that, under sub-section 36(5)(o) of the FOIA, the QP is appropriate.
21. ICL has provided the Commissioner with the submission it sent to the QP seeking her opinion with regard to its approach to the complainant's request. Part 12 of the submission document evidences the QP confirming that, in her opinion, disclosing the information in question would be likely to have the effect set out under section 36(2)(c). The Commissioner is therefore satisfied that an opinion was given by the QP.
22. The request was submitted on 7 May 2020. The QP's opinion is dated 22 May 2020 and ICL provided a response to the request on 29 May 2020. As such, the Commissioner is satisfied that the opinion was given at an appropriate time.
23. The Commissioner has gone on to consider whether that opinion is reasonable. It is important to note that this is not determined by whether the Commissioner agrees with the opinion provided but whether the opinion is in accordance with reason. In other words, is it an opinion that a reasonable person could hold? This only requires that it is a reasonable opinion, and not necessarily the most reasonable opinion. The test of reasonableness is not meant to be a high hurdle and if the Commissioner accepts that the opinion is one that a reasonable person could hold, she must find that the exemption is engaged.
24. The QP's opinion in this case is that the prejudice envisioned under section 36(2)(c) would be likely to occur if ICL disclosed the withheld information. 'Would be likely' imposes a less strong evidential burden than the higher threshold of 'would occur'.
25. In order for the QP's opinion to be reasonable, it must be clear as to precisely how the prejudice or inhibition may arise. In her published guidance on section 36 the Commissioner notes that it is in public authority's interests to provide her with all the evidence and argument that led to the opinion, in order to show that it was reasonable. If this is

not done, then there is a greater risk that the Commissioner may find that the opinion is not reasonable.

26. In the submission it provided to the QP, ICL provided the QP with: a summary of the request; a description of the information being withheld; public interest arguments for and against disclosing the information which incorporate a discussion of the purpose of the section 36(2)(c) exemption and the envisioned prejudice; and the view that ICL's complaints procedure is the appropriate route through which the complainant can progress their concerns about ICL's admissions and assessment process.
27. The Commissioner is satisfied that the QP had sufficient appropriate information about the request and the section 36(2)(c) exemption in order to form an opinion on the matter of whether reliance on section 36(2)(c) with regard to the information in question was appropriate. The opinion and the public interest arguments are discussed further below.
28. The Commissioner has noted the evidence at paragraph 25 and, since she is satisfied that the remaining points at paragraph 18 have also been addressed, she must accept, having also reviewed the withheld information, that the QP's opinion about disclosing the information is one a reasonable person might hold. She therefore finds that ICL can rely on section 36(2)(c) to withhold the information to which it has applied this exemption. The Commissioner will go on to consider the public interest test associated with the exemption.

### **Public interest test**

#### Public interest in withholding the information

29. In its submission to the Commissioner, ICL has expanded on the public interest arguments provided to the QP. It has confirmed that the prejudice it has identified is that if it were to disclose the particular Department's detailed application scoring criteria, that disclosure would undermine ICL's selection process for the Department's applicants. It says ICL is rated as one of the world's best universities and competition for places, especially in that particular subject in question, is very strong. ICL seeks to recruit the most academically able and well-rounded students. Due to the very high standard of applicants, the decision on who to interview is based on very fine margins. The guidance document being withheld is a working document that is formulaic in nature and is intended to assist the admissions officers differentiate between the candidates fairly and consistently.

30. ICL has gone on to argue that if the document were to be placed into the public domain, it would be likely that many applicants would use the document as a blueprint when completing their personal statement. This would enable them to 'game' or manipulate the application system. ICL notes that it is not able to verify the truth of applicants' personal statements, and the system relies on applicants not knowing the criteria by which their applications will be assessed. Disclosing the document would therefore make it more difficult for the Department to select appropriate candidates. This would be unfair to potential applicants (those who had not seen the document would lose out) and to ICL (as it would be unable to reliably select the strongest applications).
31. As disclosure under the Freedom of Information Act is regarded as a disclosure to the world at large, disclosure to the complainant under the Act in this case would, ICL argues, effectively oblige it to provide the application scoring criteria to any other person who requests it. ICL considers it is likely that such requests would be received as it often receives requests for the scoring criteria across a number of different courses and departments. In addition, the scoring criteria for the Department do not substantially change year-on-year – so if the withheld information were to enter the public domain, it is likely there would be damage to current and future application rounds.
32. ICL says that, given the above, disclosing the withheld information would undermine the integrity of its application process, both in relation to the Department and for other courses of study. This would damage the admissions process, to the detriment of both potential applicants and ICL. As such, would 'otherwise prejudice the effective conduct of public affairs'.
33. As a higher education institution with a student body of approximately 20,000, ICL says its admissions process is absolutely central to its 'public task' and the service it delivers, as it is the only means by which it selects students.
34. ICL has noted that whilst FOI is typically said to be 'applicant blind', the complainant represents a student whose application to study at Imperial College was not successful. The request was made in the context of a possible appeal against the admission decision and/or possible legal action. ICL's Undergraduate Admissions Policy allows for appeals against admissions decisions where there is an alleged administrative or procedural error. ICL says that the request was made "in order for the Applicant to be able to ascertain whether there has been any procedural irregularity, administrative error, bias or prejudice within the decision-making process". That is, the request was made to obtain information that the complainant regarded as necessary to pursue an appeal on behalf of their client. ICL considers that this is a private interest which



is not itself relevant to the public interest test and that the complainant has not identified any wider, objective, public interest.

35. ICL has noted that information about entry requirements and the selection process is published on its website. Guidance on what to include in the supporting personal statement is also published on ICL's website and elsewhere, for example UCAS' website. In ICL's view, the published information, and information it had provided to the complainant, is sufficient for them to achieve their stated objective, above.
36. ICL has concluded by stating that there is, in its view, a strong public interest in ensuring a level playing field for the Department's applicants and allowing the Department to efficiently select for interview the students that would be best suited to its undergraduate programmes. This far outweighs any public interest in disclosing the application scoring criteria in this case. ICL says it is also of the view that it is not in the public interest for its admissions procedures to be undermined and damaged through disclosure under FOI.

#### Public interest in disclosing the information

37. In their complaint to the Commissioner, the complainant has discussed the matter of their appeal against ICL's decision to refuse to admit their client on to one of its courses. The complainant has also discussed ICL's responsibility to undertake its admissions process transparently.

#### Balance of the public interest

38. The Commissioner accepts that releasing its internal admissions guidelines would indeed be likely to undermine ICL's admissions process. This is because it would be possible for applicants to tailor their applications to ICL in line those guidelines. Their applications would therefore not be a true representation of their abilities or interests. The Commissioner agrees that this would not be fair to other applicants who had not had sight of the guidelines. It could also result in ICL not accepting the most suitable applicants to the course in question which would weaken that course.
39. The public interest in ensuring that ICL's admissions process is fair and transparent is met through the relevant information it publishes, and through its complaints process and possibly through an appeal. The Commissioner is satisfied that the public interest in ICL remaining a top university with a fair admissions process far outweighs the complainant's private concern about a decision ICL made about one application, and the appeal they intend to bring about that decision. It is quite clear to the Commissioner that the balance of the public interest

favours maintaining the section 36(2)(c) exemption in this case and is line with her previous decision in a similar case: [FS50454031](#).

## Other matters

---

40. Providing an internal review is not a requirement of the FOIA but it is a matter of good practice. ICL had advised the complainant in its response to the request in May 2020 that they could request a review and the complainant did so in June 2020. However, when contacted by her, ICL told the Commissioner in February 2021 that it did not intend to provide a review on this occasion. ICL could have instructed the complainant to submit a complaint to the Commissioner in its May 2020 response to the request. Its inconsistent approach delayed the complainant submitting their complaint to the Commissioner for four months. The Commissioner reminds ICL that if it offers an applicant an internal review, it should then go on to provide a review within the recommended timeframe of 20 working days if the applicant asks for one.



## Right of appeal

---

41. 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](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

42. 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.
43. 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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**