

**Freedom of Information Act 2000 (FOIA)
Environmental Information Regulations 2004 (EIR)**

Decision notice

Date: 20 December 2018

Public Authority: Trinity College
Address: Broad Street
Oxford
OX1 3BH

Decision (including any steps ordered)

1. The complainant has requested information relating to an investment by Trinity College into a redevelopment project by Quantum Group. The complainant asked for updates to the College by the Quantum Group and minutes of investment meetings. The College disclosed some information but made redactions on the basis of section 41, 43 and 36 of the FOIA.
2. The Commissioner's decision is that Trinity College has correctly applied the provisions of section 43(2) to redact information from the documents it identified. She considers the balance of the public interest lies in maintaining the exemption and she therefore requires no steps to be taken.

Request and response

3. On 19 September 2017, the complainant wrote to Trinity College Oxford ("the College") and requested information in the following terms:

"1) All Quantum communications to Trinity describing updates to the plans for the project subsequent to the original Information Memorandum.

2) Minutes of the 2015 meeting of Trinity's Investment Committee which approved the Investment in Quantum Teddington, including any relevant

project papers submitted to the meeting, and of course excluding any non-Quantum matters discussed.”

4. The College responded on 28 November 2017. For part 1) the College stated it had identified two sets of investor meetings and provided information on this with some redactions made on the basis of section 41 of the FOIA. For 2) the College stated it believe it had complied with this previously when the original email recommending the purchase of Trinity College’s share of the investment and the Bursarial Committee meetings was disclosed to the complainant following an earlier information request. The College stated it had looked again at whether the information that had been redacted from these documents had been done so correctly and concluded that the redactions were appropriate on the basis of section 36.
5. Following an internal review the College wrote to the complainant on 9 January 2018. For 1) the College disclosed some additional information but maintained redactions had been appropriate under section 41 and 43. For 2) the College clarified section 36(2)(b)(i) had been applied to the same information as had been previously considered (email to the Bursarial Committee recommending the investment) and section 36(2)(c) also applied.

Scope of the case

6. The complainant contacted the Commissioner on 22 February to complain about the way his request for information had been handled. The complaint was accepted for investigation on 21 March 2018.
7. The complainant accepted the scope of the investigation was for the Commissioner to consider the redactions made from the minutes in 1) and the papers in 2) but did question the position of the College that the request would not include any communications after 19 September 2017. The Commissioner accepts the College is only required to consider information which existed at the time of the request and that the College’s position on this is correct.
8. During the course of the investigation the College confirmed that whilst it was applying section 41 to withhold information in relation to part 1) and section 36 to withhold information in relation to part 2) it was also applying section 43 to withhold information from both parts of the request.
9. The Commissioner therefore considers the scope of her investigation to be to determine if the College has applied the cited exemptions to redact information from the documents it has identified.

Background

10. The request relates to an approach made to the College in 2015 by the Quantum Group about an investment opportunity regarding the acquisition and redevelopment of a site at Teddington in Surrey. The Teddington Project involves the redevelopment of privately-owned playing fields into mixed use development including residential units, care homes, playing fields and sports facilities.
11. The land, including Udney Park Playing Fields was sold by Imperial College to the Quantum Group in 2015. At the time of the request, there had been various public consultations and pre-planning discussions but the formal planning application to the London Borough of Richmond upon Thames was not submitted until January 2018, after the date of the request.
12. Trinity College is a chartered charitable corporation and a registered charity with an aim of advancing education, learning and research through the provision, maintenance and conduct of a college within the University of Oxford. The College's investment policy aims to generate the maximum total return over time from a diversified portfolio of investments. The College was approached about investing in the Teddington Project and the withheld information in this case relates to the advice about this investment opportunity and discussions with the Bursarial Committee about the investment.
13. As further background to this issue the College has provided the Commissioner with details as to its reasons for investing in the project and has clarified it is a passive investor and has no involvement in the day to day decisions being made. The College is aware of the genuine concerns of some of the local community about the development plans but considers the planning process provides opportunity and the right forum for any party to discuss the merits of the application.
14. In addition, the College has dealt with a number of information requests from the complainant in this case on the subject of the Teddington Project. In a request from 2016 the complainant requested copies of the investment prospectus/information memorandum and minutes from relevant meetings relating to the College's decision to invest. The Commissioner investigated the College's response and issued a decision notice¹. The Commissioner ordered disclosure of extracts from the

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2017/2014709/fs50654257.pdf>

Information Memorandum which would show a fuller picture of the potential options for use of the land but agreed that information on Quantum Group's method of operation and financial projections could be withheld.

Reasons for decision

15. In relation to part 1 of the request the College has confirmed it holds the minutes of meetings of investors which took place on 16 November 2016 and 4 April 2017 ("the Quantum Updates"). The College was not present at these meetings where updates to the Teddington Project were discussed but received the minutes as they were used by Quantum to update investors.
16. For part 2 of the request the College holds an email of advice from July 2015 to the Bursarial Committee advising on the investment and extracts from minutes of a meeting of the College's Bursarial Committee acknowledging the investment ("the Bursarial Committee Papers").
17. In terms of the exemptions cited by the College:
 - section 41 has been applied to one sentence in the April 2017 minutes and six paragraphs in the November 2016 minutes;
 - section 36 has been applied to withhold information from the Bursarial Committee Papers; and
 - section 43 has been applied to withhold the same information as for section 41 and 36.
18. As section 43 has been applied by the College to withhold all of the remaining information from the Quantum Updates and the Bursarial Committee Papers, the Commissioner considers this to be the logical starting point for her analysis.

Section 43(2) – prejudice to commercial interests

19. Section 43(2) of FOIA states that information is exempt information if its disclosure under the FOIA would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).
20. In order for a prejudice based exemption, such as section 43(2) to be engaged the Commissioner considers that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely, to occur if the withheld information was disclosed must relate to the applicable interests within the relevant exemption;
 - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. The resultant prejudice which is alleged must be real, actual or of substance; and
 - Thirdly, to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – i.e. disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice. In relation to the lower threshold the Commissioner considers that the chance of prejudice occurring must be more than a hypothetical possibility; there must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
21. The College has stated that it considers the information withheld from the Quantum Updates and Bursarial Committee Papers would be likely to prejudice both Quantum Group's and the College's commercial interests. In support of its position the College has provided the Commissioner with a detailed breakdown of the commercial interests and prejudice arguments in relation to each part of the withheld information. This has been included in a confidential annex to this decision notice (sent only to the College) as it describes the withheld information in detail.
 22. Having viewed the withheld information in both the Quantum Updates and Bursarial Committee Papers the Commissioner accepts it is commercial in nature as it relates to the investment strategy of the College and specifically the nature of the investment with Quantum Group. It is argued that the information is sensitive not just in relation to the Teddington Project but also with regard to future investments the College may want to make and Quantum Group's ability to competitively bid for future opportunities.
 23. Whilst the Confidential Annex provides more detailed analysis of the specific withheld information; the Commissioner can confirm that the information that has been withheld relates to Quantum Group's commercial strategy for the Teddington Project and the investment made by the College.
 24. Quantum Group has been consulted on disclosure of information relating to the Project and it has made it clear it is opposed to the disclosure of

commercially sensitive information. It has previously informed the College that it considers disclosure would affect its ongoing operations and relationships with investors as well as impacting on future negotiations with investors.

25. The Commissioner has provided analysis of Quantum Group's prejudice arguments in the confidential annex. In summary, when considering each redacted part of information and the arguments for these, she accepts there is a likely prejudice to the Quantum Group's commercial interest if the information were to be disclosed. It is clear the information is not publicly known and contains details which are likely to be of use to competitors or may undermine its plans for the site in this case.
26. In terms of the College's own commercial interests; it argues that it has a commercial interest in securing value for money in its investments. The College competes with similar charitable institutions to secure value for money in its investments and when purchasing investment from third parties. This minimises the costs associated with investing, allowing the College to access a range of investments and the investment income generated provides funding for the College's charitable aims.
27. The College has provided further detail on the likely prejudice caused as a result of disclosure of each part of the redacted information and the Commissioner has commented on this in more detail in the confidential annex. Broadly speaking, it is argued that disclosure would impact on the investment strategy of the College and the likelihood of maximising its investment return in relation to the Teddington Project.
28. The College is concerned that disclosure would be likely to impact on its future investment opportunities with Quantum Group or with other similar investment opportunities with other companies. This is a two-fold arguments – firstly as disclosure would reveal some details of the College's investment strategy which would impact its position in future investment opportunities and secondly as the remaining information not already disclosed is the information considered most sensitive. The College considers disclosing this would undermine its relationship with investors, both current and future and impact on its commercial interests. The College's investment in this project is a 'taster' for future investments of a similar kind and it considers that the commercial prejudice which would be likely to result, reaches beyond the current project.
29. With regard to the first criterion of the three limb test described earlier, the Commissioner accepts that the potential prejudice described by the

College relates to the commercial interests which the exemption contained at section 43(2) is designed to protect.

30. The Commissioner is satisfied that the second criterion is met as disclosure of the information withheld on the basis of this exemption has the potential to harm both Quantum Group and the College's commercial interests as described above and in the confidential annex.
31. The College specified that it believed that prejudice to commercial interests *would be likely to* result, rather than *would* result. This means that the test that the Commissioner has applied here is whether there is more than a hypothetical or remote possibility of prejudice occurring. She is satisfied that the level of prejudice has been met with regard to the information withheld.

Public interest arguments in favour of disclosure

32. The College accepts there is some public interest in disclosure to assist the public in understanding the future of the site, College decision making, and promoting accountability for the College's investments so the public can judge if the College is investing wisely.
33. The complainant argues that the earlier ruling of the Commissioner also carries weight here as she previously found the importance of the project to the residents of Teddington outweighed any commercial privacy exemptions claimed in relation to the Information Memorandum and prospectus.
34. The complainant points to Oxford University having a policy on socially responsible investment and the importance of individual Colleges also following these principles. The complainant is of the view that the College would provide further information but is being influenced by the developer to withhold information.
35. The complainant argues full disclosure is needed to provide transparency and to see the ultimate intentions of Quantum Group. The planning application, at the time of the request, had not been submitted and it was therefore important to ensure that all relevant financial facts were available to allow for informed opinions to be given on the plans.

Public interest arguments in favour of maintaining the exemption

36. The College is concerned that disclosure will damage the relationship of trust it has with Quantum Group and other investors which will hinder or prevent further investment opportunities with Quantum Group. It may also affect the likely success of the investment the College has made in the Teddington Project.

37. The College argues that as an investor it needs to be kept updated on the Project. It considers that disclosure would mean it is seen as the 'weak link' in relation to confidential information and it may be excluded from updates on its investment, this would not be in the public interest as it may jeopardise the College's return on its investment and its relationship with future investors.
38. It is argued it is not in the public interest for the College to be hampered in achieving the best investment outcomes either in relation to this specific investment or in relation to future investments offered by Quantum Group or other third parties. Damage to the value of the investment and/or restrictions on the College's ability to access this type of investment in the future would in turn damage the College's finances and its ability to generate funds. At a time when public funding of Universities is declining this would negatively affect the College's ability to fulfil its charitable aims and deliver education which would not be in the public interest.
39. The College recognises the level of legitimate public concern around the future of the site and the Teddington Project and the impact on local residents of the redevelopment of the site. However, it also considers that the information already in the public domain is sufficient for the public to have an informed debate. It also considers there is a great deal of public support for the Project and that due to these competing views the planning process is the appropriate mechanism for arguments to be played out.

Balance of the public interest arguments

40. In considering whether there is an overriding public interest in providing the requested information, the Commissioner has considered the arguments put forward by both the complainant and the College. She must consider whether in all the circumstances of the case the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
41. In forming a conclusion here, the Commissioner has taken into account the general public interest in the transparency of the College, as well as specific factors that apply in relation to the information in question.
42. The Commissioner accepts that there is a strong public interest in the College managing its investments wisely. She also accepts that there is little public interest in disclosure of the details of the College's investment strategy. For the information which reveals some detail about Quantum Group's strategy and the specifics of its strategy for the Teddington Project; the Commissioner considers there is a more compelling public interest argument for disclosure.

43. However, this information is very limited and what is contained in the updates to investors is only that which is likely to be the most commercially sensitive information, for example, information on specific clauses associated with this Project. The Commissioner recognises that information on Quantum Group is likely to carry more public interest than information on the College's investment strategy as it is Quantum Group who are behind the proposals but she also considers that disclosing this level of detail is not likely to add to the debate on the merits of the plans but may undermine the working relationship with Quantum Group and the College and potentially impact on the College's ability to get the best return on its investment. This would not be in the public interest as it could affect the College being able to deliver its aims.
44. The Commissioner is aware in the previous decision notice she found that some information that had been withheld under section 41 should be disclosed because there had been some degree of misrepresentation. In this case the withheld information is different and there is no indication of any misrepresentation that could be highlighted by disclosure; the information is a different type of information prepared for a different audience of investors.
45. In conclusion, the Commissioner has recognised that it is in the public interest to maintain the exemption in order to avoid a situation in which the commercial interests of private sector organisations are prejudiced as a result of involvement in the public sector. She also accepts that there is a real risk of prejudice to the College through disclosure of information about its investment strategy as this may impact on its future investments by disclosing what it considers is a reasonable investment.
46. Whilst the Commissioner understands that the Teddington Project has generated a lot of opinions, both positive and negative, and there is therefore a public interest in transparency of information around the Project; in this case the information would not add to this debate as it relates to the investment made by the College and to the information given by Quantum Group to its investors but does not specifically shed any light on the plans or Quantum Group's intentions regarding the site.
47. The Commissioner finds, therefore, that the public interest in the maintenance of the exemption outweighs the public interest in disclosure of the withheld information.
48. She has therefore not gone on to consider the application of sections 41 or 36.

Right of appeal

49. 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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

50. 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.
51. 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

Jill Hulley
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF