

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

### **Decision notice**

**Date:** 31 March 2023

**Public Authority Address:** **The Council of the University of Liverpool  
Foundation Building  
Brownlow Hill  
Liverpool  
L69 7ZX**

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

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1. The complainant has requested information relating to the University's investment portfolio. The University disclosed some information in response to the request but also withheld some under section 43(2) (commercial interests).
2. The Commissioner's decision is that the withheld information engages section 43(2) and the public interest lies in maintaining the exemption.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 2 September 2022 the complainant wrote to the University and requested:

"1. What was the total market value of the university's investment portfolio(s) on the 31st July 2022?"

If you are going to provide this information through your Annual Accounts/Financial Statements, please provide the specific page number, section and row that the value can be found on. For example, page 28, section 5 "Investments", row "total market value."

For guidance on the number we are seeking, please see this example from the University of Glasgow at 'Annual Investments' in cell C1091 here: <https://www.gla.ac.uk/myglasgow/sustaina...>

2. On the 31st July 2022, were the institution's investment portfolio(s) managed directly by the institution, indirectly by [an] external fund manager(s), or a combination of both?

3. If the university uses external fund manager(s) to manage investment portfolios, please provide the name of each fund manager used, along with the percentage of the total investment funds that they were managing on the 31st July 2022.

Please present this information in this format:

Fund manager name - Percentage of total investment funds managed  
Schroders - 47%  
CCLA - 49%  
University - 4%

4. If the institution invests directly, please provide the details of companies invested in (by way of all investment portfolios), including the full names of each company invested in, and the market value invested in each company on the 31st July 2022. Please provide this information in a spreadsheet format.

5. If the university holds investments through [an] external fund manager(s), please provide a breakdown of the university's holdings with that investment manager on the 31st July 2022, including the market value for each company that forms part of your investment portfolio(s) with them. Please provide this information at a company level in a spreadsheet and/or the format that this information is provided to you by your fund manager(s).

For example, see the University of Glasgow's breakdown at 'Annual Investments' here: <https://www.gla.ac.uk/myglasgow/sustaina...>

6. Does the institution have an ethical investment policy, or similar? If so, please state if it is publicly-available, and provide a web link.

If applicable, in response to any of the above information requested, please confirm that the University does not hold this information."

5. The University responded on 3 October 2022. It explained that part 1 of the request, that asked for the total value of the University's investment portfolio, was exempt under section 22 (information intended for future publication), since it would be published at the end of 2022. It disclosed information in response to parts 2 and 4 of the request. In relation to part 3 and 5, it disclosed the names of the fund managers but refused to

provide the breakdown of the University's holdings with each fund manager and the market value for each company included in the investment portfolio, under section 43(2) (commercial interests).

6. Following an internal review University wrote to the complainant on 5 December 2022. It upheld its original position.

### **Scope of the case**

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7. The complainant's request of 2 September 2022 was a round robin, submitted to 153 Universities, the majority of which appear to have complied with the request in full. The complainant raised complaints with the Commissioner about those that did not and several of these complaints were resolved informally because the commercial sensitivity of the withheld information waned over time, which meant it could be disclosed during the course of the Commissioner's investigation.
8. However, the outcome of these previous investigations, or the fact that other public authorities chose to disclose the information that is being withheld here, is not relevant here. Each request must be looked at on a case-by-case basis and the scope of this request is to consider whether the University was correct to withhold the information that it did, at the time that the request was received.
9. The Commissioner will not consider the University's application of section 22, since the complainant has not raised any concern about this matter and the information appears to have now been published<sup>1</sup>.

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<sup>1</sup> [Annual, Accounts, 2021-2022.pdf \(liverpool.ac.uk\)](#)

## Reasons for decision

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### Section 43(2) – commercial interests

10. Section 43(2) states:

‘Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).’

11. The Commissioner’s guidance<sup>2</sup> ‘Section 43 - Commercial interests’ states ‘A commercial interest relates to a legal person’s ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.’ For this purpose, the University represents the legal person in question.

12. The Commissioner acknowledges that, first and foremost, Universities are education providers. However, they are also businesses and must be able to operate in a highly competitive market.

13. The University has elaborated ‘To be sustainable in the long term, universities need to meet their ‘full economic costs’ of teaching. This includes costs of staff, equipment, and services. Some subjects cost more to teach than the University receives from student fees. Government teaching grants are used to close this funding gap but other sources such as research and investments are crucial to the income of the business.’

14. The University is concerned that maximising its returns on investments is essential to ensuring the University can fund its business activities and improve the services that it offers. The Commissioner accepts this.

15. However, in order for any information to be appropriately withheld under section 43(2), there must be a causal link between its disclosure and any prejudice to University’s commercial interests.

16. The University has explained that:

‘The University has paid for advice on the optimum asset allocation for its investments and for advice on the choice of fund managers to achieve this. Sharing this information would enable third parties to determine our asset allocation (i.e., how much of our funds we want in

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<sup>2</sup> [Section 43 - Commercial interests | ICO](#)

equities, property, diversifying assets, etc) and how we achieve this.

The University believes this is the element that gives us a competitive edge over other universities. Given the University pays for this expertise, we believe this to be commercially sensitive and would be of benefit to other universities to understand and potentially replicate our approach.'

17. The University has also explained that 'Because of the size of our endowments, the University has a larger investment portfolio than most Universities. This increases the commercial advantage of achieving good returns via our fund managers.' The University believes that its investment make up has protected it from the recently global turmoil in the financial market and maintains its position that disclosure of this make up would be likely to prejudice its commercial interests.
18. The Commissioner has seen the withheld information as part of this investigation, it's the breakdown of the University's holdings with each fund manager and the market value for each company included in the investment portfolio.
19. Looking at the withheld information, and the University's explanation in paragraph 16, the Commissioner is satisfied that the withheld information could be used by a competitor, either of the University or of its fund managers, to emulate either the University's or the fund manager's performance. Having accepted that the University operates in a highly competitive global market, any economic advantage to its competitors has the potential to damage the performance, and the commercial interests, of the University. The Commissioner is satisfied that the exemption is engaged and he'll go onto consider the balance of the public interest.

### **The public interest test**

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20. The University recognises the need for transparency on how its funds are invested. It's explained that it meets this public interest with its publicly available accounts, which give the total market value requested in part 1 of the request, but also shows the total value held in each type of asset. The University has explained that 'We feel that this gives sufficient information on our direction of travel without disclosing the specific asset allocation we are aiming for.'

21. Furthermore, the University publishes its annual lists of investments<sup>3</sup> and directed the complainant to this information during the initial handling of the request. This information, again, provides a list of investments except without the level of holdings or values.
22. The complainant is concerned that universities should be held accountable for their investments. The Commissioner agrees. However, in this case the Commissioner is satisfied that the University has demonstrated this accountability with the information in the public domain but has reasonably declined to publish any information that might benefit its competitors.
23. The Commissioner accepts the complainant's arguments that other universities have chosen to disclose this information, both in this round of requests and in previous. However, the way in which a public authority might choose to handle a request can differ for many reasons, for example the complexity of its investments or the economic climate at the time of the request. In this case, in the absence of any concerns surround the legality or appropriateness of the University's investments, the Commissioner has decided that the public interest lies in maintaining the exemption.
24. Furthermore, the Commissioner's investigation is to consider whether the University was right to withhold the information at the time that it did; not at the time of writing this notice. However, he notes that if the University's investments are substantially different now to what they were at the time that the request was received, disclosure would not be likely to prejudice the commercial interests of the University.

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<sup>3</sup> [University, of, Liverpool, Investments.pdf](#)

## **Right of appeal**

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25. 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)

26. 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.
27. 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**

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