

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 April 2023

Public Authority: Council of Queen Mary University of London

Address: Mile End Road
London
E1 4NS

Decision (including any steps ordered)

1. The complainant submitted an information request to the Council of Queen Mary University of London ("the University") requesting documents in relation to the changing of the name of a faculty.
2. The Commissioner's decision is that the University was entitled to rely on section 43(2) of FOIA to withhold the requested information. However, in failing to respond to the request, or provide a refusal notice within twenty working days upon receipt of the request, the Commissioner has determined that the University breached sections 10(1) and 17(1) of FOIA.
3. The Commissioner does not require further steps as a result of this decision notice.

Request and response

4. On 30 April 2022, the complainant made the following request for information under FOIA. For ease of reference, the Commissioner has numbered the questions to align with the University's response:

"I'm requesting information under the Freedom of Information Act. I refer to the FOI made by [redacted] on 04/02/22 and responded to by yourselves on 08/04/22 (<https://www.whatdotheyknow.com/request/i...>).

1. In this FOI, the document labelled '20211117 email' refers to both a document made by [redacted] regarding this branding issue, and a paper written by [redacted], [redacted], and [redacted]. I would like to request copies of both of these documents.
 2. In the document labelled '20211117 Identity consultation group' there is also mention of "work conducted as part of the merger showed strong international identity with the Barts name". I would like to request a copy of this work if it exists.
 3. I would also like to request a copy of any legal correspondence received by the University over this issue."
5. Responses were provided on 9 and 29 June 2022 in which the University confirmed that in relation to question one, the information was being withheld under section 43(2) of FOIA and that in response to questions two and three the information is not held.
6. Upon receiving this response, the complainant requested an internal review on 21 July 2022 and on 4 October 2022, the University provided its internal review, in which it maintained its original response.

Scope of the case

7. The complainant contacted the Commissioner on 5 October 2022 to complain about the way their request for information had been handled.
8. In the complainant's internal review and complaint to the Commissioner, their complaint centred solely on the application of section 43(2), in relation to question one.
9. The Commissioner has therefore considered the University's handling of the complainant's request and in particular its application of section 43(2) of FOIA.

Reasons for decision

Section 43(2)

10. Section 43(2) of FOIA states that information is exempt if its disclosure would, or would likely to, prejudice the commercial interests of any person, including the public authority holding it.
11. The Commissioner's guidance¹ states that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests.
12. In this case the withheld information consists of considerations regarding the change of nomenclature and the University considers that disclosing this would likely result in prejudice to its own commercial interests because of its impact upon its reputation and upon future student recruitment.
13. The University explains that commercial interests for a university can relate to "activities that it undertakes in a competitive market in order to generate income (regardless of profit), such as recruiting students to provide academic courses for a fee".
14. In highlighting harm, the University explains that it is in competition with other higher education institutes and the competition for quality students and staff could said to be "particularly intense". If prospective students and job applicants choose to apply or enrol at competitor institutions, because they have been discouraged, this could lead to a detriment to the University in prejudicing its reputation and commercial interests.
15. The University also confirms that there is mention, in the withheld information, of a lease, held by the University, and of one of its main funding streams. The University believes that disclosure of the withheld information would be likely to prejudice renegotiation of the lease and have a direct impact on its main funding stream for research.

¹ <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/section-43-commercial-interests/>

16. The University has also referred the Commissioner to a previous decision notice², involving a university and potential damage to its commercial interests, in which the Commissioner found that the exemption was engaged.
17. In submissions to the Commissioner, the University further highlighted why disclosure of the withheld information would likely prejudice its commercial interests. However, the Commissioner cannot reproduce those arguments here without undermining the exemption, but he considers that the University have amply demonstrated that there is a causal link to be drawn between disclosure and harm.

The Commissioner's decision

18. Having considered the arguments provided by the University and referred to the withheld information, the Commissioner is satisfied that the harm the University envisages, relates to its own commercial interests. Secondly, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice, and finally the Commissioner accepts the University's position that the envisioned prejudice would be likely to happen.
19. The Commissioner's decision is therefore that the University was entitled to apply section 43(2) to the withheld information, and he will go on to consider the associated public interest.

Public interest test

Factors in favour of disclosure

20. The University has identified the public interest in transparency and accountability. It also acknowledges that disclosure of the information would "allow more insight to the issues considered behind the change to the nomenclature, the decision-making process and understanding about the impact".
21. The complainant considers that as a public institution, it is only right that the public are able to understand how decisions are made and that "withholding this information is more likely to cause mistrust".

² <https://ico.org.uk/media/action-weve-taken/decision-notice/2022/4019769/ico-119875-f6h5.pdf>

Factors in favour of maintaining the exemption

22. The University sees no public good in releasing the information but states that it would damage the public good if students, who were contemplating joining the University, were "needlessly put off owing to reputational damage".
23. The University further explains that the public good in disclosure would be "extremely limited" and would not outweigh the impact on its recruitment, lease, and donation negotiations, were the information to be disclosed.
24. The University believes that there isn't a wide public interest in this matter and that there is already "sufficient information" in the public domain. Furthermore, it confirms there is also no plausible suspicion of wrongdoing by the University.

The balance of the public interest test

25. In balancing the public interest arguments, the Commissioner accepts that disclosure would to some extent help increase the openness and transparency regarding the change in nomenclature. However, given the University has explained publicly the reasoning behind the change, and given the likelihood of commercial harm that would occur, should the requested information be disclosed, the Commissioner finds that the balance of public interest favours maintaining the exemption.

Procedural matters

26. Section 10(1) of FOIA states that a public authority must respond to a request promptly and in any event no later than the twentieth working day following the date of receipt.
27. Section 17(1) of FOIA states that where a public authority refuses a request for information, it must provide the applicant with a refusal notice explaining the exemptions relied upon and why they apply (if not apparent), no later than 20 working days after the date on which the request was received.
28. The request for information was made on 30 April 2022 and the University provided responses on 9 and 29 June 2022. Even though the University informed the complainant that it was considering the public interest test, the initial refusal notice was issued after 20 working days had passed.
29. The Commissioner therefore considers the University to have breached section 10(1) and 17(1) of FOIA.

Other matters

30. There is no obligation under FOIA for a public authority to provide an internal review process. However, it is good practice to do so and, where an authority chooses to offer one, the section 45 Code of Practice sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 in exceptional circumstances.
31. In this case the complainant requested an internal review on 21 July 2022 and the University provided the outcome of its review on 4 October 2022, over 50 working days later. The Commissioner reminds the University of the Code of Practice and urges it to respond in a timely manner.

Right of appeal

32. 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

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

33. 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.
34. 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.....

Gemma Garvey
Senior Case Officer

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