

Freedom of Information Act 2000 (FOIA)

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 17 August 2023

Public Authority: The Council of the University of Warwick
Address: University Road
Coventry
CV4 7AL

Decision (including any steps ordered)

1. The complainant has requested information about the intake, admissions and requirements for offers for a particular course at the University of Warwick ("the University"). The University refused the request on the basis of section 43 of FOIA – commercial interests.
2. The Commissioner's decision is that the University has correctly engaged the exemption and the balance of the public interest favours maintaining the exemption and withholding the information.
3. The Commissioner does not require further steps.

Request and response

4. On 3 May 2023, the complainant wrote to the University and requested information about the BSc Accounting and Finance course in the following terms:

"Can you please provide for the 2023/24 intake the following information on the above course in terms of

No of application

No of offers made Total

Broken down by

Offers made to students with predicted

A*AA

AAA

AAB (Non Widening Participation)

AAB (Widening Participation Context)

Lower Requirements

Offers not made to students"

5. The University responded on 4 May 2023. It stated that it could not provide information for admissions for applicants for courses in 2023/24 as the admissions cycle was not complete. The University asked the complainant if they wanted the information for the 2022/23 academic year or wanted to resubmit their request in October once the 2023/24 admissions data was available.
6. The complainant responded on the same date stating the request was not about admissions but was about applications and offers relating to a specific course where offers have already been issued. The complainant therefore considered their request was valid in its current form.
7. The University responded and re-stated its position that applications and offers come under admissions statistics and as the University was still mid-cycle the data was not complete for 2023/24. The complainant confirmed they wanted the data for 2023/24 and as letters and offers had been sent out information should be available.
8. The University again stated they were still accepting applications and offers and asked the complainant to confirm if they wanted the information as it stands ie not complete at the end of the cycle. The complainant stated that would be acceptable but still maintained the information should be complete as individuals had been declined offers and told the course is fully offered.
9. The University responded to the clarified request on 10 May 2023. It refused to provide the information on the basis of section 43(2) of FOIA as the information related to mid-cycle admissions statistics.
10. Following an internal review the University responded on 8 June 2023 upholding its position.

Scope of the case

11. The complainant contacted the Commissioner on 8 June 2023 to complain about the way their request for information had been handled.
12. The Commissioner considers that the scope of his investigation is to determine if the University has correctly applied section 43 of FOIA to withhold the information.

Reasons for decision

Section 43 – commercial interests

13. Section 43(2) of FOIA states that:

“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).”

14. The exemption can be engaged on the basis that disclosing the information either “would” prejudice commercial interests, or the lower threshold that disclosure only “would be likely” to prejudice those interests.
15. In order for a prejudice based exemption, such as section 43, to be engaged the Commissioner believes 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 has to 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. Furthermore, the resultant prejudice which is alleged should be real, actual or of substance; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, ie disclosure ‘would be likely’ to result in prejudice or disclosure or ‘would’ result in prejudice.
16. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring 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.

17. The University considers the admissions process must remain fair, transparent and consistent for all applicants in each admissions cycle. The University explained it was still considering applications for 2023 entry and at the time of the request, response and internal review it was still receiving new applications and would be until the end of July 2023.
18. The University stated it would not provide information relating to application data or other related data during an admissions cycle if that information was not available to all applicants at the start of the admissions cycle. It argued that giving mid-cycle data would enable the recipient to analyse and interpret the University's student recruitment and admissions strategy and operations.
19. The University considers this could enable a competitor to better understand its operating model, prejudicing the University's financial success and profitability in the future.
20. The term 'commercial interests' is not defined in the FOIA. However, the Commissioner has considered his guidance on the application of section 43, which clarifies that: "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."
21. The Commissioner has accepted that Universities operate in commercial environments. The information in this case is, broadly speaking, admissions data and this is commercial information as it relates to the University's ability to participate in commercial activities such as competing for students to attend its courses.
22. The Commissioner is also satisfied there is a causal link between disclosure of the withheld information and the prejudice that would be likely to occur to the University. The fact this information is mid-cycle is key here. The Commissioner notes the complainant considers the information is not mid-cycle as they state some students have already had offers declined but the University has reiterated several times that it was still accepting applications and making offers. The Commissioner has no reason to dispute the assertions made by the University and, as such, notes that the information requested has the potential to be useful to competitor institutions by allowing them an insight into the popularity of the course and what entry requirements the University is requiring and accepting. This information could clearly be of use to competitors who are seeking to attract students onto the same course at their institution and thus potentially affect the amount of students on courses and the amount of tuition fees the University obtains.

23. The University has argued the exemption is engaged at the lower level of likelihood ie that prejudice would be likely to occur. Based on the above and the fact the prejudice is of substance given the potential impact on revenue from tuition fees, the Commissioner accepts disclosing admissions information is likely to harm the commercial interests of the University. This is strengthened by the granularity of the information requested, asking for offers made broken down by predicted/actual grades required.
24. The exemption at section 43(2) is a qualified exemption which means that the University must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.
25. The University considers there is no overriding public interest in the circumstances that would warrant prejudicing the University's commercial interests.
26. The complainant has argued that the University is operating an opaque admissions process contrary to its requirements and the information is needed to bring this to light.
27. The Commissioner acknowledges that disclosure of the withheld information may provide those considering courses with a greater degree of understanding of the popularity of courses and what is needed to be offered a place and to be accepted. Students should be able to make decisions about their choice of course and University based on reliable and informative data but the Commissioner considers mid-cycle data is not reliable and informative in the same way that data would be if it was complete ie once the academic year has begun and final offers and acceptances have been concluded. Whilst the cycle is ongoing, disclosure of the data may impact on the University's position to compete with other higher education institutions for students for its courses or affect the quality of candidates and this would not be in the public interest as it would place higher education institutions on an uneven footing.
28. The Commissioner therefore considers, on balance, that given the timing of the request there is sufficient public interest in favour of withholding the information and maintaining the information and he accepts the University has correctly withheld the requested information.

Right of appeal

29. 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

30. 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.

31. 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
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Wilmslow
Cheshire
SK9 5AF