

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 November 2023

Public Authority: The Council of Imperial College
Address: South Kensington Campus
London
SW7 2AZ

Decision (including any steps ordered)

1. The complainant has requested information on skills bootcamps run by HyperionDev and accredited by Imperial College (the College). The College disclosed or answered the majority of the parts of the request but withheld information relating to the financials of the arrangement under section 43(2) of FOIA.
2. The Commissioner's decision is that the College has correctly engaged the exemption in relation to part (3) of the request and the public interest favours maintaining the exemption and withholding the information. However, the Commissioner has found the College has not demonstrated section 43(2) is engaged in relation to the revised part (17) of the request.
3. The Commissioner requires the College to take the following steps to ensure compliance with the legislation.
 - Disclose the start and end date of the partnership between HyperionDev and the College.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 3 May 2023, the complainant wrote to the College and requested information relating to any bootcamp or course provided by HyperionDev in partnership with or accredited by the University. The request was in the following terms:

“(1) How much money has the university been paid by HyperionDev to accredit or partner the courses, provided by HyperionDev?

(2). How much money has the university been paid by the UK government to accredit or partner the courses, provided by HyperionDev?

(3). How much money in total has been agreed to be paid to the university by HyperionDev to accredit or partner the courses, provided by HyperionDev? (whether with/without certain conditions being fulfilled - please state)

(4). How much money in total has been agreed to be paid to the university by the UK government to accredit or partner the courses provided by HyperionDev? (whether with/without certain conditions being fulfilled - please state)

(5). How much money has HyperionDev been paid by the university to provide the courses, in partnership or accreditation?

(6). How much money has the UK government been paid by the university to provide the courses, in partnership or accreditation?

(7). How much money has HyperionDev been allocated, by the university to provide the courses, in partnership or accreditation? (whether with/without certain conditions being fulfilled - please state)

(8). How much money has the UK government been allocated, by the university to provide the courses, in partnership or accreditation? (whether with/without certain conditions being fulfilled - please state)

(9). How many students have received a university partnership or accredited certificate from HyperionDev?

(10). How many certificates, accredited or in partnership from the university have been allocated, in total, by the university?

(11). How many complaints has the university received regarding HyperionDev? (even if they were then subsequently signposted to the UK government or HyperionDev)

- (12). Please outline the exact relationship between HyperionDev and the university to provide these bootcamps.
 - (13). Please state whether the course certificates are “partnered” or “accredited” by the university, and exactly what that means.
 - (14). Please describe the full reasons as to why the university entered the partnership with HyperionDev, to partner or accredit these bootcamps? (from the person or team who agreed to it)
 - (15). Please outline what oversight or involvement the university has had in HyperionDev’s curriculum for these bootcamps.
 - (16). Please outline whether any requirements for a student receiving a university (partnered or accredited) certificate changed, stating what the change of requirements was and the date of that change.
 - (17). Please outline whether there is a finite date that the partnership or accreditation agreement ends.”
- 6. The College responded on 9 June 2023 answering all parts of the request with the exception of part (3) which was refused under section 43 of FOIA.
 - 7. The complainant requested an internal review on 26 June 2023. They challenged the use of section 43 in relation to part (3) and clarified what was requested in relation to some other parts of the request. With regard to part (17), the College had confirmed that the contract was for a fixed term. The complainant asked the College to provide the exact dates the partnership started and ended.
 - 8. Following an internal review the College wrote to the complainant on 25 July 2023 upholding its position in relation to part (3). With regard to part (17) the College considered this was a revised FOIA request as originally it had only been asked if the partnership had a finite end date. In any event, the College considered providing start and end dates would engage section 43 of FOIA.

Scope of the case

- 9. The complainant contacted the Commissioner on 18 August 2023 to complain about the way their request for information had been handled.
- 10. The Commissioner considers that the scope of his investigation is to determine if the information at part (3) and the revised part (17) of the request has been correctly refused under section 43(2) of FOIA.

Reasons for decision

11. By way of background to this request; Skills Bootcamps are free, flexible courses of up to 16 weeks that give people the opportunity to build up sector-specific skills, with an offer of a job interview on completion. Training is designed and delivered in partnership with employers. There are more than 1000 Skills Bootcamps available across the country.
12. HyperionDev is a technology education provider based in southern Africa that provides online coding learning. The Department of Education and HyperionDev, in partnership, offer enrolments on a government-funded online coding bootcamp. The end result is a non-degree certificate from HyperionDev and some limited certifications issued in partnership with Universities.
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 term 'commercial interests' is not defined in 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."
18. The Commissioner has considered this issue in another decision notice IC-252656-J2P1 which related to an identical request made to the University of Nottingham. In that case the Commissioner considered whether part (3) of the request engaged section 43(2) of FOIA and concluded that it did and that the balance of the public interest favoured maintaining the exemption and withholding the information.
19. As the requests in these cases are identical and the arguments were presented by HyperionDev in each case the Commissioner does not consider it necessary to repeat these again. He relies on these arguments to support the decision that, as in the previous case, the section 43(2) exemption is engaged in relation to part (3) and the information should be withheld after considering the balance of the public interest test.
20. Turning to part (17); in the decision notice referred to at paragraph 18 the Commissioner had considered the application of section 43(2) to providing confirmation as to whether there was a finite end date to the partnership. He concluded it was not clear how prejudice would be likely to occur to either the University or HyperionDev from disclosing this information. In this case, the request at part (17) has been somewhat revised to ask for the start and end dates of the partnership.
21. HyperionDev has argued knowing the end date of the partnership or accreditation would allow competitors visibility of when a contract is up for renewal. It argues this would allow competitors to approach its partners with a more competitive offer prior to renewal and thus lower HyperionDev's ability to negotiate. HyperionDev has informed the Commissioner it is engaged in an ongoing contract negotiation that involves the term of contract as a negotiation point.
22. HyperionDev states that the term of contract is a key point that is heavily negotiated between the parties and the process of negotiation involves extensive time and effort investment with the outcome of each negotiation being unique to each engagement.
23. Furthermore, it is stated that length of contracts is a factor considered and assessed when determining company valuation. Company valuation

is in turn used to fuel HyperionDev's growth plans, sometimes by raising additional funds, but by HyperionDev's own admission it only looks to do this from time to time.

24. The Commissioner can understand that from a commercial standpoint, contract length is important. A long-term contract will often be more beneficial as it guarantees income over a longer period of time, conversely a short-term contract offers greater flexibility.
25. He also recognises that when a contract is coming to an end competitors may take the opportunity to engage with parties to 'test the waters' and see if there is any possibility of offering their services if a new contract is needed.
26. However, this can happen whether a contract start and end date is known or not. It is possible for clauses to be inserted in contracts preventing any party to the contract entering negotiations before the contract expires. And even if these clauses do not exist there is always a possibility competitors will contact potential clients to enquire about whether they will be renegotiating in the future.
27. As such the Commissioner is not persuaded that disclosing the start and end date of a contract ie the contract length is likely to have the prejudicial effect argued by HyperionDev. Therefore, the Commissioner does not find the section 43(2) exemption engaged in relation to the revised part (17) of the request. He now requires the College to disclose this information.

Right of appeal

28. 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

29. 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.

30. 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
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