

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 20 August 2024

**Public Authority** Council of Queen Mary University of London  
**Address:** Mile End Road  
London  
E1 4NS

### Decision (including any steps ordered)

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1. The complainant has requested a remuneration report. Queen Mary University of London ("the University") disclosed a redacted version of the report but withheld information under section 40(2) (personal information) and section 43(2) (commercial interests).
2. The Commissioner's decision is that the University has correctly withheld the information it did under section 40(2) and section 43(2).
3. The Commissioner does not require further steps.

### Request and response

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4. On 20 November 2023 the complainant made the following request for information under FOIA:  

"Please provide me with the full minutes from the Remuneration Committee meeting of 3 April 2020 as the pulled quote does not provide the full context to understand its meaning."
5. The University responded on 18 December 2023. It disclosed a redacted version of the report, with information withheld under section 40(2) (personal information) and section 43(2) (commercial interests).
6. The complainant requested an internal review on 2 January 2024.
7. The University provided the outcome to its internal review on 15 January 2024, upholding its previous position.

## Scope of the case

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8. The complainant contacted the Commissioner on 8 March 2024 to complain about the way their request for information had been handled.
9. The Commissioner considers that the scope of his investigation is to determine whether the University has correctly withheld the information it has.

## Reasons for decision

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### Section 40(2) – personal information

10. The following analysis concerns section 40(2) of FOIA. Full details of the exemption can be found in the Commissioner's [Decision notice support materials | ICO](#).
11. The Commissioner has reviewed the information that's been redacted from the remuneration report under section 40(2). It's a section that discusses a remuneration package for a named member of staff.
12. The member of staff in question, who is the data subject in this case, is the focus of the information and it has biographical significance to them. It discusses their job responsibilities, personal circumstances, performance, achievements and salary.
13. The Commissioner is satisfied this entire section is personal data. The staff member is identifiable, both directly and indirectly, by virtue of being the only individual at the University who holds the tile they do, and the information also relates to them.
14. The complainant has specific concerns about the data subject and their role at the University. The University has explained that it's attempted to address this concern on several occasions. There's a legitimate interest in the request, both private and general, in demonstrating accountability and transparency.
15. The University believes disclosure isn't necessary in this case because it has already addressed the complainant's concerns. Even so, if the complainant believes the withheld information will further address their concerns, and this information isn't otherwise available, the Commissioner acknowledges that disclosure is necessary. Even if the withheld information doesn't address the complainant's concerns, in order for the complainant to verify this for themselves, disclosure would be necessary.

16. Therefore, the Commissioner has gone onto balance the legitimate interest that the request represents against the rights and freedoms of the data subject.
17. The withheld information largely relates to the professional life of the data subject but it also touches upon their personal life. The Commissioner agrees with the University that remuneration committees occur with the expectation that they will remain confidential and the report is labelled confidential.
18. The Commissioner agrees with the University when they say the data subject:

“would not be likely to give consent considering the legitimate expectation that discussions of the Remuneration Committee are confidential. In addition, (the data subject) is not privy to the content as this was a confidential discussion and cannot be expected to agree disclosure of confidential information that they has not also been sighted on. That is the nature of a remuneration committee.”
19. The Commissioner believes that disclosure in this instance would be done so against the reasonable expectations of the data subject and so would cause them distress. In this instance, the rights and freedoms of the data subject outweigh the legitimate interest that the request represents. Therefore disclosure isn't lawful and the University was correct to withhold the information that it did under section 40(2).

### **Section 43(2) – commercial interests**

20. Section 43(2) of FOIA 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)’

21. The Commissioner's guidance<sup>1</sup> 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.’
22. In this case, the University has confirmed that it's applied section 43(2) to protect its own commercial interests. The Commissioner acknowledges that the University is, first and foremost, a higher

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<sup>1</sup> [Section 43 - Commercial interests | ICO](#)

education provider. However, it also operates in a commercially competitive environment.

23. The University has confirmed:

"The Remuneration Committee is a committee of Council which has as its main responsibility the determination and review of the salaries, terms and conditions, and any severance payments, for senior members of staff. Its minutes are considered confidential. In coming to a view on setting a salary, there will be discussion concerning the individual's contributions and other justifications. The information that has been withheld under s.43(2) concerns three topics covered in the minutes: information relating to the proposed pay award and reasoning for this of the Vice-Principal (Education and Student Experience), the summary of a presentation from the Vice-Principal (People, Culture and Inclusion) and the outcomes of the Professorial and Professional Services Grade 8 Reviews in the academic year 2018-19."

24. It's gone onto say:

"We contend that releasing this type of information would be useful to our competitors and would be likely to prejudice our commercial interests. For example, if we disclosed information about a specific individual's responsibilities, achievements and proposed salary, and the reasoning as to why that salary or conditions are to be offered to that individual, a rival may poach this member of staff by offering them more money and/or better conditions. This would be to QMUL's detriment if we were to lose a valued and capable member of senior management. We do not disclose the specific salary/remuneration of our most senior staff members (except the President and Principal, in line with regulatory requirements) as this would not make commercial sense in terms of recruitment and retention of most senior colleagues in a competitive recruitment market."

25. Having reviewed the information that's been withheld under section 43(2), which is very detailed and talks about the University's tactics when it comes to attracting, recruiting and retaining high value staff, the Commissioner agrees that the exemption is engaged. He's therefore gone onto consider the public interest test.

## **Public interest test**

### **Factors in favour of disclosure**

26. The University has identified the 'public interest in releasing information which shows the type of considerations made by a remuneration committee and in order to increase the overall transparency of QMUL.'
27. The Commissioner notes that disclosure could actually attract high value members of staff, as well as having the potential to damage its commercial interests.

### **Factors in favour of maintaining the exemption**

28. The University is concerned that:

"there is a public interest in the organisation being able to maintain its competitive position in the market for staff recruitment and retention, and its ability to protect its discussions and financial decisions from unwarranted external scrutiny. A remuneration committee needs to discuss matters candidly and make decisions without external pressure to ensure effective governance."

### **Balance of the public interest**

29. In this instance, the Commissioner has decided that the balance of the public interest lies in maintaining the exemption.
30. The complainant's concerns seem to largely revolve around the specific data subject referred to in paragraph 14. Disclosure of the remainder of the withheld information doesn't address this specific concern but would be likely to damage the commercial interests of the University and so the Commissioner doesn't consider disclosure proportionate.

## **Right of appeal**

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31. 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)

32. 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.
33. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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