

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 October 2024

Public Authority: The Council of King's College, London
Address: Strand
London
WC2R 2LS

Decision (including any steps ordered)

1. The complainant has requested copies of past exam papers. The above public authority ("the public authority") relied on section 43 of FOIA (commercial interests) to withhold the information.
2. The Commissioner's decision is that section 43 of FOIA is engaged and that the public interest favours maintaining the exemption.
3. The Commissioner does not require further steps to be taken.

Request and response

4. On 28 April 2024 the complainant requested information of the following description:

"I would like to request a copy of all Past Papers (January/May session, August(resit) session, and study abroad sessions from years 2000-2023 for the following modules:

5CCYB010 Electromagnetism
5CCYB041 Object oriented programming
5CCYB070 Computational methods
5CCYB080 Computational Applied Biomathematics
5CCYB020 Signals and Systems
5CCYB050 Signals and Image processing"

5. On 28 May 2024, the public authority responded. It refused to provide the requested information, relying on section 43 of FOIA in order to do so. It upheld its position following an internal review.

Reasons for decision

6. Section 43 of FOIA allows a public authority to withhold information whose disclosure may harm its own commercial interests or those of another party.
7. In its submission, the public authority provided further arguments as to why its commercial interests may be harmed by disclosure. It noted that:

“Publishing the exam papers developed by our engineering experts would make the underlying intellectual property available globally, meaning that international competitors can reverse engineer contents of both the taught modules, the structure of the courses and their design, as well as technological know-how related to the computing and communications technologies developed at KCL.”
8. The public authority accepted that copyright provides protection in theory, but argued that this wasn't the case in practice because reliance on copyright:

“does not reflect the size and scale of the consequences given the current geo-political landscape. UK Universities would be forced to use public resource to pursue multiple global copyright cases, in some cases against state actors, in territories where there is little hope of redress. In these circumstances copyright law would not prevent disclosed information being used in a way that would prejudice KCL's commercial interest. Copyright would not provide effective prevention for anyone being able to exploit the commercial value of this information in competition with King's.
9. The public authority further explained that it was having to expel increasing numbers of students for either paying third parties to provide answers to exam questions or for posting previous exam questions to online sites such as Chegg.com. This was costing “millions” of pounds of tuition fees from students who would not be completing their studies.
10. Finally the public authority noted that the availability of such material online was allowing generative AI tools to get better and better at predicting and solving exam questions. This in turn undermined academic integrity and presented a potential loss to itself and other universities.

The Commissioner's view

11. The Commissioner has dealt with several complaints involving exam papers and has previously been unimpressed by claims of commercial harm. The arguments made in decision notices [IC-304494-S4S4](#) and [IC-145419-V8Q0](#) apply equally here.
12. However, each case must be looked at on its own merits and must involve an assessment of the relevant evidence.
13. The public authority has pointed to the particular content of its exam papers and the possibility that these could be used to reverse engineer content and underlying technology.
14. The public authority has provided the Commissioner with [evidence](#) of growing concern that countries such as Russia, China and Iran are targeting universities in an attempt to steal intellectual property. The Commissioner also recognises that the public authority would experience considerable practical difficulties in enforcing its intellectual property rights in such jurisdictions.
15. The Commissioner is not persuaded by the arguments about questions appearing online. The evidence suggests that this practice is already widely established and therefore disclosure of the withheld information is unlikely to have more than a marginal effect.
16. However, the Commissioner does recognise that there is a real prospect of actors, within states whose relationship with the UK are either strained or outwardly hostile, getting access to the public authority's intellectual property – or worse underlying technological secrets.
17. The Commissioner notes that these arguments apply in this case because of the specific nature of the course material. Had this been, for example, an arts subject it is much less likely that the Commissioner would have accepted this line of argument.
18. Nevertheless, the Commissioner does accept that disclosure creates a possibility of harm. However, he judges this to be at the lower level of "would be likely to" cause harm – meaning that the chance of harm is below 50%.

Public interest test

19. Even where information may harm commercial interests, it must still be disclosed unless the balance of the public interest favours maintaining the exemption.

20. The Commissioner recognises that there is a public interest in protecting the public authority from the commercial harm that might occur if others were able to exploit its intellectual property – particularly if this included brand new research or technology.
21. The Commissioner cannot see a compelling public interest in disclosure. The public authority has noted that it does make some past papers available to current students, but this practice is carefully managed to ensure that tutors can continue to set exam questions that candidates will not have encountered before.
22. The Commissioner is therefore satisfied that, in the particular circumstances of this complaint, section 43 is engaged and the balance of the public interest favours maintaining this exemption.

Right of appeal

23. 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

24. 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.
25. 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
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