

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 November 2024

Public Authority: Department for Education
Address: Sanctuary Buildings
Great Smith Street
London
SW1P 3BT

Decision (including any steps ordered)

1. The complainant has requested information on a particular supplier of Skills Bootcamps, including the number of enrolments and successes. The Department for Education (DfE) refused the request under section 43 and 36 FOIA.
2. The Commissioner's decision is that the DfE has correctly engaged the section 43(2) exemption and the balance of the public interest favours withholding the information. He requires no steps to be taken.

Request and response

3. On 30 April 2024 the complainant made the following request for information to the DfE:
 - How many people the Department for Education has provided funding for to enroll on the Data Science Skills Bootcamp with HyperionDev AKA CoGrammar, broken down by year,
 - of those, how many completed the course, and,
 - of those, how many it is known have been offered a job as a data scientist

4. The DfE responded on 23 May 2024 stating that the information was held but was exempt under section 43(2) FOIA – prejudice to commercial interests.
5. The DfE conducted an internal review and responded with the outcome on 18 June 2024 upholding its use of section 43 and also citing section 36(4).

Scope of the case

6. The complainant contacted the Commissioner on 18 June 2024 to complain about the response from the DfE.
7. The Commissioner considers the scope of his investigation is to determine if the DfE has correctly relied on either section 43 or section 36 FOIA to withhold the requested information.

Reasons for decision

Section 43 – prejudice to commercial interests

8. 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.
9. CoGrammar is a technology education provider based in southern Africa that provides online coding learning. The DfE and CoGrammar, in partnership, offer enrolments on a government-funded online coding bootcamp. The end result is a non-degree certificate from HyperionDev (CoGrammar) and some limited certifications issued in partnership with Universities.
10. The Skills Bootcamps offer has grown rapidly since launch in 2020, meeting or exceeding delivery targets. The DfE delivered 2,800 starts in 2020/2021, 16,120 in 2021/2022 and expect to scale up delivery to 64,000 starts in 2024/2025.
11. 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)."

12. The exemption can be engaged on the basis that disclosing the information either “would” prejudice commercial interests, or the lower threshold that disclosure “would be likely” to prejudice those interests.
13. 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.
14. 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.
15. 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.”
16. The DfE has argued both its own and the suppliers (CoGrammar’s) commercial interests would be likely to be prejudiced by the disclosure of the information.
17. The first consideration is whether the information is commercial information. On face value, asking for information on enrolment numbers and course completions does not seem to be obviously commercial. However, the DfE has shown that the information can be used to calculate a per-learner cost by combining this information with

published contract values¹ and published payment structures². The DfE gave the Commissioner a specific example of how this could be calculated that he is satisfied could be used to allow someone to work out how much the DfE pays per learner. This may not be an exact number but it would give a clear indication as to what the approximate per learner cost is.

18. The Commissioner is satisfied this calculation can be made and as such that the information in question is commercial information as it relates to the contract value.
19. In terms of prejudice, the DfE has argued disclosure would be likely to prejudice the supplier's commercial interests. The supplier had confirmed to the DfE that the release of the data could be used to calculate the per-learner cost. This would put the supplier at a disadvantage in a competitive market, allowing competition to have access to granular data relating to their delivery model which is not in the public domain. In turn this would allow competitors to propose, as part of any tendering exercise, lower per-learner costs and this would put CoGrammar at a commercial disadvantage as the only supplier whose costings information is in the public domain.
20. The DfE also considers its own commercial interests would be prejudiced through disclosure of this information. Knowing the per-learner costs for this supplier would allow competitors to tailor any bids they make for such departmental costings. Costs could be inflated or adjusted to put them in line with other suppliers where, if they did not have access to this information, their proposed costs may have been lower. The DfE argues this would skew the costings in the market, prejudicing its commercial position.
21. With regard to the second criterion and CoGrammar's commercial interests, the Commissioner is satisfied that disclosure of the withheld information has the potential to harm its commercial interests. The Commissioner has reached this conclusion given that the withheld information can be used to deduce details of CoGrammar's per-learner costs. In the Commissioner's view it is clearly plausible to argue that disclosure of this information has the potential to harm CoGrammar's commercial interests given the insight such information would provide to its competitors.

¹ [Data Science & Cyber Security Digital Bootcamps Level 3 - Contracts Finder](#)

² [ESFA Skills Bootcamps technical funding guide for learners that began on or after 1 August 2022 - GOV.UK](#)

22. With regard to the third criterion the Commissioner also accepts that this is also met and thus if the withheld information were to be disclosed there is clearly more than a hypothetical risk of prejudice occurring; rather there is a real and significant risk of this prejudice occurring.
23. In an earlier decision notice³ the Commissioner considered the risk of commercial prejudice to CoGrammar if total amounts paid to the University of Nottingham by CoGrammar to accredit its courses were disclosed. Whilst this information is different, the arguments considered by the Commissioner are relevant here. The Commissioner accepted CoGrammar's argument that disclosing the information would likely impact on its existing partnerships as partners with lower contract value may want to renegotiate their contracts or switch to other partners.
24. In this case the argument is that knowing, or being able to calculate, the per-learner costs would put CoGrammar at a competitive disadvantage as this information would be in the public domain when competitors per-learner costs are not. This would impact on future negotiations as per-learner costs can form part of the negotiations with potential partners.
25. The Commissioner previously accepted that knowledge of amounts paid to partners could impact on contract negotiations with other potential partners, it follows that knowledge of per-learner costs could also affect CoGrammar's negotiating position. The Commissioner considers putting information into the public domain that would allow calculation of specific information about only one company in a competitive market would likely be prejudicial to that company's commercial interests.
26. With regard to the DfE's commercial interests, the Commissioner also accepts the second criterion is met. The Commissioner accepts that per-learner costs being known could harm the DfE's commercial interests by resulting in it having a much weaker position and receiving reduced or inflated bids. Furthermore, the Commissioner recognises that as the DfE is looking to significantly scale up delivery of bootcamp starts in 2024/25 there is a real risk of this prejudice occurring as the DfE will be negotiating with bootcamp providers to ensure it meets its aim of increasing delivery to 64,000 starts.
27. Taking this into account, the Commissioner accepts that there is a more than hypothetical risk of prejudice occurring to the DfE's commercial interests if the information was disclosed and the third criterion is therefore met.

³ [ic-252656-j2p1.pdf](#)

Public interest arguments in favour of disclosure

28. The DfE recognises that as the delivery of the Skills Bootcamp programme involves the expenditure of public funds there is a strong public interest in ensuring transparency in the process and in being accountable for publicly spent money.
29. The complainant argues that funding and performance data related to publicly financed educational programmes is crucial for transparency and accountability. There is a legitimate public interest in understanding how public money is being used and this information would allow for an assessment of the effectiveness and efficiency of the Data Science Skills Bootcamp.
30. Further, they argue there is a public interest in knowing how many, if any, participants have secured jobs post-completion. If the answer is none or is very low then this would demonstrate there are issues with the effectiveness of the programme and the allocation of public funds, warranting scrutiny.
31. The complainant points to the Department for Work and Pensions (DWP) regularly publishing data on the performance of contracted employment programmes⁴ as an example of how similar data has been disclosed without significant harm to commercial interests.
32. Finally, the complainant argues the release of this information is critical for public confidence in the DfE's initiatives and for fostering trust in the effective use of public resources. Moreover, transparency can drive improvements in service delivery by highlighting areas of success and those needing enhancement. The general public interest in ensuring accountability for public expenditure, especially in educational programmes, substantially outweighs any speculative harm to commercial interests.

Public interest arguments in favour of withholding the information

33. The DfE argues that the disclosure of the withheld data would be detrimental to it as it would reduce its ability to negotiate or compete in a commercial environment, given that any future Skills Bootcamp suppliers would have access to, and knowledge of, the per-learner funding associated with this named supplier. This would result in the

⁴ <https://www.gov.uk/government/collections/work-programme-statistics--2>

less effective use of public money and thus a reduction in value for money.

34. If commercially sensitive information regarding the funding made available as a per-learner basis for the provision of Skills Bootcamp learning were released, this could add prejudice to any competition should future options/providers be considered, allowing potential third party bidders and suppliers providing services to tailor their prices, if they believe that there is adequate space in the budget to do so.
35. The DfE strongly believes that the release of this information would allow any future competitors to 'tap into' commercial information provided by the named supplier, to help mould any applications or bids they put forward to the department. It would have an impact on the fairness of the market when assessing future applications, and would weaken the broader application and assessment process, with some organisations being at a commercial advantage based on the commercial information of their competitors being in the public domain.
36. The Commissioner notes that the DfE did provide some additional arguments on this point which he accepts are relevant and carry weight but cannot be reproduced here without revealing some level of detail that is not in the public domain.

Balance of the public interest arguments

37. The Commissioner recognises there is public interest in the release of data that allows for scrutiny of a publicly funded education programme. There is interest in understanding how effective the skills bootcamps are and in the effectiveness of specific providers.
38. However, balanced against this the Commissioner must consider the commercial impact on both the DfE and the specific provider if this information is released. The Commissioner has already acknowledged there is a real risk of prejudice to the commercial interests of both the DfE and the supplier and there is a public interest in ensuring that a competitive market exists and value for money can be secured without placing any party at a disadvantage.
39. The Commissioner acknowledges that other departments, like the DWP, produced statistics on its work programmes to allow for scrutiny of how successful the programmes were in terms of job outcomes. The DfE does provide information on the programme and has published headline

figures about starts, completions and positive outcomes⁵, as well as implementation reports on skills bootcamps⁶. This provides an overview of the programme and its relative success against its aims.

40. The Commissioner notes this is not broken down by provider and therefore he does not consider that disclosing the breakdown as requested, allowing for the calculation of per-learner costs, and placing the specific referenced provider at a commercial disadvantage to its competitors would be proportionate or in the public interest. Particularly as this would also likely weaken the DfE's bargaining position and affect its use of funds.
41. The information already in the public domain on the programme overall allows for sufficient scrutiny of the efficacy of the programme to meet the public interest in it at this time without disclosing supplier specific information that will have a commercial detriment.
42. The Commissioner therefore finds that the balance of the public interest lies in maintaining the exemption and withholding the requested information. He concludes the DfE has correctly withheld the information under section 43(2) and as such he has not gone on to consider the application of section 36 to the same information.

⁵ [Skills Bootcamps Completions and Outcomes, Financial year 2022-23 - Explore education statistics - GOV.UK](#)

⁶ [Evaluation of Skills Bootcamps 2022 to 2023: Wave 3 implementation report](#)

Right of appeal

43. 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

44. 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.
45. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Jill Hulley
Senior Case Officer
Information Commissioner's Office
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