

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 April 2025

Public Authority: The Governing Body of De Montfort University
Leicester

Address: The Gateway
Leicester
LE1 9BH

Decision (including any steps ordered)

1. The complainant has requested information on agreements between De Montfort University Leicester ("the University") relating to advanced entries, specifically to include the identity of overseas partners, qualifications accepted and year of entry. The University refused the request under section 43 FOIA – commercial interests.
2. The Commissioner's decision is that the University has correctly applied section 43(2) FOIA and the public interest favours maintaining the exemption and withholding the information. He requires no steps to be taken.

Request and response

3. On 14 May 2024 the complainant made a request to the University. The request was for:

"Can I please get a complete and up-to-date list of all your General Progression Agreements (GPAs), Articulation Arrangements, and any other agreed operating methodologies for supporting the recruitment of advanced entry, referred to at some universities as Letters of Recognition?"

Please provide this data in a format similar to your current Collaborative Provision Register, identifying the overseas partner, the qualification you are mapping from, and the qualification you are allowing the students to enter at an advanced stage, with the year of entry specified.”

4. The University responded on 6 June 2024 refusing the request under section 43(2) FOIA as it would be likely to prejudice the University’s commercial interests.
5. The complainant requested an internal review on the same date. The University conducted an internal review, after several delays, and communicated the outcome to the complainant on 8 November 2024. The University upheld its decision to refuse the request under section 43(2).

Scope of the case

6. The complainant contacted the Commissioner on 20 October 2024 to complain about the University’s refusal of their request.
7. The Commissioner considers the scope of his investigation is to determine if the University has correctly applied section 43 FOIA to withhold all the information in scope of the request.

Reasons for decision

Section 43 – prejudice to commercial interests

8. 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).”
9. 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.
10. 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.
11. 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.
 12. The University states that it invests significant resources in attracting applications for its courses. In this case the request relates to students applying for advanced entry – entry to a undergraduate course directly at Year 2 or 3 of the course.
 13. The University explained that its resources are deployed on a forecast basis and so the risk of disruption to its recruitment processes through revealing relative areas of strength or weakness is high and would severely impact the University. More specifically it would allow competitor institutions to adapt their marketing and offers strategy. This in turn could affect the University's competitive advantage and increase its costs and use of funds.
 14. The University considers sharing the requested information could potentially expose its recruitment partners overseas to competitor universities. These could be higher ranked universities. The University is one of only a few universities that have achieved success through this particular recruitment channel and competitors will be eager to learn more about the approach the University has taken.
 15. It explained the information requested is commercially valuable as it would provide competitors with the University's exact blueprint of qualification mapping for each of its programmes. These are products developed by and unique to the University and are a source of commercial income. By making this information available the University would risk damaging the competitive advantage which it has built over a period of many years, and also risks posing a threat to its revenue.

16. 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.
17. The Commissioner has accepted that Universities operate in commercial environments. The information in this case is, broadly speaking, related to admissions 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.
18. 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 information requested amounts to a detailed breakdown of the acceptance criteria for various programmes, broken down by partner institutions. The information has the potential to be useful to competitor institutions by allowing them to understand what entry requirements the University is requiring for each late admissions course, from each different institution. This information could clearly be of use to competitors looking to attract students in similar circumstances onto the same courses at their institution. This could potentially affect the amount of students on courses and the amount of tuition fees the University obtains.
19. 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 the requested information is likely to harm the commercial interests of the University.
20. 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.
21. In terms of the public interest in disclosure of the requested information the complainant points to [good practice guidance](#) from the UK Standing Committee for Quality Assessment (UKSCQA) – in particular Guiding Principle 6 which suggests all awarding organisations maintain accurate and up to date records of all partnership arrangements that are subject to a formal agreement.
22. The University's public interest arguments for continuing to withhold the information were based on the idea that if the prejudice argued occurred

this would not be in the public interest as it would affect the University's financial position, use of public funds and the quality of its offerings.

23. The Commissioner acknowledges that disclosure of the withheld information may impact on the University's position to compete with other higher education institutions for students for its courses and this would not be in the public interest as it would place higher education institutions on an uneven footing. Revealing details of the partnership arrangements in place, who they are with, conditions for acceptance for each institution and course would place a significant volume of otherwise unknown information into the public domain.
24. There would be commercial value in this information to competitor institutions and the Commissioner would have to be persuaded the public interest in this information was sufficient to outweigh this. The UKSCQA guidance and the principles referred to by the complainant are not mandatory and represent good practice recommendations. Whilst disclosing this information would allow for an understanding of who the University has partnered with and how overseas students might be able to attend different courses as late entry admissions it is not clear what the wider public interest in this information would be beyond providing increased transparency.
25. The Commissioner therefore considers, on balance, 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.

Other matters

26. Part VI of the [section 45 Code of Practice](#) makes it good practice that a public authority should have a procedure in place for dealing with complaints about its handling of requests for information, and that the procedure should encourage a prompt determination of the complaint.
27. The Commissioner considers that these internal reviews should be completed as promptly as possible. While no explicit timescale is laid down by FOIA, the Commissioner has considers that a reasonable time for completing an internal review is 20 working days from the date of the request for review. In exceptional circumstances it may be reasonable to take longer but in no case should the time taken exceed 40 working days.
28. The Information Commissioner does not consider this case to be 'exceptional', so is concerned that it took over 20 working days for an

internal review to be completed and reminds the University of the need to conduct internal reviews in a timely manner.

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.

Jill Hulley
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