

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2019

Public Authority: University of London
Address: Senate House
Malet Street
London
WC1E 7HU

Decision (including any steps ordered)

1. The complainant requested from University of London (the University), information relating to the University's additional security provision during a specific time period. The University refused the request under section 43(2) (commercial interests) of the FOIA.
2. The Commissioner's decision is that the University correctly applied section 43(2) of the FOIA. Therefore, the Commissioner does not require the University to take any steps as a result of this decision.

Request and response

3. On 18 October 2018 the complainant wrote to the University and requested information in the following terms:

"I am writing to make an open government request for all the information to which I am entitled under the Freedom of Information Act 2000.

Please send me...

- *The total additional security officers and receptionists, and the full cost of additional security officers and receptionists hired for each strike day undertaken by outsourced workers since 1 April 2017 (to today), as well as the cost of any other security measures for those days. This should be broken down by day.*

- *The total number of additional security officers and receptionists (broken down per day), and the full cost of additional security officers and receptionists, and other security measures on non-strike days from 19 March 2018 (to today)."*
4. On 15 November 2018 the University responded. The University confirmed that it does not hold information to the first part of the request relating to the number of additional security officers and receptionists used since 1 April 2017. The University also stated that information is not held for the second part of the request relating to the number of additional security officers and receptionists used since 19 March 2018.
 5. With regards to the parts of the request which relates to the full cost of additional security officers and receptionists since the dates in question, the University considered that disclosing the information would be exempt under section 38 ('Health and Safety') of the FOIA. However, the University subsequently withdrew its reliance of this exemption to these parts of the request.
 6. On 22 November 2018 the University maintained that it does not hold information relating to the total number of additional security officers and receptionists. The University provided the complainant with information for the full cost of additional security officers and receptionists hired for each strike day since 1 April 2017. It stated that it does not hold information on the daily costs for extra security.
 7. With regards to the total number of additional security officers and receptionists (broken down per day) the University confirmed that it does not hold this information. The University provided information for the full cost of additional security officers and receptionists, and for security measures on non-strike days from 19 March 2018.
 8. On 26 and 29 November 2018 the complainant asked the University the following question: *"...if these two figures could be broken down by month/week or the nearest possible denomination you have available?"*
 9. On 30 November 2018 the University acknowledged the complainant's additional question.
 10. On 24 January 2019 the University responded to the complainant's question. It confirmed that it holds information regarding breakdowns of financial spend on additional security. It also stated that to disclose this information would be likely to prejudice the commercial interests of the University or a third party. It therefore considered the information exempt under section 43(2) of the FOIA.

11. On 25 January 2019 the complainant requested an internal review. He said that similar requests to his, had been "*granted without issue*" and he referred the University to a request on the WhatDoTheyKnow.com website which relates to costs of recent student protests.
12. On 26 February 2019 following an internal review, the University provided its outcome. With regards to the complainant's request for a breakdown of the figures, the University informed him that it should have handled this request for a further breakdown, as a new request. However, the University maintained its reliance of section 43(2) of the FOIA to the request and said that in this case, it relied on the '*would be likely to*' limb of the exemption.

Scope of the case

13. The complainant contacted the Commissioner on 7 March 2019 to complain about the way his request for information had been handled. Specifically, he considered that the University had provided him with partial answers to his request and he reiterated his request in the following terms:

"1. The total additional security officers and receptionists hired for each strike day undertaken by outsourced workers since 1 April 2017 (to today).

2. The full cost of additional security officers and receptionists hired for each strike day undertaken by outsourced workers since 1 April 2017 (to today). The cost of any other security measures for those days. This should be broken down by day.

3. The total number of additional security officers and receptionists (broken down per day), on non-strike days from 19 March 2018 (to today).

4. The full cost of additional security officers and receptionists, and other security measures on non-strike days from 19 March 2018 (to today)."

14. The following analysis focuses on whether the exemption at section 43(2) of the FOIA was cited correctly. This is in relation to the breakdown of the figures concerning costs of the University's additional support staff - security officers and receptionists during the period in question.

Reasons for decision

Section 43(2) – prejudice to commercial interests

15. Section 43(2) of the FOIA states that information is exempt if its disclosure would or would be likely to prejudice the commercial interests of any person, including the public authority holding it. This is a qualified exemption and is, therefore, subject to the public interest test.
16. 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. The term “likely” is taken to mean that there has to be a real and significant risk of the prejudice arising, even if it cannot be said that the occurrence of prejudice is more probable than not.
17. The Commissioner has gone onto consider the prejudice which disclosure would or would be likely to cause and the relevant party or parties that would be affected.
18. The withheld information is breakdowns of costings for specific forms of security provision, linked to particular events over the period covered by this request.
19. The University confirmed the parties whose commercial interests would be likely to be prejudiced if the withheld information was disclosed. It said it would be both the University and companies contracting to the University to provide security services.
20. The University explained to the Commissioner what would be the likely consequences if the requested information was disclosed. It said that the days and the period of time which resulted in the spending, could be matched against specific events, e.g. an occupation or eviction covered in the media, and it said that a competitor could plausibly use this cost information for its advantage in a tender.
21. The University explained that at the time of the request and throughout the following months, it was carrying out a security review and potentially re-tendering for specific services rather than an overarching contract. Therefore, the University considers that *“the prejudicial effects of disclosure were / are naturally heightened.”*

22. The University stated that it had relied on the limb '*would be likely to*' of section 43(2) of the FOIA. It explained that its review is an extensive project to review and repurpose its security provision. This, it said, is part of a wider review of its outsourced providers and the University referred the Commissioner to a link¹ which shows a full context of its project.
23. The University further explained that the background to this is that there has been a long campaign of protests within the university. These include occupations and demonstrations, and also a campaign to boycott University buildings. A recent example of the disruption of events and meetings was provided within a link² to the Commissioner. The University reported that for these reasons it has, during announced protests/demonstrations³, introduced tighter access and security control measures, which required additional security measures.
24. With regards to how disclosure would impact the University's commercial interests, the University said that "*the security risks that resulted in the additional cost persist.*" It said that if breakdowns of costings were disclosed, these would be likely to prejudice the University's commercial interests by revealing costings for specific forms of security provision, linked to particular events over the time period in question. The University believes that this information were to be disclosed it would be likely to impact on its ability to obtain best value in a tender process.
25. The University said that its Facilities Management contractors had made a general representation to the University at a meeting on 17 May 2018. The contractors had asked the University to withhold pricing breakdowns and other information from the review documentation as they considered this information to be commercially sensitive.
26. For Section 43(2) to be engaged three criteria must be met:
 - First, the actual harm which the University alleges would be likely to occur if the withheld information was disclosed has to relate to commercial interests;

¹ <https://london.ac.uk/about-us/university-london-and-insourcing>

² <https://www.theguardian.com/education/2019/jun/23/academics-criticise-oppressive-treatment-of-student-protesters-university-of-london>

³ <https://www.theguardian.com/education/2018/jun/04/university-of-london-criticised-for-spending-415000-on-student-protest-security>

- Secondly, the University must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice to those commercial interests; and
 - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met.
27. With regards to the first criterion, the Commissioner accepts that the prejudice envisaged would be to the commercial interests of the parties concerned. Therefore, the Commissioner is satisfied that the first criterion is met. This is not to say that she agrees it will happen; simply that the criterion is met.
28. The University explained that disclosure would reveal sensitive costings information to its contractor's competitors. This would allow the competitors to amend their bids when tendering for future contracts with the University. Disclosing the information would reveal the current costs that the University would pay for its security contracts and this would undermine the University's position in future tenders. This is because the price for the services provided in this contract would be known by the other contractors. Therefore, future tenders will be likely to take this into account rather than providing straight market based values for the contract and services offered.
29. Regarding the second criterion, the Commissioner accepts that the reasoning of the University concerns prejudice to commercial interests resulting from disclosure of the specific information requested.
30. Thirdly, the question here is whether the Commissioner agrees that disclosure *would be likely* to result to the commercial interests of the University and companies contracting to the University. In forming a conclusion here, the Commissioner has taken into account the reasoning from the University and the content of the withheld information. She has also taken into account that at the time the request was received, the University was undertaking a review of its security contracts with a view to reformulating or retendering for these.

31. The Commissioner recognises that the likelihood of the university retendering for some of the services in the near future, means that the information in question holds greater relevance in terms of the tenders it is likely to receive – effectively it provides information to potential bidding companies that it was willing to pay a specific amount to receive similar services in the last 12/24 months. If known, this figure may well affect the bids it receives in these new tenders, as bidders will be aware of the costs that the university was willing to pay, and the costs which a successful bidder charged, to provide similar services a relatively short time ago.
32. As to whether the content of the withheld information suggests that there is a real and significant likelihood of its disclosure resulting in that outcome, the Commissioner notes the explanation by the University. This was that its contractors had preferred the information (pricing breakdowns) to be withheld from any documentation as it deemed this to be commercially sensitive information. The University stated that specific days relate to specific events and the University's response to them. Therefore, the breakdown of costs, it said, would reveal how much the University paid a provider to manage a specific task.
33. The Commissioner accepts that the University had in its initial response, provided the complainant with an overall figure of spend which related to the request.
34. When claiming that disclosure would prejudice the commercial interest of a third party, the Commissioner expects a public authority to obtain arguments from the third parties themselves. During this investigation, the University was asked to clarify on what basis it believed that disclosure would prejudice the commercial interests of the third party organisations. It was also asked to provide copies of any correspondence the University had had with third parties in relation to this request. The University responded and stated that the "*work planned' is the review of outsourced contracts*". The University referred the Commissioner to the description obtained from the Director involved and it said the following:

"The meeting was a commercially focused event with the MDs of the contractors to brief them on the work planned, why we are requesting information and why we are reviewing the contracts. There were no minutes, it was a relationship meeting."
35. The University was asked to clarify this statement, and in its response it confirmed that there was no correspondence between the University and third parties relating to the request. The University explained that it was a verbal representation from the third parties around the disclosure of cost information during the period of the Facilities Management review.

36. The University also provided the Commissioner with reasons why it considers that there would be an impact on the commercial position and why a disclosure of the costs would undermine the contractors' commercial position. The explanations are the same as described in paragraph 20 of this decision notice.
37. The Commissioner acknowledges that the disclosure of the costs would undermine the contractors' commercial position as it would give competitors an idea of the costs of the current contract for specific events. This could subsequently allow its competitors to undermine them or weaken proposals in future tendering bids.
38. Having viewed the withheld information and considered the arguments which were made, the Commissioner accepts that prejudice to the commercial interests of the contracting companies would be more likely than not to result through disclosure of the information in question. She therefore finds that disclosure of the information would result in prejudice to the commercial interests of the University's contractors and on this basis section 43(2) is also engaged.

Public interest test

39. Having found that the exemption is engaged, the Commissioner has gone on to consider the public interest factors in favour of disclosing the withheld information and of maintaining the exemption.

Public interest arguments in favour of disclosing the withheld Information

40. The University said that it had considered the public interest factors of openness and transparency and for the spending of public money. In this case breakdowns of costings for specific forms of security provisions.
41. The University confirmed that it had disclosed to the complainant the overall figures relating to his request and it said it accepts the public interest in disclosing the total amount spent. The University considered that it had met the public interest of transparency by disclosing overall figures of spend with regard to this request. It stated to the Commissioner that the overall figures which the University disclosed had been the subject of national press coverage.
42. The complainant is of the view that the University has a public interest duty to release the information (breakdown of the figures), in order to show that it is spending its finances responsibly.

43. The Commissioner recognises that there is a public interest in disclosure of information concerning the University's security provisions, its security control measures and how its finances are being spent.

Public interest arguments in favour of maintaining the exemption

44. The University argued that the disclosure of the withheld information would undermine the University's position in future negotiations and tenders.
45. It also considers that there is a public interest in companies protecting their commercial interests, by ensuring sensitive costing information, broken down to the level requested, is not disclosed via access to information legislation.
46. The University further argued that the public interest in its ability to get best value from its services or in third party companies protecting their commercial interests in a competitive market, outweighs the public interest in providing breakdowns of the figures.
47. The University maintains its view that the disclosure of the breakdown of figures would be likely to prejudice its commercial interests and those of its contractors. The University therefore, considers that on balance the public interest in maintaining the exemption outweighs that in disclosing the withheld information.

Balance of the public interest arguments

48. The Commissioner considers that there is always some public interest in the disclosure of information. This is because it promotes the aims of transparency and accountability, which in turn promotes greater public engagement and understanding of the decisions taken by public authorities. By releasing the overall figures to the complainant, the University has already demonstrated its openness and accountability in this case. However, releasing the breakdown of the figures would provide the contractors with a commercial advantage and damage its own ability to obtain best value in the upcoming procurement exercise.
49. The Commissioner understands that the disclosure of the information into the public domain would be likely to undermine the University's competitive advantage and impact on its ability to compete fairly to obtain security contracts.
50. The Commissioner's conclusion is that the public interest in disclosure of the withheld information is outweighed by the public interest in maintaining the section 43(2) exemption. Therefore, the University was not obliged to disclose the breakdown of the figures relating to the requested information.

Right of appeal

51. 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: 0300 1234504

Fax: 0870 739 5836

Email: grc@justice.gov.uk.

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

52. 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.
53. 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

Andrew White
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