

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 23 October 2012

Public Authority: University of Cambridge
Address: Registry Office
The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Decision (including any steps ordered)

The complainant requested information relating to the admissions policy and process of the University of Cambridge ("the University"). The University disclosed some information to the complainant, however it refused to disclose the remainder, citing section 36(2)(c) of FOIA as a basis for non-disclosure. The Commissioner's decision is that section 36(2)(c) applies to the withheld information and that the public interest in maintaining the exemption as set out in that section outweighs the public interest in disclosure of the withheld information. Therefore the Commissioner orders no steps to be taken.

Request and response

1. On 26 September 2011 the complainant wrote to the University and requested information in the following terms:

"I would be grateful if the University of Cambridge would provide information detailing the following:

1. With respect to the University of Cambridge *Affiliated-Entry Medicine Course*:

For each year of the course (identifying year) please provide information detailing:

- (i) the total number of places available on the course;
- (ii) the number of offers made (by College);
- (iii) the number of places taken up (by gender, fee status (Home, EU, International), and College);

2. With respect to the University of Cambridge *Affiliated-Entry Veterinary Medicine Course*:

For each year of the course (identifying year) please provide information detailing:

- (i) the total number of places available on the course;
- (ii) the number of offers made (by College);
- (iii) the number of places taken up (by gender, fee status (Home, EU, International), and College);

3. With respect to the University of Cambridge *Cambridge Graduate Course in Medicine (CGCM)*:

For each year of the course (identifying year) please provide information detailing:

- (i) the total number of places available on the course;
- (ii) the number of offers made (by College);
- (iii) the number of places taken up (by gender, fee status (Home, EU, International), and College);

4. Information (copy of procedures) detailing the standardised admissions process for the *Group IV Colleges* (i.e. Lucy Cavendish College, St. Edmund's College, Wolfson College) with respect to the admissions process for the *Affiliated-Entry Medicine Course*.

5. Information (copy of procedures) detailing the standardised admissions process for the *CGCM Colleges* (i.e. Lucy Cavendish College, Hughes Hall, Wolfson College) with respect to the admissions process for the *CGCM*.

6. A copy of the Terms of Reference and Regulations/Procedures pertaining to the *Chair of the Group IV Colleges* and the *Group IV Colleges Committee*.

2. The University responded to the complainant's request on 24 October 2011. It disclosed the requested information, however the complainant then wrote to the University on 26 October 2011 to point out that the information provided to him was incomplete as the information he had received in response to part 5 of his request was missing a page.

3. On 22 November 2011 the University wrote to the complainant stating that it was treating his letter of 26 October 2011 as a follow-up to his original request. It stated that the missing page of information was exempt from disclosure under section 36(2)(c) of FOIA as disclosure would be likely to prejudice the effective conduct of public affairs.
4. Following an internal review requested by the complainant on 1 December 2011, the University wrote to the complainant on 3 January 2012. The reviewer upheld the decision not to disclose the withheld information citing section 36(2)(c) as a basis for non-disclosure.

Scope of the case

5. The complainant contacted the Commissioner to complain about the way his request for information had been handled. The University informed the Commissioner that the withheld information, i.e. the missing page, was not within the scope of the complainant's original request. It therefore treated the complainant's letter of 26 October 2011 as a new request and responded accordingly.
6. The Commissioner has considered whether the withheld information was within the scope of the complainant's original request. He has decided that it is outside the scope, as the original request only asked for the 'standardised admissions process' and not specific interview questions. Therefore, this decision notice is solely concerned with the request of 26 October 2011.
7. The University has applied sections 36(2)(c) of FOIA to the withheld information. The Commissioner has considered the University's application of this exemption.

Reasons for decision

Exemption

Section 36

8. The relevant parts of section 36(2) state that,

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act-

[...]

(b) would, or would be likely to, inhibit-

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs."

Section 36(2)(c) provides that information is exempt if its disclosure would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs. The phrase 'otherwise prejudice' means that this section refers to prejudice not covered by section 36(2)(b).

9. This is a qualified exemption, and is therefore subject to the public interest test.
10. The Commissioner has considered the application of section 36(2)(c) to the withheld information.
11. Information can only be exempt under section 36 if, in the reasonable opinion of a qualified person, disclosure would, or would be likely to, lead to the adverse consequences described in that part of the exemption – in this case the prejudice to the effective conduct of public affairs.
12. In order to consider the application of the exemption the Commissioner will first consider whether the opinion was obtained from a qualified person, and the manner in which this opinion was obtained. He will then consider whether the opinion of the qualified person was reasonable.
13. To establish whether section 36 has been applied correctly the Commissioner considers it necessary to:
 - ascertain who is the qualified person for the public authority;
 - establish that an opinion was given;
 - ascertain when the opinion was given; and
 - consider whether the opinion was reasonable.

14. The University has informed the Commissioner that the qualified person in this case was Professor Sir Leszek Borysiewicz, the Vice-Chancellor of the University. The Commissioner is satisfied that Professor Borysiewicz was a qualified person for the University.
15. The University has also provided the Commissioner with a copy of the submission provided to Professor Borysiewicz in order to seek his opinion as to whether this exemption was engaged.
16. In deciding whether an opinion is reasonable the Commissioner will consider the plain meaning of that word, that is, not irrational or absurd. If it is an opinion that a reasonable person could hold, then it is reasonable. This is not the same as saying that it is the *only* reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that *no* reasonable person in the qualified person's position could hold. The qualified person's opinion does not even have to be the *most* reasonable opinion that could be held; it only has to be *a* reasonable opinion.
17. The Commissioner has also been guided by the Information Tribunal's comments in *Guardian Newspapers & Brooke v Information Commissioner & BBC1*¹ (paragraph 91), in which it indicated that the reasonable opinion is limited to the degree of likelihood that inhibition or prejudice may occur and thus, *'does not necessarily imply any particular view as to the severity or extent of such inhibition [or prejudice] or the frequency with which it will or may occur, save that it will not be so trivial, minor or occasional as to be insignificant'*.
18. Therefore, in the Commissioner's opinion this means that when assessing the reasonableness of an opinion, the Commissioner is restricted to focusing on the likelihood of that inhibition or harm occurring, rather than making an assessment as to the severity, extent and frequency of prejudice or inhibition of any disclosure.

Section 36(2)(c)

- 19 Prejudice to the effective conduct of public affairs could refer to an adverse effect on the public authority's ability to offer an effective public service or to meet its wider objectives or purpose.

¹ EA/2006/0011 & EA/2006/0013

20. In *Ian Edward McIntyre v Information Commissioner and the Ministry of Defence*⁴, 4 February 2008, the Information Tribunal said at paragraph 25:
"We take a similar view to the Commissioner that this category of exemption is intended to apply to those cases where it would be necessary in the interests of good government to withhold information, but which are not covered by another specific exemption, and where the disclosure would prejudice the public authority's ability to offer an effective public service or to meet its wider objectives or purposes due to the disruption caused by the disclosure or the diversion of resources in managing the impact of disclosure"
21. The University's informed the Commissioner that the withheld information consisted of the core interview questions used to select the 2011 intake into the CGCM course. Its rationale for engaging the exemption in this case was to prevent the quality of the selected candidates from diminishing overall, which would be the likely effect of disclosing the withheld information.
22. The University of Cambridge's published mission statement is "to contribute to society through the pursuit of education, learning, and research at the highest international levels of excellence." The selection of the very best candidates for the University's various degree programmes, including the CGCM, is fundamental to the pursuance of this mission.
23. The University's selection process takes place through a series of applications procedures, including an interview in which, as is customary with most interviews, the precise questions are not known to any of the interviewees in advance. The University submitted to the Commissioner that any act that might prejudice the fairness of the selection process – such as the disclosure of the withheld information – would be likely to prejudice the University's conduct of its mission and therefore the effective conduct of public affairs because the interview process would cease to test a candidate's ability to express their unrehearsed and unscripted understanding of, and suitability for, a highly vocational subject.
24. It might be argued that this issue could be addressed by the routine advance publication of the questions to all of the candidates so as to ensure that each and every candidate had access to the same information about the process. However, this would severely prejudice the University's ability to test a candidate's capacity to deal with a question or situation for which he or she had not previously been specifically prepared. This is particularly important in the context of the selection of candidates for medical education as the process

determines those who will train to become clinicians in whom the public will place its trust.

25. It is the qualified person's opinion that disclosure of the withheld information would be likely to prejudice both the fairness of the selection process and public health and safety in a broader sense because it could lead to the selection of inferior candidates who might recite flawless answers to interview questions that had been plagiarised or prepared by a third party. The ability of the University objectively to assess the merit of individual candidate's applications would be likely to be compromised as a result. The University has informed the Commissioner that the interview questions for entry to the CGCM, while reviewed on an annual basis, contain a number of core questions that are unaltered from year to year. It would be neither desirable nor feasible to re-write all of these questions each year and therefore the 'learning answers by rote' scenario would be a highly likely outcome of disclosure of the withheld information.
26. The Commissioner has been provided with a copy of the submissions given to the qualified person at refusal notice stage. These included a description of the withheld information, as well as information supporting a recommendation. Having considered the submissions and the withheld information, the Commissioner considers that the opinion of the qualified person is reasonable. The Commissioner is also satisfied that section 36(2)(b)(c) applies to the whole of the withheld information.

Public interest test

27. Section 36(2)(c) is subject to a public interest test. As such, the information can only be withheld if the public interest in maintaining these exemptions outweighs the public interest in disclosure. The Commissioner has first considered the public interest in disclosure.

Public interest arguments in favour of disclosing the withheld information

28. The University understands that FOIA carries a presumption in favour of disclosure and acknowledges that there is a public interest in ascertaining the types of questions deemed suitable for the selection of those individuals for medical education who have already completed an undergraduate degree (which is the criteria for admission to the CGCM as opposed to the standard medicine course). The Commissioner agrees with this.

29. The University recognises that there is a public interest in increasing openness, transparency and accountability in the decision-making processes of any public sector organisation. The University recognises that there is a public interest in increasing openness, transparency and accountability in the decision-making processes of any public sector organisation. There is a more specific public interest in promoting transparency about the ways in which universities, which are in receipt of some public funds, choose their students.

Public interest arguments in favour of maintaining the exemption

30. The University argues that there would be likely to be considerable damage to the effectiveness of the application process for the CGCM course if the University was unable to include an interview in which all candidates did not know the questions in advance and therefore could not learn their answers by rote or, worse still, ask others to prepare them on their behalf. Such an outcome would not be in the public interest because it would neither be fair nor be likely to result in the selection of the most outstanding candidates for the education on offer.
31. The University argues that the fact that the CGCM leads to the accreditation of doctors who are responsible for the health and safety of the public adds further weight to the public interest arguments in favour of maintaining the exemption in this case because disclosure of the withheld information would be likely to undermine the University's ability to recruit and train the most suitable individuals for a career in this public-serving profession and thus achieve the best value for public money. This Commissioner does not consider that this argument carries much weight, as he considers that any individual on the course who turns out not to possess the skills and qualities required to become a doctor, would surely not have the ability to complete the necessary training. However, the Commissioner does accept that it would not be in the public interest to risk allowing substandard candidates entry to a University course which they may not be able to complete.

Balance of the public interest arguments

32. In finding that the above exemption is engaged, the Commissioner has already accepted that the disclosure of this information is likely to result in the inhibition set out in these exemptions. However, in considering the balance of the public interest, the Commissioner takes into account the severity, frequency, or extent of any inhibition that would or might occur. In order to determine this, the Commissioner

has considered both the nature of the withheld information and the timing of the request.

33. The withheld information consists of the interview questions used in the selection of the September 2011 intake to the CGCM. The University has informed the Commissioner that the same core questions are used each year. Therefore the withheld information is current and could be utilised by candidates seeking entry onto the CGCM course in future years. The Commissioner accepts that this would not be desirable. At present, since the same core questions are used each year, those re-applying for the course, having failed to be selected the first time, would be able to utilise their knowledge of the questions and possibly gain an advantage over first-time applicants. However, the Commissioner considers that this is a risk inherent in any interview process which uses the same or similar core questions in each new round of applications – those re-applying will naturally have the advantage of knowing what to expect. The fact that a small number of individuals, i.e. those re-applying for the course, would perhaps have a knowledge advantage, must be weighed against the potential risks of a much larger pool of candidates being aware of and being able to rehearse answers to those core questions.
34. The Commissioner considers that there is a public interest in a University being open and transparent about the processes it uses to select its students. However, the University routinely publishes extensive information about its admissions procedures, both generally and those specific to the CGCM. This can be found on the University's website. The Commissioner considers that this would be sufficient to inform the public about the admissions procedures and policies of the University without the necessity to publish the withheld information. Although this would add to the public's knowledge of the selection process of potential future clinicians, the Commissioner considers that any public interest in knowing this would be outweighed by the likely damage which would be caused to the fairness and impartiality of the selection process and the likely prejudice caused to the quality of the candidates.
35. Although the Commissioner accepts that there is some public interest in disclosure of the withheld information, he agrees with the University that the overall public interest in maintaining the integrity and quality of its admissions process to the CGCM course outweighs that in disclosure of the withheld information. This is especially true in the context of the extensive general and CGCM-specific information that is already published by the University. The additional information to the public which would be provided by disclosure would be far outweighed

by the likely considerable damage which would occur to the effectiveness of the applications and selections processes.

36. The Commissioner accepts that such damage would be a likely effect of disclosure and would be likely to undermine to a large extent the effectiveness of the ongoing admissions process for the course. Therefore, the Commissioner's conclusion is that, in all the circumstances of the case, the public interest in maintaining the exemption set out in section 36(2)(c) of FOIA outweighs that in disclosure of the withheld information.

Right of appeal

37. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

38. 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.
39. 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

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