

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 9 October 2013

**Public Authority:** Universities and Colleges Admissions Service  
**Address:** (UCAS)  
Rosehill  
New Barn Lane  
Cheltenham  
Gloucestershire  
GL52 3LZ

#### Decision (including any steps ordered)

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1. The complainant has requested information relating to the number of applications made to each university during an application cycle.
2. The request was refused under section 22 of the FOIA (information intended for future publication).
3. The Commissioner's decision is that section 22 is engaged and the public interest test favours maintaining the exemption.
4. The Commissioner requires UCAS to take no steps.

#### Request and response

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5. On 12 March 2013, the complainant wrote to UCAS and requested information in the following terms:
  - (a) *The number of applications made to each university during the 2011/12 application cycle*
  - (b) *The number of applications made to each university during the 2012/13 application cycle*
  - (c) *The number of applications made to each university during the 2013/14 application cycle*

6. UCAS responded on 15 March. It provided a link in answer to requests (a) and (b). However, it went on to state that the information in request (c) was exempt under section 22 of the FOIA – information intended for future publication.
7. In relation to request (c), the 2013/14 application cycle has been interpreted to mean applications to institutions to start education at the beginning of the academic year 2013 (September 2013).
8. Following an internal review UCAS wrote to the complainant on 30 April 2013. It upheld its previous decision that the information was exempt under section 22 of the FOIA.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 5 May 2013 to complain about the way his request for information had been handled, specifically UCAS' refusal to disclose the information requested in part (c) of his request. The complainant didn't dispute the engagement of section 22. However, he did dispute the public interest test and that it did not favour maintaining the exemption.
10. The Commissioner considers the scope of this request has been to consider whether the public interest test was correctly engaged when relying on section 22 as an exemption.

### **Reasons for decision**

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11. Section 22 of FOIA states that information is exempt information if-
  - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),
  - (b) the information was already held with a view to such publication at the time the request for information was made, and
  - (c) is it reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).
12. In the Commissioner's view, in order to demonstrate that the exemption under section 22 is engaged, a public authority must have an intention to disclose information at a future point in time and it must be able to

demonstrate what information within the scope of the request it intends to publish.

**(a) Was the information held by UCAS and was there an intention to publish at the time the request was received?**

13. UCAS states that at the time of the request for the information contained in (c), there had always been an intention to publish the information as it had done with its previous cycles. It did not have a specific date but explained that the information is scheduled to be made available by the end of January 2014.

**(b) Was the information held with a view to publication at the time when the request was made?**

14. The Commissioner understands from UCAS that the requested information was held with a view to publication at a later date at the time the request was made.

**(c) Is it reasonable in all the circumstances that the information should be withheld until a later date?**

15. UCAS has explained analytical reports on live operational processes should be published only when such processes are complete. This is because of the detrimental effect that a premature disclosure could have on the operation of these processes. Therefore, UCAS argue that in principle it is reasonable in the circumstances to withhold the information prior to publication.
16. The Commissioner has accepted that it is reasonable in the circumstances for UCAS to engage section 22 as a basis for withholding the requested information. However the exemption can only be applied where the public interest in maintaining the exemption outweighs the public interest in disclosure.

**Public interest arguments in favour of maintaining the exemption**

17. UCAS has provided numerous arguments as to why the public interest favours maintaining the exemption. The Commissioner has considered all arguments raised by UCAS but he felt it was not necessary to include all of them in this notice. However, he has considered the main points of its arguments below.
18. UCAS has explained that if the information up to the January 2013 deadline were to be released, it would only provide a snapshot and a partial picture of the overall applications to each university. Therefore, there would be no reliable relationship between the publication of the information and the true number of applications to each university. In

summary, UCAS has explained the request would not represent a complete picture of the applications each university had received.

19. Following on from this, UCAS has stated that the information would be better served if the statistical context of the request was released after the 2013 admissions cycle. The current application cycle is live and therefore an early disclosure would not allow students to make a more informed application.
20. Adding to this, UCAS has explained that it adopts many elements of the UK Statistics Authority Code of Practice for Official Statistics to ensure informed decision making by the users of the data and management of statistical releases. UCAS has argued that the information in question is contained within its statistical publication schedule which it believes conforms to the best statistical practice. Therefore, following the Statistics Authority Code of Practice, UCAS has argued that it is necessary for the statistical data to be made available at the end of the cycle.
21. UCAS believes students would interpret the application numbers to how successful the institutions will be at recruiting students to all courses by the time the cycle closes. Similarly those applicants are likely to consider any potential changes in application numbers could reflect the quality of the course/institution they have chosen resulting in them changing or withdrawing their application. UCAS has argued that such behaviours could destabilise the normal pattern of admissions which is based on the content of the course, the qualification requirements and the suitability for the applicants. It considers these changes in behaviour to be highly detrimental as they would be based on partial information that bears no relation to final recruitment numbers.
22. UCAS has put forward the view that if the information requested was published early, it is not an evidence-based measure of the suitability for a particular course and would therefore not increase transparency for applicants and other individuals interested in attending a higher education institute. It states the use of aggregated institutional level data mid-cycle is not a proxy of course quality and suitability with the applicants being unaware that figures can vary year on year.
23. Further to this, UCAS has explained that the number of applications can change throughout the cycle for a number of reasons. Therefore the institutional level data in the middle of the admissions cycle would cause recursive behaviour that would not be conducive to an orderly application process and likely to lead to detrimental outcomes for applicants, institutions and students.

24. UCAS has argued that the early publication of the information would not only have a negative effect on applicants but also on institutions. The early publication of the information may alter offer making behaviour at a stage in the admissions cycle when offers of university places have yet to be made to applicants. UCAS has stated that from this, institutions may compute likely number of acceptances that other institutions would be aiming to achieve and how it related to their applications at that point. From this information, institutions may change their offer making conditions depending on whether they need to attract more applications.
25. UCAS has maintained the view that the requested information does not convey any useful information about popularity of a specific course, likelihood of securing an offer or any assessment about the viability of a course itself inferred from how many students it may eventually recruit.
26. Finally UCAS stated that detrimental outcomes are more likely to occur in the current admissions cycle as institutions are now operating in an increasingly market-influenced sector where student recruitment is key to their success and viability. UCAS therefore concluded that the current scheduled release of the requested information is the earliest possible time when it can be confident that it would not cause the harm detailed above.

### **Public interest arguments in favour of disclosure**

27. In favour of disclosing the information, the complainant argues that the information he has requested is of public interest due to the lack of information released about the numbers applying to individual institutions. Due to this lack of information the complainant believes that the release of this information would make applicants aware of a decline in applications received by a particular institution.
28. The complainant explains the release of this information could show a correlation between higher tuition fees and few applicants making an application to attend university and therefore the release of this information may help to inform consideration on the Government's change of policy in respect of tuition fees.
29. The complainant argues that if institutions are receiving fewer applications then it can have a detrimental impact upon an applicant's education at that institution. He further states that applicants need to obtain value for money and therefore need to be aware that there may be a decline in applications to a particular institution. He explains that applicants need to be able to balance the risks against the rewards of attending a particular institution.

30. In providing his arguments in favour of disclosing the information, the complainant made reference to a college. He explained that the college had come under financial difficulty due to, at least in part, falling student numbers during the period 2007 – 2010. Due to the financial difficulty the college was facing, it was essential for them to pay off staff subsequently causing a negative impact on the education of those attending that college. The complainant therefore puts forward the view that the falling number of students at a particular institution puts the education at that institution at risk. The complainant argues that this places a greater emphasis on student protection and the release of this information will ensure the protection of students.
31. UCAS agrees in part with the complainant that the information he has requested would be of some use to applicants who have not applied to an institution or are considering withdrawing their application.

### **Balance of the public interest arguments**

32. The Commissioner has recognised UCAS' substantial arguments in favour of maintaining the exemption. However he notes that the detriment or harm caused to applicants would be greater if the complainant had requested information concerning the number of applications made to each course at each institution. This is because it would give a more in-depth stance on each institutions position.
33. However, it is reasonable for the Commissioner to question the usefulness of the information if it were to be released early. The early release of the requested information would not represent the complete number of applications to each institution and as mentioned by UCAS, the number of applicants to each university can vary throughout the cycle and therefore it would seem more appropriate for this information to be released when the cycle is complete. In support of this, the Commissioner at paragraph 29 of his decision notice issued on FS50444347<sup>1</sup> involving Coventry University, spoke of the strong public interest in public authorities being able to deliver on on-going projects without disclosing information which may impede this process at a crucial time.
34. The Commissioner notes that there is likely to be public interest in information concerning how many applications have been made to each institution. However, he has also noted that the information requested is

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<sup>1</sup> [http://www.ico.org.uk/~/media/documents/decisionnotices/2013/fs\\_50444347.ashx](http://www.ico.org.uk/~/media/documents/decisionnotices/2013/fs_50444347.ashx)

of a broad description and therefore the information is likely to be misinterpreted.

35. The Commissioner has questioned the arguments put forward by the complainant in favour of disclosing the requested information. He notes that although they are valid public interest arguments, the arguments do not provide substantial weight as to why it is essential for the information to be released now rather than at the future intended publication date.
36. Taking into account all of the above, the Commissioner considers that the public interest arguments in favour of maintaining the exemption outweighs the public interest arguments in favour of disclosure.
37. The Commissioner considers that section 22 was correctly applied to request (c) and requires UCAS to take no steps.

## Right of appeal

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38. 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm)

39. 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.
40. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**