

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 March 2015

Public Authority: University of Reading

Address: Whiteknights

Reading

RG6 6AH

Decision (including any steps ordered)

1. The complainant has requested information relating to the funding the university has received from the sugar industry since 2010. The university disclosed some information but refused to disclose the amount it had received from Mars over this period citing section 43 of the FOIA.
2. The Commissioner's decision is that the university has acted appropriately by refusing to disclose the amount of funding it has received from Mars since 2010 under section 43 of the FOIA. He therefore requires no further action to be taken.

Request and response

3. On 10 April 2014 the complainant wrote to the university and requested information in the following terms:

"I am writing to request the following information:

1. The total research funding received by Reading University from the food industry over the following time periods:

2010

2011

2012

2013

2014

2. Amount of research funding over the same time period, from:

Coco Cola

Unilever

Mars

Sugar Bureau

3. Any additional funding over the same period from the sugar industry.

4. Amount of research for [name redacted] and her research group over the same period (2010, 2011, 2012, 2013, 2014) from the sugar industry."

4. The university responded on 13 May 2014. The university disclosed the information it held falling within the scope of question one. For questions two to four, the university refused to disclose the requested information citing sections 41 and 43(2) of the FOIA.
5. The complainant requested an internal review on 20 May 2014.
6. The university completed its internal review on 24 June 2014. It upheld its application of section 43 of the FOIA to questions two to four except the funding the professor named in question four had received during the course of her membership of the Scientific Advisory Committee on Nutrition (SACN). In relation to the university's earlier application of section 41 of the FOIA, it confirmed that it no longer wished to rely on this exemption.

Scope of the case

7. The complainant contacted the Commissioner on 10 July 2014 to complain about the way her request for information had been handled. She specifically stated that she was unhappy that the university was withholding information from her under section 43 of the FOIA. She believes insufficient weight was given to the university's public interest considerations and that it exaggerated the potential prejudice disclosure could cause.
8. During the Commissioner's investigation the university decided to disclose further information to the complainant. In relation to question two of the original request the university confirmed that it had received funding from Mars, as it no longer considered the organisation's identity

warranted the application of section 43 of the FOIA. It however confirmed that it remained of the opinion that section 43 of the FOIA applied to the amount of funding it had received Mars.

9. The remainder of this notice will consider the amount of funding received from Mars and the university's application of section 43 of the FOIA.

Reasons for decision

10. Section 43 of the FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the university, a third party or both.
11. In addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of the university, a third party or both, the university must also consider the public interest test, as section 43 of the FOIA is a qualified exemption. When doing so, the university must consider the arguments for and against disclosure and reached a balanced view as to why the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.
12. The university stated that it considered disclosure of the funding amount would be likely to prejudice the commercial interests of the university and Mars. The Commissioner will first consider the commercial interests of the university.
13. The university explained that the research funding environment is an extremely competitive one and there is only a small group of powerful companies working in this industry. The university confirmed that it competes with other Higher Education institutions and research centres for business from various companies in the food industry. The competition is strong and there is only limited amount of money available for such research. It also explained that companies are free to exchange with other institutions, i.e. rival universities and research centres, if they wish to do so.
14. The university explained that research income is of great importance to it and to the overall financial bearing of the university. Research income plays a significant part in the university's overall resources and confirmed that for the 2012-2013 financial year research income equated to 15% of its total revenue – a contribution of £33m.
15. The university considers the disclosure of the exact amount of research funding it has received from Mars would be likely to prejudice the

university's ability to secure similar funding in the future from Mars and other companies whether in the food industry or another.

16. The university states that some of the contracts it holds with third parties are confidential and sensitive in nature and contain specific confidentiality clauses. If the university was to disclose commercially sensitive information to the world at large in relation to a third party it would be in breach of contract and then open to monetary and reputational penalties. Such a scenario could then lead to the third party and other companies refusing to conduct business with the university in future. This would result in a loss of future research income upon which the university is heavily reliant. This would then in turn be likely to prejudice the university's core business functions and even undermine its ability to fulfil its role.
17. The university stated that even for those contracts that do not contain explicit provisions for confidentiality, disclosure of the outstanding requested information would be likely to have the same effects as those described above.
18. The Commissioner has considered the arguments presented by the university. He is satisfied that disclosure of the outstanding requested information would be likely to prejudice the commercial interests of the university and therefore that section 43 of the FOIA is engaged. He will now explain why.
19. The Commissioner accepts that the environment in which the university competes for research funding is highly competitive. He acknowledges that there will be many universities and research centres all wishing to secure valuable amounts of funding from Mars and other companies whether from the food and sugar industry or another. It is clear that research funding is a significant element of the university's overall revenue and such resources are required in order for it to carry out its functions, particularly in the current climate of continual public sector cuts.
20. The Commissioner accepts that the funding offered by such companies will differ between each institution and between each piece of research it is sponsoring. The amounts offered will have been agreed between the university and the company after a thorough process of negotiation and debate. It is inevitable with any commercial negotiation that both sides will try and secure the most favourable terms for their organisation or company. The university has explained that there are only a small number of companies offering such funding for research and therefore the university is up against stiff competition for it. If the amounts agreed were disclosed this could damage the relationship the university has with its funding source and may hinder its ability to continue this

relationship with the company in future or secure other funding from other companies.

21. Given that the university relies heavily on such funding as a source of revenue, the Commissioner agrees that disclosure would be likely to prejudice the university's ability to maintain such commercial relationships with existing funding sources and potentially secure future arrangements with other companies.
22. The university has also argued that disclosure of the outstanding requested information would be likely to prejudice the commercial interests of Mars. However, the only arguments that the university has submitted are those relating to the identity of Mars itself (which it initially withheld from the complainant prior to the Commissioner's involvement) and the alleged concerns many companies have with the cross contamination of research. The Commissioner does not consider these arguments are relevant to the issues being considered here. He does not agree that any cross contamination of research could potentially occur from the simple confirmation of the amount of funding received from a particular source. As stated above, these arguments in the main relate to other companies knowing that Mars sponsors the university and this resulting in Mars and other competing companies not wishing to conduct similar business with the university as a result.
23. The Commissioner is however satisfied that the likely prejudice to the university's own commercial interests is sufficient to engage the application of this exemption and so he will now proceed to consider the public interest test.
24. The university stated that it accepts there is an inherent public interest in ensuring openness, value for money, transparency and accountability about the income it receives from the food and sugar industries. It also accepts that there is a public interest in promoting understanding of how the university is funded and the relationships its researchers have with the food and sugar industry.
25. However, the university considers there is a real and tangible risk that the disclosure of the outstanding requested information would be likely to prejudice the commercial interests of the university and such consequences are not in the public interest. As stated previously, the university considers disclosure would be likely to result in existing companies being reluctant to continue existing commercial relationships with the university and may deter future potential partners from conducting business with it at all. It considers disclosure would put the university at an unfair disadvantage to other institutions and research centres that are competing for similar deals and again this would not be in the public interest. It relies on funding as a significant source of

revenue. If the university is unable to secure similar amounts in the future or is hindered from securing more favourable amounts, this will negatively impact upon its core business functions and its ability to fulfil its wider purpose of providing teaching and learning. Again such consequences are not in the interests of the public.

26. The Commissioner has considered the arguments for and against disclosure and he is satisfied that in this case the public interest in favour of disclosure is outweighed by the public interest in maintaining the exemption. He will now explain why.
27. He accepts that there is a public interest in openness and transparency and a public interest in understanding more clearly how public authorities are funded and how such funding is used. However, the Commissioner considers such openness cannot be at the expense of disclosing commercial information which would be likely to cause detriment to the university. He has accepted that disclosure would be likely to hinder existing commercial relationships and future relationships with other potential companies and this is not in the public interest.
28. He considers the public interest is best served by protecting the university's ability to compete fairly with other universities, institutions and research centres for such funding. It has been acknowledged that research funding accounts for a significant amount of the university's overall revenue. If the university's ability to continue with existing relationships or secure future relationships with other companies is hindered, this would be likely to have a real and significant impact on the core business of the university, its ability to carry out its functions and ultimately the standard of teaching and learning it is able to offer to students. For these reasons the Commissioner is satisfied that the public interest is best served by maintaining the exemption in this case.

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: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.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.

Signed

Rachael Cragg
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