

**Freedom of Information Act 2000 (FOIA)  
Environmental Information Regulations 2004 (EIR)**

**Decision notice**

**Date:** 14 February 2018

**Public Authority:** University of Bedfordshire  
**Address:** University Square  
Luton  
Bedfordshire  
LU1 3JU

**Decision (including any steps ordered)**

---

1. The complainant has requested the University of Bedfordshire (the university) to confirm whether it uses a private company to carry out certain services. If it does, the complainant has asked to know what the services are, when the contract was let, when it is due to expire and when it is likely to be re-tendered. The university refused to disclose the information, citing section 43 of the FOIA.
2. The Commissioner's decision is that section 43 of the FOIA does not apply in this case.
3. The Commissioner requires the university to take the following steps to ensure compliance with the legislation.
  - Disclose the requested information to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## Request and response

---

5. On 13 November 2017, the complainant wrote to the university and requested information in the following terms:

### **Part 1**

1. Does the university currently use a private company to undertake any of the following services:

- Public Relations
- Social Media Communications
- External Stakeholder Communications
- Internal Stakeholder Communications.

2. If yes, can you please confirm:

- The services contracted out
- When the current contract was last let
- When the current contract expires
- Whether the current contract has options to extend its length
- When you expect to retender the contract.

3. If no (to question 1 above,) are you considering letting such a contract in the future and if so, do you have an approximate timetable for engaging the market?

### **Part 2**

4. Have you used a private company to help you with any other marketing or public information campaigns in the past 2 years?
5. If so, could you please provide a brief overview of what those campaigns were about and approximately how long your contract with the company was for to support the campaign(s)?"
6. The university responded on 5 December 2017. It refused to respond to all questions, citing section 43 of the FOIA.
7. The complainant requested an internal review on 31 December 2017.

8. The university carried out an internal review and notified the complainant of its findings on 7 January 2018. It stated that it remained of the opinion that section 43 of the FOIA applied to request.

## Scope of the case

---

9. The complainant contacted the Commissioner on 8 January 2018 to complain about the way his request for information had been handled. He referred to an earlier complaint he raised with the Commissioner relating to a very similar request to the university. He stated that he does not agree that section 43 of the FOIA applies for the same reasons he gave in relation to his earlier complaint.
10. The Commissioner has already considered the earlier complaint and reached a decision. The decision notice can be found via this link:  
<https://ico.org.uk/media/action-weve-taken/decision-notices/2018/2173112/fs50708619.pdf>
11. The Commissioner considers the scope of this case is to determine whether section 43 of the FOIA applies to this request.

## Reasons for decision

---

12. Section 43 of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the university or a third party.
13. Section 43 of the FOIA is also subject to the public interest test. So in addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of the university or a third party, the university must also consider the public interest arguments for and against disclosure and demonstrate that the public interest rests in maintaining the exemption.
14. The arguments given by the university in support of its application of section 43 of the FOIA are the same as those presented in paragraphs 12 to 15 of the Commissioner's decision notice for case reference FS50708619. The only difference between the requests is that the request of 20 October 2017 is asking for information for one contract and the request of 13 November 2017 is asking for information for contracts relating to four types of services.
15. As the arguments are essentially the same there is no need to repeat them here.

16. It then follows that the Commissioner's decision in this case is the same as that described in paragraphs 16 to 22 of her decision notice dated 23 January 2018. Again as the Commissioner's reasoning is the same in both cases, there is no need to repeat this here.

### **Conclusion**

17. The Commissioner's decision in this case is that section 43 of the FOIA is not engaged. As the exemption is not engaged, there is no need for her to go on to consider the public interest test.

### **Other matters**

---

18. To clarify, the university has not applied section 22 of the FOIA in this case, unlike in case reference FS50708619. But if it had, again, the Commissioner's analysis would be the same as that outlined in her decision notice dated 23 January 2018.

## Right of appeal

---

19. 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](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

20. 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.
21. 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** .....

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**