

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 January 2023

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

Decision (including any steps ordered)

1. The complainant requested information relating to settlement agreements. The University of Cambridge (the "University") refused the request under the exemption for commercial interests – section 43(2) of the FOIA.
2. The Commissioner's decision is that the information is commercially sensitive and the University is entitled to withhold it under section 43(2) of FOIA. The public interest favours maintaining the exemption.
3. The Commissioner does not require the University to take any corrective steps.

Request and response

4. On 30 August 2022, the complainant wrote to the University of Cambridge (the "University") and requested the following information:

"From time to time people leave the University's employment after mutual agreement and with a so-called "Settlement Agreement," which may also include a financial pay-off. I understand that there is a template agreement, or at least a standard list of clauses, which is then customised to produce individual agreements. I request a copy of the template agreement, or, if no such document exists, then the standard clauses used in Settlement Agreements which cover the following areas:

1/ Non-disclosure, gagging or confidentiality clauses, including clauses prohibiting derogatory or adverse statements by either party

2/ Waiving of rights arising from Statutes and Ordinance

3/ Return or deletion/destruction of physical or electronic records of teaching and research material in the employee's possession (including any broadly-phrased clauses which would cover more than just teaching and research material)."

5. The University's final position is that the requested information should be withheld under the exemption for commercial interests (section 43(2)).

Reasons for decision

6. This section sets out the Commissioner's conclusions in relation to the University's application of the exemption in section 43(2) of the FOIA.

Section 43(2) – commercial interests

7. Section 43(2) of 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.
8. In this case the withheld information consists of a template settlement agreement and the University considers that disclosing this would be likely to result in prejudice to its own commercial interests.
9. The University has argued that disclosing the information would make public the clauses/wording it does or does not routinely agree to as part

of its settlement agreements, and this would be likely to impair its ability to negotiate with individual employees from a starting point in which the standard position is commercially confidential.

10. The University has explained that it operates in a global higher education marketplace wherein members of staff are a key asset. It considers that the financial arrangements that it may enter into with them, accordingly forms a core part of the University's commercial interests.
11. The University has argued that placing information about its potential position in relation to confidentiality clauses, non-derogatory comments clauses, contribution to legal fees, references, tax treatment into the public domain would be likely to place it at a disadvantage when pursuing individual negotiations, including (for example) if it were to offer someone an agreement on less favourable terms than its usual 'starting point'.
12. The University has further explained that some of the most contentious issues in settlement agreements (often bound up with negotiations about the financial figure) are about whether one party is going to be able to make derogatory comments about the other and whether there is a need to maintain confidentiality about the agreement. The University has explained that it will adopt different stances in such negotiations depending on the circumstances and placing its standard wording into the public domain would be likely to undermine its ability to do this.
13. Having considered the arguments provided by the University and referred to the withheld information, the Commissioner is satisfied first, that the harm the University envisages relates to its own commercial interests. Second, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice and, finally, the Commissioner accepts the University's position that the envisioned prejudice would be likely to happen. The Commissioner's decision is therefore that the University was entitled to apply section 43(2) to the withheld information and he will go on to consider the associated public interest test.

Public Interest Test

14. The complainant considers that there is a strong public interest in knowing the extent to which the University uses "gagging clauses" in its settlement agreements with employees. The complainant pointed to campaigns to stop Universities from using such clauses in cases where settlement agreements are associated with practices such as bullying or sexual harassment.

15. The Commissioner acknowledges that there is public interest in the detail of how the University is settling employment disputes, including the level of public funds that are involved.
16. The University, however, considers that the public interest in this case has been largely met by the fact that it is a matter of public record that it enters into settlement agreements with departing members of staff, and that these may contain confidentiality clauses. The University considers that that this information itself (as opposed to the specific wording used as a standard starting point in many such negotiations) satisfies any genuine public interest in this topic.
17. The University considers that its ability to negotiate settlements to the best of its ability so as to minimise the use of its funds for this purpose is an overriding public interest factor in this case.
18. The Commissioner acknowledges that there is a public interest in knowing how authorities conduct their relationships with employees and manage their resources, particularly in the context of settlement agreements. He recognises that there might be concerns about the use of gagging clauses, particularly where staff departures relate to forms of misconduct.
19. The Commissioner also recognises that settlement agreements are a means for authorities to obtain best value from a commercial and public resources perspective. They are also an agreement between an authority and an individual.
20. The Commissioner does not see that there is significant public interest in releasing the settlement agreement template as it would not have any significant impact on the wider general public as it is used to settle employment disputes between itself and individual employees. Whilst he recognises public concerns about the deployment of gagging clauses, he does not see that it is necessary for the specific forms these might take as applied to individuals needs to be placed in the public domain for concerns about the practice or principle to be voiced.
21. The Commissioner also considers that, as argued by the University, disclosing its starting point via the template would undermine its ability to negotiate effectively in its own interests. The resulting commercial prejudice which would be likely to ensue would not, in the Commissioner's view, be offset by the relative public interest gains obtained via disclosure.
22. In relation to the public interest around concerns regarding the use of gagging clauses, as noted above, the Commissioner considers that it is possible for these concerns to be raised without prejudicing the

University's ability to negotiate commercial terms in these and other aspects of settlement agreements.

23. On balance, therefore, the Commissioner finds that the public interest favours maintaining the section 43(2) exemption in this case.

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

25. 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.
26. 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

Christopher Williams
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF