

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 18 March 2023

Public Authority: The Governing Body of the University of Cambridge

Address: The Old Schools
Trinity Lane
Cambridge CB2 1TN

Decision (including any steps ordered)

1. The complainant has requested information about its investments from the University of Cambridge ('the University'). The University has withheld some information under sections 41 and 43 of FOIA which concern information provided in confidence and commercial interests respectively.
2. The Commissioner's decision is that the information in question was provided in confidence, and the University is entitled to withhold it under section 41(1) of FOIA.
3. It is not necessary for the University to take any corrective steps.

Request and response

4. On 2 September 2022, the complainant wrote to the University and requested the following information:

"This is a request for information through the Freedom of Information Act.

1. What was the total market value of the university's investment portfolio(s) on the 31st July 2022?

If you are going to provide this information through your Annual Accounts/Financial Statements, please provide the specific page number, section and row that the value can be found on. For example, page 28, section 5 "Investments", row "total market value."

For guidance on the number we are seeking, please see this example from the University of Glasgow at 'Annual Investments' in cell C1091 here: <https://www.gla.ac.uk/myglasgow/sustaina...>

2. On the 31st July 2022, were the institution's investment portfolio(s) managed directly by the institution, indirectly by [an] external fund manager(s), or a combination of both?

3. If the university uses external fund manager(s) to manage investment portfolios, please provide the name of each fund manager used, along with the percentage of the total investment funds that they were managing on the 31st July 2022.

Please present this information in this format:

Fund manager name - Percentage of total investment funds managed

Schroders - 47%

CCLA - 49%

University - 4%

4. If the institution invests directly, please provide the details of companies invested in (by way of all investment portfolios), including the full names of each company invested in, and the market value invested in each company on the 31st July 2022. Please provide this information in a spreadsheet format.

5. If the university holds investments through [an] external fund manager(s), please provide a breakdown of the university's holdings with that investment manager on the 31st July 2022, including the market value for each company that forms part of your investment portfolio(s) with them. Please provide this information at a company level in a spreadsheet and/or the format that this information is provided to you by your fund manager(s).

For example, see the University of Glasgow's breakdown at 'Annual Investments' here: <https://www.gla.ac.uk/myglasgow/sustaina...>

6. Does the institution have an ethical investment policy, or similar? If so, please state if it is publicly-available, and provide a web link.

If applicable, in response to any of the above information requested, please confirm that the University does not hold this information."

5. With regard to parts 1-5 of the request, the University explained that the majority of its investments are invested in units of the Cambridge University Endowment Fund (CUEF). This is a unit trust which is managed and operated by Cambridge Investment Management Limited (CIML), a wholly owned subsidiary of the University. The University directed the complainant to where information that is relevant to part 6 is published.
6. The University's final position with regard to information about its investments in the CUEF that is not already published is that this information is exempt under sections 41(1), 43(1) and 43(2) of FOIA.

Reasons for decision

7. Under section 41(1), a public authority is entitled to withhold information if (a) the information was obtained from another person and (b) disclosure would constitute a breach of confidence.
8. The University has directed the Commissioner to his 2014 decision in [FS50528576](#). That case concerned a request to the University for broadly similar information and the Commissioner found that section 41(1) was engaged.

Was the information obtained from another person?

9. In the 2014 case the University had explained, and the Commissioner had accepted, that it obtained the information from Cambridge Investment Management Ltd (CIML) and the fund managers that CIML appointed.
10. In the current case the University has told the Commissioner that the above company's name has changed from CIML to University of Cambridge Investment Management Limited (UCIM). (Since the University referred to CIML in its response to the complainant in September 2022, the Commissioner assumes this name change occurred between that point and the date of this notice.) The University indicated that it obtained the information from another person ie UCIM (formerly CIML) and, in the circumstances and because UCIM is a separate legal entity, the Commissioner accepts that is the case.

Would disclosure constitute an actionable breach of confidence?

11. To determine whether disclosure constitutes an actionable breach of confidence the Commissioner considers four tests.

12. First, does the information have the necessary quality of confidence? The Commissioner is satisfied that it does because it is not trivial – concerning as it does, the University's investments – and because it is not otherwise accessible. The University does not publish the information on its website and, if it were otherwise accessible, the complainant would not have had to request it from the University.
13. Second, was the withheld information imparted in circumstances importing an obligation of confidence? In a submission to the Commissioner, the University has advised that, other than the change of name from CIML to UCIM, the factual circumstances surrounding the information requested in the current case are the same as those described in that earlier decision notice.
14. Those circumstances regarding the second test are therefore that different arrangements apply depending on whether the CUEF is invested in a collective fund or a segregated managed account. In the former case, the CUEF is bound by the terms incorporated within the standard fund documentation of the managers, while in the latter case an individual Investment Management Agreement will be negotiated.
15. In the earlier case the University had provided the Commissioner with samples of both types of documentation and the Commissioner considers that the documentation would be the same for this case. He is again satisfied, given the contract clauses, that the requested information was provided in circumstances importing an obligation of confidence.
16. Third, would unauthorised disclosure cause a detriment to the party providing the information or to another party? The Commissioner will not duplicate the discussion of the Bluck case in FS50528576. But as in the earlier case, the Commissioner considers that detriment is not a prerequisite of an actionable breach. The University has again not made any submissions to the effect that disclosure would cause detriment to any party, but the Commissioner is satisfied that the absence of detriment would not defeat a cause of action.
17. Finally, if the first three tests are satisfied, would the University nevertheless have a defence to a claim for breach of confidence based on the public interest in disclosing withheld information?
18. Section 41 is an absolute exemption not subject to the public interest test. However the common law duty of confidence contains an inherent public interest test. With regard to section 41(1), this test assumes that a public authority should withhold the information unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence.

19. In their complaint to the Commissioner, the complainant has argued that there is a public interest in disclosing the information because transparency and accountability are fundamental qualities of UK universities where students are paying high levels of fees. The complainant considers that students should have the right to hold universities accountable for their investments. The complainant has also noted that a number of other universities to which they submitted their request disclosed the information - this year and in previous years. The complainant says that other universities also publish the information on their websites.
20. The public interest is discussed in paragraphs 34 to 36 of the earlier decision. The Commissioner has noted the complainant's arguments, but he has again seen no evidence of illegality, misconduct, or gross immorality. Such matters would warrant disclosing the information or could form the basis of a public interest defence against breach of confidentiality. He therefore considers that the public interest in maintaining the duty of confidence outweighs the public interest in disclosure in this case. The Commissioner's decision is that the University was correct to withhold the requested information in this case under section 41(1) of FOIA.
21. Since the Commissioner has found section 41 to be engaged, it has not been necessary to consider the University's application of section 43 to the same information.

Right of appeal

22. 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

23. 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.
24. 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

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