

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 5 April 2023

Public Authority: The Council of the Royal Agricultural University

Address: Tetbury Road
Cirencester
GL7 6JS

Decision (including any steps ordered)

1. The complainant has requested information relating to the University's investment portfolio. The University disclosed some information in response to the request but also withheld some because it was commercially sensitive.
2. The Commissioner's decision is that the withheld information engages section 43(2) and the public interest lies in maintaining the exemption. However, the Commissioner has recorded procedural breaches of section 10 and section 17 of FOIA.
3. The Commissioner does not require further steps.

Request and response

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

"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. The complainant chased a response to their request on 21 October 2022.
6. The University responded on 26 October 2022, explaining that it could not locate the request of 2 September 2022 in its FOI inbox. It asked the complainant to resubmit their request, which they did.

7. The University provided its response on 14 November 2022. It disclosed information in response to parts 1, 2, 3 and 6 of the request. It confirmed, in response to part 4 of the request, it does not invest directly. Finally, it confirmed in response to part 5 of the request, which asks for a breakdown of the University's investments with its investment manager, that this information was exempt because it was commercially sensitive.
8. The complainant requested an internal review on 24 November 2022.
9. The University provided the outcome to its internal review on 20 December 2022. It upheld its previous position.

Scope of the case

10. The complainant's request of 2 September 2022 was a round robin, submitted to 153 Universities, the majority of which appear to have complied with the request in full. The complainant raised complaints with the Commissioner about those that did not and several of these complaints were resolved informally because the commercial sensitivity of the withheld information waned over time, which meant it could be disclosed during the course of the Commissioner's investigation.
11. However, the outcome of these previous investigations, or the fact that other public authorities chose to disclose the information that is being withheld here, is not relevant here. Each request must be looked at on a case-by-case basis and the scope of this request is to consider whether the University was correct to withhold the information that it did, at the time that the request was received.

Reasons for decision

Section 43(2) – commercial interests

12. Section 43(2) states:

'Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).'

13. The Commissioner's guidance¹ 'Section 43 - Commercial interests' states 'A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.' For this purpose, the University represents the legal person in question.
14. The Commissioner acknowledges that, first and foremost, Universities are education providers. However, they are also businesses and must be able to operate in a highly competitive market. The Commissioner understands that the University may be funded by government grants and tuition fees, however, it also subsidises this income with its investment activity.
15. The University has explained that 'The RAU is the smallest public sector English university and relies significantly on any private/commercial income generated or donation received.'
16. The University is concerned that its investment activities are largely dependent upon donations and goodwill and, disclosure of the investments 'would be inappropriate to breach the implied trust placed upon RAU' by its donors. The Commissioner rejects this argument – part 5 of the request asks for the breakdown of the University's investment portfolio as managed by its investment manager, not the details of any donations received. Therefore, the Commissioner doesn't see how disclosure could identify any individual donor.
17. However, the University has also explained that 'Given our small size, challenging financial circumstances, and reliance upon the additional funding, all our finances are commercially sensitive.' The University is concerned that in a larger university that has greater investment activity, disclosure of individual investments might not cause the same prejudice, but where such investments are limited disclosure would allow other competitors, either of the University or its fund manager, to replicate this activity to its own advantage and to the disadvantage of the University. The Commissioner accepts this argument.
18. The University has failed to identify which level of likelihood it is relying upon, disclosure 'would' or 'would be likely to' damage its commercial interests. These are separate, distinct terms in FOIA. In the absence of any evidence that demonstrates the commercial prejudice is more probable than not, the Commissioner has decided that section 43(2) is engaged on the lower threshold of prejudice; disclosure of the

¹ [Section 43 - Commercial interests | ICO](#)

investment portfolio breakdown would be likely to prejudice the commercial interests of the University. Therefore, the Commissioner has gone onto consider where the balance of the public interest lies.

The public interest test

19. At no point during the University's initial handling of the request, or subsequent investigation, has the University identified any public interest factors in support of disclosure. It should have done so.
20. There is always a public interest in public authorities being transparent and accountable. Furthermore, there's a specific public interest in transparency regarding how university funds are invested.
21. The complainant is concerned that universities should be held accountable for their investments. The Commissioner agrees. Whilst he recognises that FOIA is purpose-blind, he notes that the complainant is trying to ascertain how sustainable the University's investments are. The University has informed the complainant that 'As the first agricultural college in the English-speaking world and the only one with a Royal Charter, we take matters of sustainability very seriously.' However, the University has reasonably declined to publish any information that might benefit its competitors. As a small, highly specialised establishment (though not without direct competitors) the University must be mindful to not limit its commercial activities, and compromise the standard of service or education it provides, in a socially and environmentally important field.
22. The Commissioner accepts the complainant's arguments that other universities have chosen to disclose this information, both in this round of requests and in previous. However, the way in which a public authority might choose to handle a request can differ for many reasons, for example the complexity of its investments or the economic climate at the time of the request. In this case, in the absence of any concerns surround the legality or appropriateness of the University's investments, the Commissioner has decided that the public interest lies in maintaining the exemption.

Procedural matters

23. In failing to respond to the request within twenty working days of receipt, due to issues with its FOI inbox, the University breached section 10 (time for compliance with request) of FOIA. This same inbox problem affected the University's engagement with the Commissioner during this investigation.
24. The University also breached section 17 (refusal of request) in failing to do the following: cite which exemption it is relying upon and state its reasons for claiming, in all the circumstances of the case, the public

interest in maintaining the exemption outweighs the public interest in disclosure.

Right of appeal

25. 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

26. 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.
27. 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

Alice Gradwell
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Information Commissioner's Office
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SK9 5AF