

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 28 April 2023

**Public Authority:** The Council of The University of Hull

**Address:** University of Hull  
Cottingham Road  
Hull  
HU6 7RX

#### **Decision (including any steps ordered)**

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1. The complainant has requested documentation from the University of Hull (the university) pertaining to the validation of an MSc People Analytics course. The university provided part of the information and withheld part under section 40(2)(personal information) and section 43(2)(commercial interests) of FOIA.
2. The Commissioner has found that section 43(2) is not engaged regarding some of the withheld information. However, some of the requested information has been correctly withheld under that exemption. Where the Commissioner has found that section 43(2) is engaged, the Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.
3. The Commissioner requires the university to take the following steps to ensure compliance with the legislation.
  - Disclose the withheld information from document two, apart from the information in the table on pages 22-25 and any personal data.
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**

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5. On 15 December 2022, the complainant wrote to the university and requested information in the following terms:

“Under the Freedom of Information Act 2000, please provide me with copies of all documentation pertaining to validation of MSc People Analytics course...”
6. On 12 January 2023 the university provided some information to the complainant but exempted part of that information under sections 40(2) and section 43(2) of FOIA.
7. The complainant requested an internal review on 13 February 2023 about what had been withheld under section 43(2) of FOIA. They accepted the redactions made under section 40(2) of FOIA.
8. Following an internal review the university wrote to the complainant on 1 March 2023 and maintained its position.

## **Scope of the case**

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9. The complainant contacted the Commissioner on 3 March 2023 to complain about the way their request for information had been handled.
10. The Commissioner spoke to the university on 26 April 2023 to query a couple of matters and it confirmed that a small part of the redacted information in document one, page one, had been redacted because it was out-of-scope of the request. This had not been flagged to the complainant but the university said that it would be taken on board in future. Once this redaction is removed from consideration there is no other redacted information contained in document one, apart from the redaction of personal information that has not been challenged by the complainant. A page number from document two had also been redacted in error.
11. Therefore the Commissioner considers that the scope of his investigation is to consider the university's citing of section 43(2) of FOIA to the information it withheld from document two.

## Reasons for decision

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12. 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.
13. The Commissioner has defined the meaning of the term "commercial interests" in his guidance on the application of section 43 as follows:

"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."<sup>1</sup>
14. Most commercial activity relates to the purchase and sale of goods but it also extends to other fields such as services.
15. The Commissioner's guidance says that there are many circumstances in which a public authority might hold information with the potential to prejudice commercial interests.
16. The public authority must demonstrate a clear link between disclosure and the commercial interests of either itself, a third party or both. There must also be a significant risk of the prejudice to commercial interests occurring and the prejudice must be real and of significance for it to be successfully engaged.
17. The exemption is subject to the public interest test. This means that, even if the exemption is engaged, the Commissioner needs to assess whether it is in the public interest to release the information.
18. The university has provided the Commissioner with a copy of the information it withheld from the disclosure it made to the complainant.
19. Firstly, the actual harm that the public authority alleges would or would be likely to occur if the withheld information was disclosed has to relate to commercial interests.
20. The university has confirmed to the Commissioner that both itself and "CEG online are the only ones to offer this course and therefore the

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<sup>1</sup> [Section 43 - Commercial interests | ICO](#)

course and its contents is unique to Hull"<sup>2</sup>. It explains that the business case information in the development consent of the information "would not form part of the final programme specification" and is not released to students. If the programme specification, once approved, is circulated (to students or externally) it is with a note that "business case sensitive information should be removed". The university argues that the information that has been removed from what was disclosed has been "considered carefully by CEG and the university...and determined that this would be harmful to our interests in a competitive international market". The university acknowledges that some of the information might be in the public domain "but collectively pulled together to form the case would provide competitors with advantage." It describes the assessment criteria as "sensitive", the details of which are "a pedagogic framework and could be regarded as intellectual property".

21. Aside from the above arguments, the Commissioner has considered the arguments the university provided in its initial response and internal review. The university believes that the redacted information falls under this exemption because its release "may give an unfair advantage to its competitors" and "damage its own commercial interests". The university explains that it operates "in a commercial and competitive environment" not only in the UK but also internationally. It needs to be able to compete in what it describes as an "ever more challenging environment" and that the course content is unique to Hull".
22. The university is in partnership with CEGD but has not provided 'evidence' from them or their exact views regarding the withheld information, though it does state that it was part of the determination made regarding the redactions that were made. The Commissioner accepts that CEGD is in partnership with the university to deliver the course but more detailed argument would have been helpful here.
23. The Commissioner is satisfied that, whilst the information is commercial because the university is selling a service, he does not accept that all the withheld information is commercially sensitive. Specifically, the Commissioner does not consider that section 43(2) is engaged regarding some of the redacted information contained in document two. It is not clear how disclosure of that information could adversely impact on either the university's commercial interests or the commercial interests of CEGD. Much of this information is generic or has some similar content to what has already been disclosed to the complainant or is on the course

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<sup>2</sup> One of Cambridge Educations Group's divisions is CEG Digital which is in partnership with the university (Hull Online Ltd) to deliver this course.

outline on the website. It is not clear how this information would aid a competitor.

24. However, the Commissioner is satisfied that section 43(2) is engaged regarding the information that was redacted from the table on pp 22-25, under the 'curriculum map'. It is information that could be utilised by competitors in combination with other publicly available information.
25. He has determined that some of the withheld information is prejudicial to the university at the lower level.

### **Public interest test**

26. Although the exemption is engaged regarding some of the information, the Commissioner also needs to consider whether it is in the public interest to disclose the withheld information or for it to remain withheld.

### **Public interest factors in favour of the disclosure of the requested information**

27. The complainant does not accept that the university has explained its position, "in particular with regards to 'Hull online' sections". The complainant has provided further reasons to support their argument that they should be able to access this information but those arguments cannot be reproduced here.
28. The university acknowledges that disclosure would promote,

"accountability, transparency and scrutiny of the information relating to:

- Costs;
- Specifications
- Public/private partnerships."

### **Public interest factors in favour of maintaining the exemption**

29. The university stressed that it operated in a commercial and competitive environment as do all universities and "they are in direct competition with each other".
30. They are also "in direct competition with overseas institutions, and certain private providers" that are not subject to FOIA. The university argued that the release of the information that had been withheld could "put the University at an unfair disadvantage in that this information could be used by competitor institutions to their own commercial advantage".

31. The university stated in its internal review that it does not consider release to be in the public interest just because it is of interest to the public. The university does not accept the complainant's public interest reasons (not all of which have been outlined here) and has not considered context due to FOIA being "applicant blind".

32. The university's view is that the public interest here lies in it being able to compete -

"in an ever more challenging market, the course content is unique to Hull and to release the remaining information would be detrimental to us and third parties compromising relationships".

### **Balance of the public interest**

33. The Commissioner notes that the university did provide a significant proportion of the requested information to the complainant. Although the complainant clearly has a personal interest in what has been withheld, the Commissioner does not accept that this equates to any wider public interest or overrides the public interest in the university being able to compete with other institutions to attract students without having to provide every detail that has gone into the validation of that course to its competitors.

## Right of appeal

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34. 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](mailto:grc@justice.gov.uk)

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

35. 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.
36. 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 .....**

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