

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

### **Decision notice**

**Date:** 30 August 2023

**Public Authority:** The Governing Body of the University of East  
**Address:** London  
University of East London  
University Way  
London  
E16 2RD

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

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1. The complainant has requested information relating to the redevelopment of the Stratford campus. The University of East London ('the University') refused the request, applying section 22 (information intended for future publication) and section 43(2) (commercial interests).
2. The Commissioner's decision is that the withheld information engages section 43(2) and the balance of the public interest lies in maintaining the exemption.
3. The Commissioner does not require further steps.

#### **Request and response**

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4. On 12 March 2023 the complainant requested:
  - "1. A copy of the Plans for redevelopment of the Stratford Campus, which include any proposed changes to vehicular access.
  2. Any impact assessment conducted in relation to development of its Stratford Campus.

3. A copy of the Plans, which relate to how the proposed plans will affect light for local residents (Light Report(s)).
4. All correspondence between University of East London and Kanda Consulting, concerning Light Reports.
5. All correspondence between University of East London and Kanda Consulting, concerning the proposed plans.”
5. The University responded on 5 April 2023; it refused to disclose the information requested in parts 1-3 of the request under section 22 (information intended for future publication) and the information requested in parts 4-5 under section 43(2).
6. The complainant requested an internal review on 7 April 2023.

### **Scope of the case**

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7. The complainant contacted the Commissioner to complain about the way their request for information had been handled. At the date that the Commissioner accepted this case for investigation – the University had failed to provide its internal review outcome.
8. The University provided its internal review outcome on 31 July 2023. It explained to the complainant that the information requested in parts 1-3 of the request had now been published.<sup>1</sup>
9. The University also confirmed that it didn't engage with Kanda on the production of light reports and so no information in relation to part 4 of the request was held. The University partially upheld its application of section 43(2), releasing previously withheld information with redactions made under section 40(2).
10. When information is disclosed during the Commissioner's investigation, he won't investigate whether it was appropriately withheld in the first place – it's not an appropriate use of his resources to do so. Therefore the Commissioner won't consider the University's application of section 22 any further.
11. Furthermore, the complainant hasn't raised any concerns about the University's position that it doesn't hold any information that would fall

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<sup>1</sup> [Part 1 of the request](#); [Part 2 of the request](#); [Part 3 of the request](#).

within scope of part 4 of the request, or its application of redactions under section 40(2).

12. So, what remains for the Commissioner to consider is whether the information still being withheld under section 43(2) is being withheld correctly.

## **Reasons for decision**

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### **Section 43(2) – commercial interests**

13. Section 43(2) states that information may be withheld if its disclosure would, or would be likely to, prejudice the commercial interests of any legal person (including the public authority holding the information).
14. In order to engage section 43(2), it's not sufficient to argue that because information is commercially sensitive, its disclosure would, or would be likely to, prejudice commercial interests. There must be a causal link between disclosure and the prejudice envisaged.
15. In this case, the University is concerned that disclosure would be likely to prejudice both its own commercial interests and the third party in question – Kanda consulting, the University's planning and communication consultant. In such instances, the University is required to consult Kanda to obtain their views on disclosure which it has done.
16. The University has continued to withhold certain information for the following reasons:
  - The withheld information reveals Kanda's approach to managing planning consultations (including the practicalities of negotiating with key stakeholders) and disclosure would reveal its methods to competitors;
  - The withheld information contains budgets and costs information and disclosure would be likely to prejudice the University's ability to achieve value for money in the future;
  - Disclosure would be likely to prejudice the planning application in itself which would require the University to expend more resources defending its position or amending its application;
  - Disclosure would damage the relationship between the University and Kanda which would compromise the University's ability to form similar relationships in the future. In turn, this would be likely to increase costs to the University and affect the quality of advice it receives in the future.

17. The Commissioner has considered each of the University's arguments above, bearing in mind that for the causal link referred to in paragraph 14 to exist, the prejudice claimed must at least be possible, i.e. there are circumstances in which it could arise.
18. The Commissioner has also considered the content of the information that is actually being withheld. Having done so, he's discounted the University's argument about budget and cost information as he can't see any such information in the information being withheld.
19. He's also discounted the University's argument that disclosure would be likely to compromise the University's ability to build robust, effective relationships with third parties in the future. Each request for information must be taken on a case-by-case basis and should not set a precedent for any future requests. Furthermore, the Commissioner considers that any third party that engages with a public authority should be mindful that such work comes with a heightened level of scrutiny and of the possibility of disclosure under FOIA.
20. Finally, he's also discounted the University's argument that disclosure would be likely to prejudice the planning application – purely on the grounds that neither the University nor Kanda has indicated **how** disclosure would prejudice the planning application, therefore it's difficult for the Commissioner to see the causal link.
21. The Commissioner does accept the University, and Kanda's, arguments that the withheld information details how engagement with key stakeholders has been undertaken. The information talks about which stakeholders the University, and Kanda, has engaged with; this information is already in the public domain as its listed on the redevelopment website<sup>2</sup>. However, the withheld information also goes into detail about Kanda's strategy and the tools used in engaging with these partners and this information isn't in the public domain. The Commissioner accepts that disclosure could lead to the replication of Kanda's approach and techniques, especially in similar consultations which would be likely to affect Kanda's ability to operate in a commercially competitive field – therefore the exemption is engaged.
22. Section 43(2) is a qualified exemption; the Commissioner will now go on to consider where the balance of the public interest lies.

### **Public interest test**

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<sup>2</sup> [UEL Stratford Campus Development Home \(uel-stratford-redevelopment.co.uk\)](http://uel-stratford-redevelopment.co.uk)

### **Public interest arguments in favour of disclosure**

23. There is always a public interest in public authorities being transparent about their work and opening up their decisions for scrutiny.
24. The University acknowledges 'The public have an expectation that public bodies will spend money responsibly. Furthermore, the public also expect transparency from public bodies, particularly when public bodies are involved in potentially contentious issues. Disclosure of the information concerned would provide this assurance.'
25. At the time of raising their complaint with the Commissioner, the complainant explained "There is public interest from residents for this information. It might have some relevance to a planning application residents only have until the 15 June 2023 for meaningful input." The Commissioner notes that this date has now passed, however, disclosure would still increase transparency around engagement around the development, particularly for those who will be affected by it.

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

26. The only argument that the Commissioner has accepted is that disclosure would be likely to prejudice the commercial interests of Kanda, on the basis that its competitors could benefit from its engagement techniques and tools being placed into the public domain.
27. In turn, this would skew the competitive market in which Kanda operates and may affect the University's ability to obtain value for money in the future if it wants to engage Kanda again.

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

28. In this instance, the Commissioner has determined that the balance of the public interest lies in maintaining the exemption.
29. The University has explained to the Commissioner that 'It is clear that the requester is particularly interested in the way the impact reports were put together. The communications in question do not necessarily reveal anything around the decision-making process concerning such impact assessments... I would also like to clarify that during the Internal review process, it was determined that the University did not engage Kanda on the production of light reports and so no communication on this specific matter exists.'
30. Whilst the complainant does request impact reports and light reports, they also requested a copy of all correspondence between the University and Kanda. The University should not presume that one part of the request is more important to the complainant than another. However, the Commissioner agrees that the withheld information, which is largely

administrative, doesn't shed any light on issues relating to local residents and wouldn't meet the public interest that the complainant has specifically identified.

31. The Commissioner notes there are 140 planning documents available on Newham Council's website<sup>3</sup> and, during, this investigation, the University disclosed approximately 400 pages to the complainant. In this case, the Commissioner is satisfied that this information meets the public interest in disclosure, without prejudicing the commercial interests of any legal person.
32. He also notes that there are routes by which local residents can express their opinions, as identified by the complainant themselves. There is no information contained within the withheld information that would be pertinent to such an appeal and therefore the Commissioner doesn't believe disclosure outweighs non-disclosure in this instance.

### **Procedural matters**

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33. Section 10 of FOIA states that a public authority must communicate any non-exempt information within 20 working days of receipt of the request. In disclosing information during this investigation, the University breached section 10.

### **Other matters**

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34. There is no statutory obligation for a public authority to provide an internal review under FOIA. However, the Commissioner's guidance states that it should be provided within 20 working days of receipt of the review request. This timeframe can be extended to 40 working days in exceptional circumstances. The University exceeded this timeframe.

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<sup>3</sup> [23/00790/FUL](https://www.newham.gov.uk/23/00790/FUL) | University Of East London Stratford Campus Water Lane Stratford London E15 4LZ ([newham.gov.uk](https://www.newham.gov.uk))

## **Right of appeal**

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35. 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)

36. 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.
37. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**