

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 September 2023

Public Authority: University Council of the University of Warwick

Address: University Road
Coventry
CV4 7AL

Decision (including any steps ordered)

1. The complainant has requested information about student accommodation. The above public authority ("the public authority") provided some information, but relied on section 43(2) of FOIA (commercial interests) to withhold the remainder.
2. The Commissioner's decision is that the public authority is not entitled to rely on section 43 of FOIA to withhold the remaining information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the information it has relied on section 43 of FOIA to withhold.
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

5. On 19 May 2023 the complainant requested information of the following description:

“Under the freedom of information act, I request the following information:

1. Revenues and spending on university owned/operated student housing for the academic year 2022/23 and 2021/22
2. Average price of rent per week and per year for students in 2022/23, and also cheapest and most expensive prices per week
3. Average price of rent per week and per year for students in 2023/24, and also cheapest and most expensive prices per week
4. Number of places for students in halls this coming year
5. How much has rent increased this year?
6. How much has rent increased by over the last ten years?
7. How many applications for accommodation were received for the coming year, and of those, how many were accepted or rejected?”

6. On 10 July 2023, the public authority responded. It provided the information within the scope of elements 2-6 of the request, but refused to provide the remainder. It relied on section 43 of FOIA to withhold this information. It upheld its position following an internal review.

Reasons for decision

7. Section 43 of FOIA allows a public authority to withhold information whose disclosure could harm its own commercial interests or those of another party.
8. In order to apply the exemption, a public authority must be able to show a causal link between disclosure and the harm it considers would occur.
9. The public authority argued that it could not disclose its revenue or spending totals without harming its own commercial interests because:

“This information would almost certainly be used by private sector competitors to draw comparisons between their own level of investment in their properties and the University’s level of investment in its own properties. It will also provide competitors with a valuable insight into the University’s business model for its student accommodation.”

10. The public authority further argued that disclosure would be likely to cause it reputational damage and prejudice its ability to negotiate rents with students and its students' union.

11. In relation to the number of applications for accommodation, the public authority again argued that disclosure would prejudice its commercial interests because:

"The University has a campus master plan including a capital plan for the development and maintenance of its student accommodation. The University has a commercial interest in developing student accommodation as well as ensuring that quality accommodation is available to its students at a reasonable price.

"The requested information combined with the same information relating to other academic years would provide the University's competitors with an insight into trends in demand for student accommodation.

"Disclosure of an upward trend would likely result in competitors developing further capacity around the University's campus, in competition with it, and contrary to the University's commercial interests. It would also encourage higher pricing for students.

"Disclosure of a downward trend would likely result in competitors modifying their own business model to better compete against the University as well as discouraging new providers which could be detrimental to our students."

12. When the Commissioner noted that, at the point the public authority responded to the request, prospective first year students would have yet to receive their A level results – and therefore be unaware of whether they would require accommodation in the area or not, the public authority noted that:

"The publication of A-Level results is an important time in the University's calendar. However, the University also receives applications for accommodation from students who are not awaiting A-Level results. By way of example, this figure includes international, postgraduate and mature students, students who have already been awarded A-Levels, and students who have already met their offer requirements."

The Commissioner's view

13. In the Commissioner's view, the public authority has failed to demonstrate why its commercial interests would be harmed by disclosure.

14. To deal with the revenue and spending figures first, the Commissioner accepts that the public authority, as a provider of student accommodation, operates in a competitive marketplace. He also accepts that this precise information is not currently available to the public authority's competitors in that market.
15. However, in order to demonstrate commercial harm, the public authority must demonstrate not only that its competitors do not currently have access to the information, but that, if they did have access to it, they could exploit it for commercial gain.
16. If the withheld information revealed (hypothetically – the Commissioner has not seen it) that the public authority was investing considerable sums and bringing its own properties up to a very high specification, it is not clear what other housing providers could do – even if they were aware – that would harm its interests.
17. An organisations level of capital spending is determined by the resources available to the organisation. It is not clear how many of the public authority's competitors are of the same size and would have the same resources to match a high level of investment across a large number of properties – even if they were aware of it.
18. Even those who do have the resources might not necessarily be able to exploit the information. Renovations take time to complete and, if a property company is bringing in contractors to carry out the work, it will be constrained by when the contractor has the capacity to carry out the necessary work. Students are unlikely to commit themselves to accommodation that will not be ready for the beginning of term time and it may not be straightforward to achieve a similar fee on the private rental market.
19. Given that the request should have been answered in June, the Commissioner is sceptical that enough of the public authority's competitors would have been able to carry out enough work to be able to offer enough properties at similar standard to have affected the public authority's ability to generate a decent return on its investment.
20. As the request only seeks a total figure, it would be difficult to deduce, solely from that figure, whether the University was spreading investment across its accommodation or whether it was targeting its resources in a particular geographical area or at particular types of property.
21. Furthermore, the Commissioner notes that, if the figure is relatively high, there will be a number of clues in the public domain. The public authority's marketing literature is likely to contain pictures of the

interiors of its accommodation and detail the specifications. A motivated competitor could already gather such information (as well observations, such as how often maintenance work appeared to be carried out) to estimate whether the figure is likely to be high or not.

22. If the investment figure were particularly low (again, hypothetically), other accommodation providers could attempt to out-compete the public authority by providing better quality accommodation – but for the same reasons outlined above, the Commissioner considers that the public authority's competitors will already have a rough idea of the quality of the accommodation provided and those with sufficient resources would already be able to deploy such a strategy.
23. The Commissioner is therefore not convinced that this information would be of material use to the public authority's competitors.
24. The public authority has not explained why disclosure of this information would harm its ability to negotiate with students or its students' union so the Commissioner can give no weight to such an argument. The Commissioner is also of the view that, were the public authority to provide additional explanations to place the withheld information in its proper context, there is no reason why disclosure would be likely to cause unwarranted reputational damage.
25. The Commissioner is therefore of the view that section 43 does not apply to information within the scope of element [1].
26. Turning next to the data on applications, the Commissioner is again unable to see why disclosing this information would be of significant use to the public authority's competitors.
27. The public authority is at a slight advantage compared to its competitors, because it will get an earlier indication – via its course application numbers – of how many students are likely to be seeking accommodation in the forthcoming academic year. Disclosure would therefore not put the public authority at a disadvantage compared to its competitors, it would simply have less of an advantage than it previously did.
28. However, the Commissioner considers that disclosing a figure in June is likely to be of only limited use to competitors for several reasons.
29. Firstly, the number of applications that had been received in June is likely to represent only a proportion of the number students who will ultimately require accommodation. The public authority has rightly noted that it has a large proportion of international students on its roll and that they, along with post-graduate students or students who have deferred entry, are likely to settle their accommodation in advance.

30. However, that still leaves a sizeable portion of students whose need for accommodation in the area will be determined by their A level results. At the point the request was responded to, those results had not been published and therefore the figure the public authority would be of only partial use in estimating the final total.
31. Even if a competitor had equivalent data from previous years, along with the final number of applications, the Commissioner is sceptical that June figures allow the final figures to be estimated with accuracy.
32. Secondly, the Commissioner notes that, even if the data revealed that there was likely to be higher than usual demand for accommodation, there is limited opportunity for providers to exploit such information because of the inherent inflexibility of supply.
33. The Commissioner has already explained above why the public authority's competitors may not be able to upgrade their existing properties quickly enough to exploit the information. The same issues apply even more strongly to increasing the amount of properties on the market.
34. Accommodation blocks cannot be constructed from scratch in three months. Providers already know terms dates and are likely to plan construction or renovation work to ensure that available capacity peaks when students arrive. Therefore even if a provider knows that demand is likely to be higher, they are limited in the steps they can take to increase the number of available properties.
35. Providers could increase the rents on their existing properties, but they can already do that based on their own application data from this and previous years.
36. Furthermore, providers are more likely to be interested in long term trends than one-off figures. Demand for university places (and the accommodation that goes with them) can fluctuate from year to year. Providers will not wish to over-commit themselves by expanding rapidly in a year where there is an unusually high level of demand, only to be left with surplus the following year when demand is lower. Equally if demand dips in one year, providers may still wish to continue investing if they believe that this represents a blip in a long term trend of increasing demand.
37. The Commissioner is therefore not convinced that this information is likely of significant interest to the public authority's competitors, let alone that they would be able to exploit it to the public authority's commercial detriment.

38. The Commissioner considers that section 43 is not engaged in respect of either piece of information. He does not need to go on to consider the balance of the public interest.

Procedural matters

39. The public authority breached section 10 of FOIA as it failed to confirm that it held information or to disclose the non-exempt information within 20 working days of receiving the request.

Right of appeal

40. 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

41. 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.
42. 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

Roger Cawthorne
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