

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

### **Decision notice**

**Date:** 13 December 2023

**Public Authority:** The Governing Body of the University of Southampton

**Address:** University Road  
Southampton SO17 1BJ

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

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1. The complainant has requested information about student accommodation from the University of Southampton ('the University'). The University disclosed some information and relied on sections 21, 22 and 43 to withhold other information. These exemptions concern information that's reasonably accessible to the applicant, information that's intended for future publication and commercial interests respectively.
2. The Commissioner's decision is as follows:
  - Some information within scope of Q1 of the request is exempt information under section 21 and section 22 of FOIA.
  - The University isn't entitled to rely on section 43(2) of FOIA to withhold the remaining information within scope of Q1.
  - The University incorrectly applied section 21 to Q3a and Q5.
  - The University didn't comply with section 1(1) and 10(1) of FOIA in respect of the information requested in Q2b, Q2c, Q2d, Q3b, Q3c, Q3d and Q7.

3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation:
  - Disclose the information it holds that falls within scope of Q1 and that isn't exempt under sections 21 and 22 of FOIA.
  - Disclose the information requested in Q2b, Q3a, Q3b and Q5.
  - Confirm to the complainant whether or not it holds information relevant to Q7 for the period 2014-2018. If it's held and isn't exempt information, communicate that information to the complainant.
4. The University 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. The complainant made the following information request to the University of Southampton ('the University') on 19 May 2023:
  1. Revenues and spending on university owned/operated student housing for the academic year 2022/23 and 2021/2022
  2. Average price of rent [a] per week and [b] per year for students in 2022/23, and also [c] cheapest and [d] most expensive prices per week
  3. Average price of rent [a] per week and [b] per year for students in 2023/24, and also [c] cheapest and [d] 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. The University addressed questions 4 and 7 and its final position was that the information requested in questions 1, 2, 3, 5 and 6 was exempt from disclosure under section 43(2) of FOIA.
7. In its submission to the Commissioner, the University confirmed that it was withdrawing section 43(2) from Q2, Q3, Q5 and Q6. This is because it had, in fact, either already given this information to the complainant in correspondence dated 23 June 2023 or because the information was already in the public domain. The 23 June 2023 correspondence shows the University providing the complainant with a copy of its response to a separate but similar request it had received from a different applicant – its reference G01668.
8. The University's position regarding the five questions above is as follows:

Q1 - the University advised that with regard to information about revenues and spending, the 2021/2022 financial statement is already published and is therefore exempt under section 21 of FOIA. The 2022/2023 financial statement will be published in the coming weeks and is therefore exempt under section 22.

However the University also said it was maintaining its reliance on section 43(2) in respect of the "very detailed" information requested in Q1. This is because the information covered by section 21 and section 22 doesn't fully address the complainant's question.

Q2a - relevant information provided in G01668

Q2b and Q3b – for both financial years, this would be the average price per week, multiplied by 52.18 (52.18/40). (To note, accommodation contracts are either for 38, 40 or 51 weeks.)

Q2c, Q2d, Q3c and Q3d - the University's 'Student accommodation fees and contracts'<sup>1</sup> web page lists the price for each type of accommodation.

Q3a – this information isn't held; it's new information that would have to be calculated. It can, however, be calculated from a response to part 5.

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<sup>1</sup> <https://www.southampton.ac.uk/student-life/accommodation/fees-contracts>

Q5 – The University said that if the complainant is given information in response to Q3, they can calculate the answer to Q5 (and vice versa). Information that hasn't been disclosed to the complainant in response to one part becomes reasonably accessible to them (and so exempt under section 21) by virtue of the disclosure in response to the other part. The University said that it will only provide an answer to one question and will rely on section 21 for the other question. The University advised that the complainant should confirm which question they want the University to answer.

Q7 - the University has already provided the complainant with information about increases over the last five years (going back to 2018/19). And as discussed above it will provide the complainant with an answer (either directly or indirectly, by calculation) to Q5 (rent increase in 2023/24). The only information that would be left outstanding would therefore be for the four years from 2014/15 to 2017/18 – the University isn't sure whether it still holds information that old.

## Reasons for decision

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9. This reasoning covers the University's application of section 21, section 22 and section 43(2) of FOIA to Q1 of the request and its application of section 21 to Q3a and Q5. Finally, he'll consider the University's compliance with section 1 in respect of Q2b, Q2c, Q2d, Q3b, Q3c, Q3d and Q7.

### **Section 21 – information accessible to applicant by other means**

10. Under section 21(1) of FOIA, information which is already reasonably accessible to the applicant is exempt information. This exemption isn't subject to the public interest test.
11. In its submission, the University has confirmed that it's applied section 21 to information in a published financial statement, which is relevant to Q1.
12. The Commissioner is satisfied that section 21 is engaged in respect of the 2021/2022 financial statement.
13. The University is also relying on section 21 in respect of either Q3a or Q5. This is because, it says, if it provides a response to one of those questions, it's possible for the complainant to calculate the response to the other question themselves.

14. Q3a is the average price of rent per week in 2023/2024 and Q5 is how much rent has increased this year. The University has told the Commissioner that it doesn't hold the information requested in Q3a; that the information would have to be calculated. The University hasn't said it doesn't hold the information requested in Q5.
15. The University has provided to the complainant the average price of rent per week in 2022/2023 in response to Q2a. If it were to provide the figure for 2023/2024 – and it's not clear why it wouldn't be able to – it would be possible to work out Q5, how much rent had increased in 2023/2024. Likewise, if the University provided a figure for how much rent had increased in 2023/2024, it would be possible to work out Q3a, the average price of rent per week, using the 2022/2023 figure.
16. The University has said it doesn't hold the information requested in Q3a. First, a public authority can only apply an exemption – such as section 21 – to information that it holds. Second, if the University holds the information relevant to Q5, it must hold the 2023/2024 information relevant to Q3a, because it holds that figure for 2022/2023. Even if a calculation is needed for Q3a and Q5, the University holds the 'building blocks' to make those calculations and so it holds the information.
17. As to section 21 being engaged in respect of either question because the complainant would be able to calculate Q3a if the University provided the information in Q5 (and vice versa), the Commissioner doesn't accept that that's an appropriate application of section 21.
18. The phrase "reasonably accessible" in section 21 should be taken to mean that the information is already published elsewhere, is available through a different access regime or has already been provided to the applicant in response to a FOIA request. Information isn't "reasonably accessible" if the applicant has to calculate it themselves, not least because it makes an assumption about an applicant's mathematics ability.
19. The Commissioner's decision is therefore that the University wrongly applied section 21 to Q3a and Q5 of the request.

## **Section 22 – information intended for future publication**

20. Under section 22(1) information is exempt if, at the time of the request it was held with the intention of publishing it at some future date.
21. With regard to Q1, the University has applied section 22 to information in a financial statement that it intends to publish in the future.
22. The Commissioner is satisfied that section 22 is engaged in respect of the 2022/2023 financial statement and that it's reasonable in all the

circumstances for the University to publish this statement to its usual timetable - if it hasn't already published the statement. In their correspondence to the University and complaint to the Commissioner, the complainant hasn't presented a public interest for disclosure that's so compelling that it would justify disclosing the 2022/2023 statement now, in advance of the University's timetable.

### **Section 43 – commercial interests**

23. The University has applied section 21 and section 22 to some of the information falling within scope of Q1 and the Commissioner has found that those exemptions are engaged. However under section 43(2) the University is withholding what it says is other, "very detailed" information which is relevant to Q1.
24. 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.
25. The Commissioner has reviewed the correspondence between the complainant and the University, the complaint to him and the submission the University has provided. But he's also taken account of his decision in a separate, but related case IC-251077-B1C3<sup>2</sup>.
26. In its submission to the Commissioner the University says that disclosing any further detail relevant to Q1 would prejudice its commercial interests.
27. It notes that disclosure under FOIA is effectively disclosure to the world at large. The University acknowledges that the numbers in the financial statements discussed above relate predominantly to residences (as opposed to catering or conferences). It says this information can be cross-checked quite easily from its response to a separate request published on the WhatDoTheyKnow website. That request was for the number of purpose-built student accommodation rooms available through the University. The answer was 6528 (University-owned) plus 83 (under a nomination agreement): 6611 in total.
28. The University has gone on to generate an annual income figure for the University based on an assumed average rent, an assumed average contract period and an assumed occupancy rate. It considers that

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<sup>2</sup> <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026879/ic-251077-b1c3.pdf>

revealing this information (from the assumptions) would be prejudicial to the University's commercial interests and if it were forced to reveal the exact income and expenditure numbers, the prejudice would be more likely and more severe.

29. The University then hypothesises about what students would opt to do regarding their accommodation if the University were obliged to disclose its exact income figures in response to this request. And the University finally discusses the possible consequences of occupancy rates being calculated and known (through the Q1 information being disclosed) and why those consequences would prejudice its commercial interests.
30. The information requested in Q1 is the revenue and spending figure for University owned and operated student housing for two academic years: 2022/23 and 2021/2022.
31. The Commissioner made a decision on this same information in relation to the University of Warwick – the decision in IC-251077-B1C3. Like the University in this case, the University of Warwick presented arguments to support its view that the information requested in Q1 shouldn't be disclosed. However, the Commissioner found that the information didn't engage section 43(2) and instructed the University of Warwick to disclose it.
32. For the same reasons, such that he doesn't intend to reproduce his reasoning here, the Commissioner finds that the additional information the University holds that's relevant to Q1 which isn't exempt under section 21 and 22 doesn't engage section 43(2) in this case. Since that information doesn't engage section 43(2), it's not necessary to consider the associated public interest test.

## **Procedural matters**

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33. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled (a) to be told whether the authority holds the information and (b) to have the information communicated to them if it's held and isn't exempt information.
34. Under section 10(1) a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
35. Through this decision notice, the University has now directed the complainant to published information within scope of Q2c, Q2d, Q3c and Q3d of the request, having originally applied section 43 to this information. It's effectively provided this information outside the 20

working days and so has breached section 1(1) and 10(1) in respect of that information.

36. Turning to the other parts of Q2 and Q3, the University says that the complainant can calculate the average price of rent per year for 2022/2023 (Q2b) and for 2023/2024 (Q3b) by multiplying the average price per week (Q2a and Q3a) by a particular multiplier it's provided to the Commissioner – 52.18.
37. The University has provided the complainant with the Q2a figure and so the complainant could calculate the Q2b figure using that multiplier. Once the University's disclosed the information relevant to Q3a as a result of this decision, the complainant would also be able to calculate the figure for Q3b.
38. However, as discussed in relation to Q3a and Q5, the Commissioner doesn't consider it's for an applicant to do the calculating. The Commissioner considers that the University holds the information requested in Q2b and Q3b – or holds the building blocks to generate that information – and should communicate it to the complainant. As such the University hasn't complied with section 1(1) and 10(1) in respect of those questions.
39. Regarding Q7, the University has disclosed some information and told the Commissioner that the only information that would be left outstanding would be for the four years from 2014/15 to 2017/18. The University says it isn't sure whether it still holds information that old. As above, section 1(1) requires a public authority to confirm whether or not it holds requested information. In respect of information for the period 2014-2018 the University has therefore not complied with section 1(1) and 10(1).



## Right of appeal

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

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

**Cressida Woodall**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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