

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 11 December 2023

Public Authority: The Governing Body of the University of Birmingham

Address: Edgbaston
Birmingham B15 2TT

Decision (including any steps ordered)

1. The Commissioner's decision is that the University of Birmingham ('the University') isn't entitled to withhold information about spending on student housing that it owns and operates under section 43(2) of FOIA. This is because disclosing the information wouldn't be likely to prejudice its commercial interests or those of its students.
2. The University must take the following step to ensure compliance with the legislation:
 - Disclose the information the University holds that falls within scope of Q1 of the complainant's request.
3. The University must take this step 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

4. The complainant made the following information request to the University on 22 June 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 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?
5. On 11 August 2023, the complainant narrowed the scope of Q6 to "How much has rent increased by since 2017/18?"
6. In its response to the request the University had applied section 43(2) to Q1 and Q7. In their request for an internal review dated 17 August 2023, the complainant asked the University to reconsider its response to Q1 only.
7. The University has addressed five of the questions and its final position is that the information requested in Q1 (and Q7) is exempt from disclosure under section 43(2) of FOIA.

Reasons for decision

8. Based on the complainant's request for an internal review, this reasoning covers the University's application of section 43(2) of FOIA to Q1 of the request.

Section 43 – commercial interests

9. 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.

10. The Commissioner has reviewed the correspondence between the complainant and the University, the complaint to him and he's considered the submission that the University has provided. But he's also taken account of his decision in a separate, but related case IC-251077-B1C3¹.
11. When he's deciding whether section 43 is engaged, the Commissioner takes into account whether the envisioned harm relates to commercial interests, why disclosing the information would or could prejudice those commercial interests and how likely it is that the envisioned prejudice will happen.
12. In its submission the University explained that it considers revenue/income in the context of Q1 to be the total amount of money generated from accommodation fees paid by its students. The University also considers spending/expenditure to account for all expenses, debts and operating costs associated with its provision of accommodation services. After deducting spending from revenue, the University considers the surplus or deficit as profit or loss. Profits may be re-invested into developing its estate (ie including its accommodation). Or they may be re-invested elsewhere, such as in the general running of the University and in research and teaching.
13. The University says that disclosing the information would [or could] prejudice its commercial interests and those of its students for the following reasons:
 - Providing student accommodation is a very large and highly competitive market. The University provides a significant proportion of the accommodation rented by its students who reside in Birmingham. The University competes with other accommodation providers for its students' custom. Some of these organisations are privately owned companies, and therefore not subject to FOIA.
 - The higher education market in more general is equally competitive. Specifically, the University competes with other universities to attract potential students to its programmes of study. By extension, the University competes with those other

¹ <https://ico.org.uk/media/action-weve-taken/decision-notice/2023/4026879/ic-251077-b1c3.pdf>

universities to provide to potential students services ancillary to its educational services – including providing accommodation.

- Disclosing the income and expenditure associated with the University's accommodation – in conjunction with information already in the public domain (and which the University disclosed in response to questions 2, 3, 4, 5 and 6) would enable an individual to deduce the occupancy level and profit margin of its student accommodation for the academic years in question.
- If private organisations were aware of the University's pricing and percentage rent increases (already disclosed) and its occupancy levels, the organisation would be able to alter its pricing strategies to be more competitive than the University. Consequently, the University's ability to compete with private organisations in the student accommodation market would be significantly prejudiced.
- In addition to competing with private organisations for its students' custom, the University negotiates 'nomination agreements' with private organisations for block bookings under which a significant number of students (between 1,000 and 2,000 each academic year) occupy rooms provided by those private organisations:
 - Knowledge of the University's occupancy levels or demand (ie applications by students for accommodation) or both would substantially improve the private organisation's negotiating position, and consequently prejudice the University's negotiating position. The effect of this, inevitably, would be that the University pays a higher price for its block bookings, which would be to its commercial detriment.
 - This, in turn, would impact negatively on the University's efforts to secure the best possible accommodation at the lowest rents for its students. Securing lower rents makes the University a more attractive proposition to its students when they're considering which universities to apply to. As such, the University's position in the competitive higher education marketplace is prejudiced by disclosing the information.
 - For those students who do apply to study at the University and rent accommodation secured by the University via a nomination agreement, their own commercial interests are prejudiced in that they'll pay a higher rent than would otherwise be the case, had the University's own negotiating position not been weakened.

- Furthermore and, in light of the complainant's request for information in respect of multiple academic years, disclosing the information – in conjunction with information already in the public domain (and disclosed by the University in response to other questions) - would enable private organisations to track trends in student booking behaviour in relation to the University's accommodation. Again, the University's ability to compete in the student accommodation market would be significantly prejudiced if such knowledge was in the hands of its competitors.
 - Each of those factors adversely affects the development of the University's estate (including its accommodation), as well as the general running of the University to the benefit of staff, students and the University's research and teaching.
14. In its submission the University has confirmed that it considers that the above prejudice would happen ie that there's a more than 50% chance of prejudice occurring. It says that this is particularly, but not exclusively, due to the highly competitive nature of both the higher education sector, and the student accommodation sector, in the UK, which it's discussed above. However, the University also says that in the alternative, it considers that disclosing the information requested would certainly fall under the scope of 'would be likely to' prejudice its and its students' commercial interests: the probability of the harm occurring is real and significant and is certainly not hypothetical or remote.
 15. The information requested in Q1 is the revenue and spending figure for University owned and operated student housing for two academic years.
 16. The Commissioner made a decision on this same information in relation to the University of Warwick – the decision in IC-251077-B1C3. He found that the information didn't engage section 43(2) and instructed the University of Warwick to disclose it.
 17. For the same reasons, such that he doesn't intend to reproduce his reasoning here, the Commissioner finds that Q1 doesn't engage section 43(2) in this case. Since section 43(2) isn't engaged, it's not necessary to consider the associated public interest test.

Right of appeal

18. 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

19. 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.
20. 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
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Wycliffe House
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