

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 20 June 2024

Public Authority: SOAS University of London (School of Oriental and African Studies)

Address: 10 Thornhaugh Street
Russell Square
London
WC1H 0XG

Decision (including any steps ordered)

1. The complainant has requested from SOAS University of London (School of Oriental and African Studies) information about students that were offered places on its Global Liberal Arts BA course for the academic year of 2023/24. SOAS applied section 43(2) of FOIA (prejudice to commercial interests) to withhold the information.
2. The Commissioner's decision is that 43(2) is not engaged regarding the withheld information.
3. The Commissioner requires SOAS to take the following steps to ensure compliance with the legislation.
 - disclose the withheld information.
4. The public authority must take these steps within 30 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 12 September 2023, the complainant wrote to SOAS and requested information in the following terms:

"I request information under the Freedom of Information Act pertaining to applications to Global Liberal Arts BA for the academic year 2023-24, specifically:

- Number of students offers were made to
 - Number of students with Home fee status and numbers with International fee status
 - Number of students required to provide additional English language requirements, and what these requirements were
 - Number of students required to have a grade 5 or above in GCSE English language as their additional English language requirement."
6. On 9 October 2023, SOAS responded to the request. It confirmed that it held the information but applied section 43(2) of FOIA to withhold it. The complainant replied on the same day and asked SOAS to carry out a review of its decision.
7. On 30 November 2023, SOAS conducted a review and wrote to the complainant maintaining its decision.

Scope of the case

8. On 1 December 2023, the complainant contacted the Commissioner to complain about the way their request for information had been handled.
9. The Commissioner has considered whether SOAS was entitled to rely on section 43(2) to withhold the requested information.

Reasons for decision

10. Section 43 of FOIA states that information is exempt if its disclosure would, or would be likely prejudice the commercial interests of any person, including the public authority holding it.
11. SOAS considers that disclosure of the requested information would likely harm its own commercial interests. SOAS said that it is 'unique' in offering a "truly *Global* Liberal Arts BA in the UK". The course differs from other programmes in the higher education marketplace because of the "depth and complexity of the module choices and pathways" it offers students.

12. SOAS said that disclosing the number of offers made by fee status and language requirements would provide larger competitor higher education institutions offering 'a similar type of programme' in London insight and knowledge into the scale of the market for the specific course, which, they could then use in a decision to copy the structure and content of the course. This would result in them being in direct competition with SOAS and cut its share in the market.
13. SOAS said that student recruitment is a 'highly competitive marketplace' and that undergraduate student fees are a hugely significant source of income for all universities, but particularly for smaller providers such as SOAS. Particularly since the UK government removed caps on university admissions.
14. SOAS said that information about the number of offers made on courses is not publicly available by UCAS as part of its annual publication schedule; on the basis that it could unbalance the natural competitiveness of the market, which, students and the public rely on for improved educational products and services. SOAS further argued that, like other universities, it is subject to the rules of the Competition and Markets Authority (CMA) that 'demands market neutrality'. It said that respecting the restricted nature of offer-holder information in the higher education sector, helps sustain this principle.
15. Having considered the arguments presented by SOAS, the Commissioner is satisfied that the harm SOAS envisages relates to commercial interests; its own. He does not however accept that a causal link exists between disclosure of the withheld information and commercial prejudice.
16. The Commissioner is not convinced that the number of offers made on its course alone or when put together with fee status and language requirements would create the prejudice envisioned by SOAS.
17. The Commissioner notes that SOAS says its course is unique whilst simultaneously claiming that other higher education institutions offering 'similar' courses may choose to copy it.
18. The Commissioner notes that on SOAS's webpage for its Global Liberal Arts BA course, it provides full details of the structure and pathways of the course, including full details of the core / compulsory and optional modules. He also notes that it says that the list of optional modules are open as of 2021. Therefore, any higher education institution considering copying the course based on its success, could reasonably infer that the course has been successful since 2021, and would have the course structure, pathways, and module information to do so.
19. The Commissioner notes that the complainant has requested the number of offers made on the course, and not the number of

applications received from prospective students, which, would provide a more accurate indication of SOAS's portion of the market for the course. He further notes that, SOAS is a 'smaller provider' and is not convinced that the number of offers made alone or when provided with fee status and language requirements would give an indication of the complete scale of the market for the course, and whether other larger higher education institutions would find the information useful in their decision to consider offering a similar course.

20. The Commissioner notes that the UK government removed caps on university admissions. However, he also notes that SOAS is likely to only have a certain number of offers it can make on its course, as would any other higher education institution wishing to offer a similar course. He further notes that students attending its course would be able to reasonably assume the number of offers that were made, and the 'home' and 'international' fee status of students.
21. The Commissioner notes SOAS's view on UCAS and the CMA's comments about 'competitiveness' and 'market neutrality', however, he also notes that SOAS appears to suggest that student recruitment for its course exists within a monopolistic market structure.
22. For the reasons given above, the Commissioner finds that section 43(2) of the FOIA is not engaged and so SOAS was not entitled to apply section 43(2) to withhold the requested information.
23. As he has found that section 43(2) is not engaged, he has not gone on to consider the public interest test.
24. As at paragraph 3 above, the SOAS is now required to disclose the withheld information.

Right of appeal

25. 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

26. 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.
27. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

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