

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

### **Decision notice**

**Date:** 8 July 2024

**Public Authority:** The Governing Body of Bangor University

**Address:** Bangor  
LL57 2DG

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

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1. The complainant requested disclosure of information relating to a consultation process from Bangor University ("the University"). The University refused to disclose the requested information, citing sections 43(2) (commercial interests) and 41 (information provided in confidence) of FOIA as a basis for non-disclosure.
2. The Commissioner's decision is that the University has correctly applied the above exemptions to the requested information.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

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4. On 29 November 2023 the complainant made the following request to the University:-

Part 1 – "The contents of the 2022-2023 and 2023-2024 formal UCEA consultation that correspond to Stage 3 of the "Consultation process" and which you need to fill when you decide to partake in the new JNCHES mechanism. I refer to the mechanism described in the "UCEA Code for Participating Employers" for further contextualisation."

Part 2:- "Electronically recorded information (memorandums, e-mails, briefings, guidance etc) related to the "3 in 3" strategy deployed by UCEA and its members in response to UCU's Marking Boycott. You can

restrict search from 01-08-2022 to 25-11-2023 (1 year 4 months approx) and only deal with the accounts of your "Senior Management Team" (SMT or equivalent)."

5. The University responded to the request on 5 January 2024. It refused to disclose the requested information, citing sections 41 and 43(2) of FOIA as a basis for non-disclosure.
6. The complainant sought an internal review of the University's handling of the request on 5 January 2024. A response to this was provided on 20 June 2024 following correspondence from the Commissioner. The reviewer upheld the original decision.

### **Scope of the case**

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7. The complainant contacted the Commissioner on 3 March 2024 to complain about the way their request for information had been handled. At this time no internal review had been carried out. Following the intervention of the ICO the internal review response of 20 June 2024 were provided.
8. The Commissioner has considered the University's handling of the complainant's request, especially its application of the exemptions as set out in sections 41 and 43(2) of FOIA.

### **Reasons for decision**

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

9. The Commissioner will first deal with this section of FOIA as the University applied it to the first part of the complainant's request.
10. 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.
11. The University is a member of Universities and Colleges Employers' Association ("UCEA") and pays a membership fee to access UCEA's services. It considers that disclosure of the requested information would have the potential to undermine its involvement in collective pay negotiations and also UCEA's ability to carry out sector pay negotiations. The process of negotiating pay settlements, by its very nature, should be confidential and is commercially sensitive. The University stated that disclosure of such information in advance of discussions would prejudice

and undermine the University's and the sector's ability to collectively negotiate pay both currently and in the future.

12. The University also stated that the communications from UCEA contain information that is not accessible to the public and is exclusively provided to its members under the membership fee. Such disclosures may provide insights into UCEA's strategic planning and service delivery methods. Consequently, this could substantially undermine UCEA's competitive advantage and market position. Disclosure would therefore cause substantial harm to UCEA's commercial interests and reputational damage to both the University and UCEA.
13. The Commissioner is satisfied first that the harm the University envisages relates to commercial interests; its own and those of UCEA. Second the Commissioner accepts that a causal link exists between disclosure and commercial prejudice as detailed above.
14. The Commissioner accepts that the envisioned prejudice would happen. The Commissioner's decision is therefore that the University was entitled to apply section 43(2) to the withheld information and he will go on to consider the associated public interest test.

### **Public interest test**

15. The University considered the public interest arguments in favour of disclosure, namely that disclosure of the requested information would allow the public to better understand the University's decision-making processes and would demonstrate a commitment to openness and accountability.
16. However, the University considered that the above arguments were outweighed by the public interest in the University's and the sector's ability to conduct negotiations without being undermined by disclosure of the requested information.
17. The Commissioner accepts that there is a public interest in transparency and accountability when it comes to the decision-making processes of the University, particularly when it involves the expenditure of public money. However, he considers that the public interest in maintaining fair negotiations for both the University and the UCEA outweighs the above considerations. Therefore the Commissioner is satisfied that the public interest is in favour of maintaining the section 43(2) exemption.

### **Section 41 – Information provided in confidence**

18. Information is exempt from disclosure if it was obtained by the public authority from any other person and the disclosure of the information to the public would constitute a breach of confidence actionable by that or any other person.
19. The withheld information in part 2 of the complainant's request is information obtained by the University from UCEA. The UCEA as an association provided the information to the University as a member institution. The Commissioner is satisfied that the withheld information is therefore information obtained from another person and this element of the exemption is met.
20. When determining whether disclosure would constitute an actionable breach of confidence it is necessary to consider whether the information has the necessary quality of confidence and whether it was imparted in circumstances importing an obligation of confidence. Then, whether disclosure would be an unauthorised use of the information to the detriment of the confider.
21. The University has informed the Commissioner that:-

Clause 4.2 of the UCEA's terms and conditions for members states:  
"UCEA materials, or extracts from them, which are not publicly available on the UCEA website cannot be made public or distributed to other organisations or individuals without UCEA's explicit prior consent."
22. The University stated that UCEA, as a non-public body, expects a commitment of confidentiality from its members. Furthermore, the University consulted with the UCEA regarding disclosure when the request was received. The UCEA did not provide consent to the disclosure of the information. The materials requested are not publicly available.
23. The Commissioner is satisfied that the withheld information is information that has the necessary quality of confidence. It is not trivial or otherwise accessible to the general public.
24. The withheld information would have been imparted in circumstances giving rise to an obligation of confidence. The Commissioner is satisfied that there is an implicit obligation of confidence where information is provided by UCEA to its members.
25. In terms of disclosure causing detriment to the confider, the Commissioner is satisfied that where the information relates to a personal or private matter, it should be protected by the law of confidence, even if disclosure would not result in any tangible loss to the confider. He considers a loss of privacy is itself detrimental. It is

therefore not necessary for there to be any tangible loss to the original confider for UCEA's information to be protected by the law of confidence.

26. Although section 41 is an absolute exemption (and there is no requirement to consider the public interest test), it is accepted that if there is an overriding public interest in disclosure it can be a defence to an action for breach of confidentiality.
27. It is noted that the complainant may feel their own personal interests in the matter are sufficient, but the Commissioner does not consider this would be enough to constitute a public interest defence. There is weighty public interest in maintaining the confidentiality of this type of information as disclosure could potentially undermine negotiations connected to the withheld information.
28. For the above reasons, the Commissioner is satisfied that section 41 of FOIA applies to part 2 of the complainant's request and the information can be withheld as there is not an overriding public interest in disclosure over maintaining confidentiality.

### **Other matters**

29. The Commissioner notes that the complainant requested an internal review on 5 January 2024 and did not receive a response to this until 20 June 2024, following the Commissioner's intervention. The Commissioner seeks to remind the University of its obligation to respond to such requests in a timely manner and normally within 20 working days.

## **Right of appeal**

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30. 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)

31. 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.
32. 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**

**Deirdre Collins**

**Senior Case Officer**

**Information Commissioner's Office**

**Wycliffe House**

**Water Lane**

**Wilmslow**

**Cheshire**

**SK9 5AF**