

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

### **Decision notice**

**Date:** 28 September 2015

**Public Authority:** Queen's University Belfast  
**Address:** University Road  
Belfast  
BT7 1NN

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

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1. The complainant has requested information relating to the University's investment funds. The University disclosed some of the requested information, however it refused to disclose the remainder (the withheld information), citing section 43(2) as a basis for non-disclosure.
2. The Commissioner's decision is that the exemption as set out in section 43(2) of FOIA is not engaged in relation to the withheld information.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation:
  - To disclose the withheld 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 (or the Court of Session in Scotland) 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 wrote to the University and requested information in the following terms:

- 1) Does Queen's University Belfast have an ethical investment policy?
  - 2) Could you please provide me with a list of the companies the University currently invests in through its endowment funds, the amount currently invested in each company, and the annual returns from each company?
6. The University responded on 18 December 2014. It provided information in relation to part 1 of the complainant's request, provided some information in relation to part 2, however it refused to disclose the remaining information requested in part 2, citing section 43(2) of FOIA (commercial interests) as a basis for non-disclosure.
7. Following an internal review the University wrote to the complainant on 3 March 2015. It stated that it had reconsidered its position as the University does not hold information in relation to specific companies invested in by the University as it does not invest directly in companies. It does, however, hold information relating to the overall performance of the University's investment funds, however it refused to disclose that information ("the withheld information") citing section 43(2) of FOIA as a basis for non-disclosure.
8. Following discussions with the Commissioner, the University agreed to accept that the complainant was substituting part 2 of his original request with a request for information relating to the overall performance of the university's investment funds (details of the 2 managed funds and names of various pooled and index-tracked funds in which they invested having been disclosed to the complainant). The University applied section 43(2) to the substituted part of the complainant's request.

### **Scope of the case**

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9. The complainant contacted the Commissioner on 6 May 2015 to complain about the way his request for information had been handled.
10. The complainant accepts that the University does not invest directly in companies but rather invests through a number of managed funds, therefore he accepts that the University does not hold information in relation to specific companies. The Commissioner has considered whether the University has correctly applied section 43(2) to the complainant's request.

## Reasons for decision

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### Section 43(2) – commercial interests

11. Section 43(2) of FOIA provides that Section 43 of the FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the commercial interests of the university, a third party or both.
12. The term 'commercial interests' is not defined in the FOIA. However the Commissioner has considered his awareness guidance on the application of section 431, which details that;  
  
*"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services."*
13. The Commissioner accepts that the University is a public authority which is engaged in commercial activities and that the information requested relates to those activities. For this reason he considers that the information in question falls within the scope of the exemption.
14. In addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of the university, a third party or both, the University must also consider the public interest test, as section 43 of the FOIA is a qualified exemption. When doing so, the University must consider the arguments for and against disclosure and reached a balanced view as to why the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption. The Commissioner has considered the University's submissions in this case.
15. The commercial interests which the University has stated are likely to be prejudiced by disclosure of the requested information are those of the University itself. The Commissioner has considered the University's submissions in this case as to how and why those commercial interests are likely to be prejudiced by disclosure of the withheld information.
16. The University stated that it considered disclosure of the funding amount would be likely to prejudice the commercial interests of the university in so far as it could negatively impact upon the University's ability to obtain value for money in its investments. The University explained that it is necessary for the University to preserve its negotiating position in its efforts to maximise income from its investments.

17. For section 43(2) to apply, the prejudice claimed must be real, actual or of substance and there must be a causal link between the disclosure and the prejudice claimed. Having considered this matter, the Commissioner has not found that the above arguments demonstrate that a causal relationship exists between the potential disclosure of the withheld information and any prejudice which is of significance. This is because the University has offered little specific argument that relates to the particular circumstances of this case.
18. In the University's internal review response, it referred the complainant to a previous decision by the Commissioner (Decision Notice FS50545986) and stated that it discussed issues which are of relevance in this case. The Commissioner has re-examined that Notice, however he finds that it deals with issues regarding prejudice caused to the commercial interests of the Fund Manager, rather than the public authority itself. In the Commissioner's correspondence with the University, the University was specifically asked to provide written evidence from its Fund Managers that disclosure of the withheld information would be likely to prejudice their commercial interests, if this was the case. The University provided the Commissioner with no written representations and very little specific argument in this regard.
19. As the University has failed to demonstrate that disclosure of the withheld information would be likely to prejudice the commercial interests of either the University or any third parties such as the Fund Managers, the Commissioner finds that section 43(2) of FOIA is not engaged in this case. Therefore, he has not gone on to consider the balance of public interest arguments for or against disclosure.

## Right of appeal

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20. 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: 0300 1234504  
Fax: 0870 739 5836  
Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)  
Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**