

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 3 November 2022

Public Authority: Board of Governors of Staffordshire University
Address: College Road
Stoke-on-Trent
Staffordshire
ST4 2DE

Decision (including any steps ordered)

1. The complainant has requested information about fees received from West Midlands Ambulance Service. The above public authority ("the public authority") denied holding some of the requested information and relied on section 43(2) of FOIA (commercial interests) in order to withhold the information it did hold.
2. The Commissioner's decision is that the public authority has correctly relied on section 43(2) of FOIA and that the balance of the public interest favours maintaining the exemption. On the balance of probabilities, the public authority holds no further information within the scope of the request. The public authority did however breach sections 10 and 17 of FOIA in responding to the request.
3. The Commissioner does not require further steps.

Request and response

4. On 10 July 2022, the complainant wrote to the public authority and requested information in the following terms:

"The following questions relate to West Midlands Ambulance Service University NHS Foundation Trust internal students sent to Staffordshire University as part of their student paramedic programme ONLY and not external students who apply to the university direct through UCAS.

- [1] How much does West Midlands Ambulance Service University NHS Foundation Trust pay Staffordshire University per year, per student, on the new two year level 6 Bachelor degree with honours?
- [2] What is the total cost to Staffordshire University, per year, per student in delivering the new two year level 6 Bachelor degree with honours for each student?
- [3] Can you provide an itemised breakdown of each element that these fees go towards?"

5. The public authority responded on 18 August 2022. It stated that:

"we confirm that disclosure of the requested information would likely prejudice the university's commercial interests. In addition, we do not know what the fees charged by other universities for this course are and therefore, have no further information to disclose."

6. Following an internal review the public authority wrote to the complainant on 16 September 2022. It stated that it did not hold some of the requested information and that the information it held within the scope of element [1] was exempt from disclosure under section 43(2) of FOIA.

Reasons for decision

7. The following analysis sets out why the Commissioner considers that section 43 of FOIA would apply and why no further information is held.

Held/not held

8. In its internal review response, the public authority explained that:

"We do not allocate individual student fees to specific costs associated with running the course as the totals of such costs as staffing, overheads, consumables, contribution to the estate, simulation equipment, library resources and so forth, would dwarf the fees of an individual student. In addition, an attempt to provide an allocation of fees/itemised costing, apart from being a broad estimate, will only apply to direct delivery costs. All other costs/overheads (Services support (HR, Legal, Finance, equipment usage, building usage, library resources and so forth) cannot be apportioned even as an approximation, as the University:

- A. Doesn't have a formal overhead rate for teaching and

B. Allocation of overheads is calculated as an overall percentage and not broken down by the individual items/cost pools.”

9. The Commissioner takes this response to mean that the public authority is denying holding information within the scope of either element [2] or [3] of the request.
10. The Commissioner accepts the public authority's explanation that it does not hold all the necessary building blocks from which to construct an answer to elements [2] or [3].
11. The University will know the salaries (as well as pension costs, National Insurance contributions etc) of the individual staff employed to deliver the course and should have sufficient information to apportion these costs based on the amount of time each staff member devotes to delivering the particular degree course specified.
12. However, other costs may be more difficult to apportion. For example, a particular lecture might be attended by students from more than one degree course, or by students who apply direct through UCAS (who are specifically excluded from the request). It then becomes a judgement call as to how those costs are allocated (ie per student or per degree course). Other costs, such as equipment costs, might also be difficult to apportion: some courses may require a lot of cheap equipment to be used, others may require a small amount of expensive equipment.
13. Therefore, in the Commissioner's view, even if the public authority does not attempt to apportion general costs such as the maintenance of its estate, energy bills or legal costs, to individual courses, there will necessarily be a degree of judgement that will need to be exercised to determine what costs and how much of those costs should be apportioned to this course or that.
14. The Commissioner therefore does not consider that the public authority holds information within the scope of element [2] and, as it would need that information in order to respond to element [3], it follows that it does not hold information within the scope of element [3] either.

Commercial interests

15. In its internal review, the public authority stated the following:

“The process was a closed tender, with three HEIs [Higher Education Institutions] successful in tendering for the business. We do not know however what the fees charged by other universities for this course are, nor have we disclosed this to others. The tendering process is likely to repeat after a five year period and it would therefore put us at

a potential commercial disadvantage at this point were our fee structure to become public knowledge.”

16. Whilst the Commissioner considers that the public authority's arguments could be considerably more detailed, they do relate to a matter which he has had to deal with on many occasions: namely, the competitive market in higher education.
17. The Commissioner has accepted in previous decisions¹ that higher education is a highly competitive marketplace and that higher education institutions have a legitimate commercial interest in attempting to maximise their income – either through fees or from other partnerships. Disclosing information which harms such an institution's ability to maximise its income, prejudices its commercial interests.
18. In this case, the Commissioner notes that the public authority has agreed a deal with West Midlands Ambulance Service (WMAS) which allows WMAS staff to enrol in a degree course with the public authority (the Commissioner notes that similar arrangements are in place with other universities). The public authority educates, trains and (for successful candidates) confers a degree upon those staff members and, in turn, WMAS either pays, or contributes to, the fees those staff would have had to pay, had they enrolled on the course of their own volition.
19. Clearly WMAS will wish to make sure that it is paying as little as possible. The public authority on the other hand will wish to maximise its income – which may require a trade-off between the number of WMAS students it accepts and the per-student fee (it would be more lucrative for the public authority to accept 12 students paying £8,000 each than 10 students paying £9,000 each).
20. Revealing exactly what per-student fee it has negotiated with WMAS would put the public authority at a commercial disadvantage. The original deal was first reached in 2018 and so the re-tendering exercise seems likely to occur in the next 18 months. If other institutions are aware of the per-student fee that the public authority has agreed, they are likely to try to undercut the public authority. Disclosing the per-student fee may also harm the public authority's ability to negotiate similar deals (although this harm will be limited because of the variation between courses).

¹ See for example: <https://ico.org.uk/media/action-weve-taken/decision-notices/2021/4018859/ic-94401-v8h0.pdf>

21. The Commissioner is therefore satisfied that the lower bar of “would be likely to prejudice” is engaged.

Public interest test

22. The public authority did not provide any assessment of the balance of the public interest either in its initial response or its internal review. This is dealt with further below.
23. The Commissioner’s guidance on the public interest test notes that, where a prejudice-based exemption (such as section 43) is engaged, there will always be an inherent public interest in preventing that prejudice from occurring.²
24. In this case, the Commissioner has already accepted that there is a reasonable chance of prejudice occurring – therefore it follows that there will be a public interest in preventing that prejudice.
25. The complainant noted that there was a public interest in transparency because the public authority spends public money. The Commissioner agrees that there is a broad public interest in transparency and accountability – but in this case, that can be met by other means.
26. The public authority will have its own processes of internal and external audit which will be able to ascertain whether it managed to achieve value for money. In addition it is likely to publish information about income received in its annual accounts. This provides a reasonable degree of transparency without exposing the public authority to the potential for commercial harm that would arise if it were to disclose the withheld information.
27. The Commissioner is therefore satisfied that the public authority is entitled to rely on section 43 of FOIA to withhold this information

² <https://ico.org.uk/for-organisations/guidance-index/freedom-of-information-and-environmental-information-regulations/the-public-interest-test/>

Procedural matters

28. The public authority breached section 10 of FOIA because it failed to inform the complainant, within 20 working days, whether or not it held any information within the scope of their request.
29. The public authority also breached section 17 of FOIA in responding to this request. Not only did the public authority fail to provide a refusal notice, of any kind, within 20 working days, but the refusal notice it did eventually provide did not cite the specific FOIA exemption being relied upon, nor did it explain why the exemption applied, nor did it contain details of the assessment the public authority had made of the balance of the public interest. Whilst the public authority's internal review did largely deal with the exemption and why it was engaged, no assessment of the balance of the public interest was provided.

Right of appeal

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

Website: 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

Roger Cawthorne
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF