

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 1 March 2023

Public Authority: Ulster University (the University of Ulster)
Address: Cromore Road
Coleraine
County Londonderry
BT52 1SA

Decision (including any steps ordered)

1. The complainant requested various information from Ulster University ('the University') regarding its courses and applications. The University refused to comply with the request, citing section 43(2) (commercial interests) FOIA to refuse the request. The Commissioner's decision is that the University has correctly applied section 43(2) to the request. However, in failing to issue its refusal notice within the required timescales specified under section 10(1) FOIA, the Commissioner has recorded a breach of section 17(1) FOIA. The Commissioner does not require the Council to take steps.

Request and response

2. On 4 July 2022, the complainant wrote to the University and requested the following information:

"...a breakdown of courses at each of its campuses over the past five years (or the length of time allowing it to fall within the cost parameters)?

Can you please provide details of the number of places available on each course over that period of time please?

Can you then provide me with the number of applications received for each course and number of students who were accepted to study each course?

Can you highlight the number of unfilled places at courses on each campus?"

3. The University responded on 1 September 2022. It provided a link to item one of the request and refused the remainder citing section 43(2) FOIA. This was upheld at internal review and communicated to the complainant on 5 October 2022.

Reasons for decision

Section 43(2) – commercial interests

4. Section 43(2) 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.
5. The University considers that disclosure of the requested information would harm its own commercial interests as student numbers and application and acceptance rates are a clear indication of the success of the course, its marketability, and its appeal to student applicants.
6. This information, along with the number of places accepted on each course, would provide other universities with valuable commercial insight into which competing similar courses they might offer. The University further argued that this would give them an unfair commercial advantage in their ability to compete with the University.

The University explained that the Higher Education market is very competitive, with each competing entity always looking for opportunities to gain a competitive edge over the others. The University competes with other higher education institutions locally, nationally and globally to recruit high calibre students. To disclose numbers on, and demand for, student courses would affect its ability to be competitive in the area of student recruitment, as this would provide other institutions with otherwise undisclosed knowledge concerning its potential future recruitment strategies. Competing universities would therefore be in a position to secure a competitive advantage by being able to adapt their own strategies for marketing and selection to attract students that might otherwise apply to the University.

7. In support of its arguments, the University referred to a First-tier Tribunal decision in the case of the [University of Central Lancashire, EA/2009/0034](#). In that case it was accepted that the higher education sector is competitive and the Tribunal noted that the university operated “in competition with other institutions of higher education in seeking to sell its products, namely undergraduate courses, to potential students.”
8. The University added that it considers that providing detailed information on applications, offers and enrolments at course level would give new or existing competitors key information about its programmes and would affect its ability to be competitive in the area of student recruitment.
9. The University further informed the Commissioner that in a local context, it is one of two universities in Northern Ireland (NI), the other being Queen’s Belfast University (QUB). Competition between the two universities to attract students is very high, and it is the University’s understanding that QUB does not publish, or make available, its application and acceptance rates. It argued that if it was required to disclose the requested information it would provide QUB with an unfair local advantage.
10. The Commissioner was further informed that NI differs significantly from universities in the rest of the UK in that the number of UK student places at NI universities is capped by the Local Assembly. The matter of competition is therefore felt more strongly by NI institutions, as unlike the rest of the UK, they are not free to accept as many applications as they would wish.
11. Having considered the arguments presented by the University, the Commissioner is satisfied first, that the harm the University envisages relates to commercial interests; its own. Secondly, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice; those the University detailed at paragraphs 5 to 11 of this notice.
12. The Commissioner is also satisfied that the prejudice envisioned (‘would’ as opposed to ‘would be likely’) is realistic. The Commissioner’s decision is therefore that the University was entitled to apply section 43(2) to the withheld information, and he will therefore go on to consider the associated public interest test.
13. The Commissioner acknowledges the general public interest in public authorities being open, transparent and accountable in their decision

making and the expenditure of public money. However, there is a wider public interest in the University being able to compete for, and attract, the best students and so be in a strong financial position. On balance therefore, the Commissioner finds that the public interest favours maintaining the exemption at section 43(2) FOIA.

Section 17(1) refusal of request

14. Section 17 of the FOIA concerns the refusal of the request and section 17(1) states that:

“A public authority which, in relation to any request for information, is to any extent relying on a claim ... that information is exempt information must, within the time for complying with section 1(1) give the applicant a notice...”

15. The Commissioner notes that the request was received on 4 July 2022, yet the response was not issued until 1 September 2022. This is clearly in excess of the required 20 working days and therefore represents a breach of section 17(1) FOIA.

Right of appeal

16. 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

17. 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.
18. 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

**Catherine Dickenson
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF**