

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2023

Public Authority: The Governing Body of Ulster University
Address: Cromore Road
Coloraine
BT55 7EL

Decision

1. The Commissioner's decision is that Ulster University ('the University') correctly refused the request for information about the University's acquisition of student rooms and property under section 43(2) of FOIA, which concerns commercial interests. The University breached section 17 as it did not issue its refusal within the required timescale and the refusal did not include any public interest reasoning. It is not necessary for the University to take any remedial steps.

Request and response

2. The complainant made the following information request to Ulster University on 8 September 2022:

"[1] How many rooms does UU have to offer students in its Belfast City Centre accommodation? Mentioning how many students those rooms cater for in total?

[2] Can Ulster University confirm, is it acquire/rent rooms from Belfast Metropolitan College/Arts Centre?

Is UU having to acquire any space at other properties to cater for the influx of 15,000 students to Belfast city centre?

If so, where?

How many rooms is UU having to acquire in such a way?

How much is this costing Ulster University?

How long will UU have to do that?

[3] Could these costs be expedited by expanding the Magee campus in Derry?"

3. The University addressed part 1 of the request, withheld the information requested in part 2 under section 43 of FOIA and advised it does not hold the information requested in part 3. It maintained its reliance on section 43 following its internal review.

Reasons for decision

4. This reasoning covers the University application of section 43(2) to part 2 of the complainant's request, which concerns its acquisition of student rooms and property.
5. Section 43(2) of FOIA states that information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it. Section 43 is subject to the public interest test.
6. In its refusal to the complainant the University confirmed that releasing the information "would prejudice or would be likely to prejudice" its commercial interests. The University said it keeps its student accommodation provision under regular review, with a view to taking steps to address student demand for accommodation where this is viable. Releasing details about the University's plans in this area could give other institutions/property owners specific knowledge that would not otherwise be provided. It said this could impact on the University's commercial advantage in any related purchases/negotiations. At internal review, the University noted that it operates in a highly competitive commercial property market ie Belfast city centre.
7. The Commissioner considers three tests when he is considering whether a party's commercial interests may be prejudiced by disclosure. First, he is satisfied that the harm the University envisages relates to commercial interests; its own.
8. Second, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice; those the University explained above and which it discussed further in its submission to the Commissioner. In its submission the University explained that it "opened, in September this year" (it is not clear whether that is a typo

and the University meant it “opened in September 2022” or “will open in September 2023”) a new campus in a highly deprived area of central Belfast, designed to accommodate over 15,000 students. To support this, the University is now seeking to acquire property in the area, to enhance its new provision or, where appropriate, to provide student residential accommodation for its student body.

9. The University confirmed that if it was required to release its development and acquisition plans, setting out exactly what it was seeking by way of lease or acquisition, it would provide other institutions/property owners with specific knowledge that would not otherwise be provided, and that this could impact on the University’s commercial advantage in any related purchases/negotiations.
10. The Commissioner accepts that disclosing the detail of the University’s plans to acquire student rooms or property – such as the rooms’ or properties’ location, the number of rooms and what the acquisition of student rooms or property might cost the University – would give property or land owners, and other institutions, an insight into the University’s plans and financial position that could potentially commercially disadvantage the University. Property owners could, for example, discover that the University may be prepared to spend more than they anticipated, or was keen to acquire rooms or property in a specific location, and could raise the cost to the University accordingly.
11. Finally, the likelihood of prejudice occurring. The University’s position on that is not clear in its correspondence to the complainant and its submission to the Commissioner. In the absence of clarity the Commissioner will accept that disclosure would be likely to prejudice the University’s commercial interests, rather than would prejudice. Since the three tests have been met, the Commissioner’s decision is that the University is entitled to apply section 43(2) to the withheld information. He will go on to consider the associated public interest test.
12. The complainant has not presented any specific public interest arguments for the information’s disclosure, in their request for an internal review or complaint to the Commissioner. However, they have indicated that they do not consider that the University is as transparent as it could be.
13. The Commissioner has noted that the University did not provide any public interest arguments in its correspondence to the complainant or its submission to the Commissioner.
14. However, in a very competitive environment, and in the absence of compelling arguments for the information’s disclosure, the Commissioner considers that there is greater public interest in the University being able to acquire student rooms and property as

competitively as possible. This helps to make sure that it acquires the most suitable rooms and property, in the most suitable areas at the most suitable price. Ultimately this benefits students and taxpayers. On balance therefore, the Commissioner finds that the public interest favours maintaining the exemption.

Procedural matters

15. Under section 17(1) of FOIA a public authority must issue a refusal notice in respect of any exempt information promptly and within 20 working days following the date of receipt of the request.
16. Where applicable, section 17(3) of FOIA requires the refusal notice to include an explanation of the public interest factors the public authority took into account and the reasoning behind the decision that the public interest favoured maintaining the exemption.
17. In this case the complainant submitted their request on 8 September 2022. The University did not issue its refusal notice until 9 November 2022. The Commissioner therefore finds that the University breached section 17(1) of FOIA and also breached section 17(3) as its refusal did not include any public interest reasoning.

Right of appeal

18. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

19. 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.
20. 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

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