

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 June 2024

Public Authority: The Governing Body of Norwich University of the Arts

Address: Francis House
3-7 Redwell Street
Norwich
NR2 4SN

Decision (including any steps ordered)

1. The complainant has requested a copy of University and Colleges Employers Association guidance. Norwich University of the Arts ('the University') refused to provide the requested information, citing section 41 (information provided in confidence).
2. The Commissioner's decision is that the withheld information engages section 41 and the public interest lies in maintaining the confidentiality .
3. The Commissioner does not require further steps.

Request and response

4. On 21 October 2023 the complainant wrote to the University and requested:

"NUA: Can you please, under the FOI 2000 regime, provide me with this document: "The UCEA Guidance on FOI requests for UCEA documents"

For the avoidance of doubt, I make reference to the Guide mentioned in <https://www.ucea.ac.uk/about-us/members/conditions-of-membership/>."

5. The University responded on 22 December 2023. It refused to provide the requested information citing section 14(1) (vexatious requests), section 36 (prejudice to the effective conduct of public affairs) and section 41.
6. The complainant requested an internal review on 22 December 2023.
7. The University provided the outcome to its internal review on 6 February 2024. It withdrew its reliance on section 36 but upheld its use of section 14 and section 41.

Scope of the case

8. The complainant contacted the Commissioner on 3 March 2024 to complain about the way their request for information had been handled.
9. During this investigation, the University revoked its reliance on section 14(1).
10. Therefore, the Commissioner considers the scope of his investigation to be to determine whether the requested information can be withheld under section 41.

Reasons for decision

Section 41 – information provided in confidence

11. Section 41(1) of FOIA states that information is exempt from disclosure under the FOIA if:
 - a) it was obtained by the public authority from any other person (including another public authority), and
 - b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.
12. The withheld information is guidance produced by the University and Colleges Employers Association ('the UCEA'). The UCEA describes itself as the 'leading voice on employment and reward matters in the UK HE

sector'¹ which provides advice and support to its higher education membership institutions.

13. The guidance is titled 'FOI requests for UCEA documents' and provides advice for membership institutions on how to handle such requests. The guidance originated from the UCEA and was provided to the University as a membership institute; it was therefore provided to the public authority by another person.
14. In order for disclosure to represent a breach of confidence, the information:
 - must have the necessary quality of confidence;
 - must have been imparted in circumstances importing an obligation of confidence;
 - must be an unauthorised use of the information to the detriment.
15. The University has explained that Clause 4.2 and 4.3 of the UCEA Conditions of Membership² specifically preclude the dissemination of UCEA materials, or extracts from them, which have been provided to membership institutes and aren't publicly available on the UCEA website.
16. The Commissioner notes the guidance is marked 'confidential' and he also notes that the University consulted the UCEA about disclosure of this information in response to the request. The UCEA expressly disagreed with disclosure of the guidance.
17. The University has confirmed:

"The information included in the Guidance Note is not trivial or unimportant. A core part of UCEA's business model is to provide valuable guidance and information to its members, and this is done by way of provision of documents such as the Guidance Note. Therefore, it would not be correct to consider the Guidance Note to be in any way trivial."
18. The Commissioner must now consider whether unauthorised disclosure would cause a specific detriment to the party that provided it or any other party.

¹ [Home \(ucea.ac.uk\)](http://ucea.ac.uk)

² <https://www.ucea.ac.uk/about-us/members/conditions-of-membership/>

19. The University has explained:

“UCEA have specifically stated, in writing, that a disclosure of the Guidance Note by Our Client would be regarded by UCEA as an actionable breach of confidence. Therefore, to disclose the Guidance Note would clearly have the detrimental impact on Our Client of putting it at risk of an imminent claim against it by UCEA, together with the associated costs, expenses and management time which would be required in order to deal with any such claim...Our Client’s membership with UCEA would also likely be suspended in such circumstances, causing further detriment.”

20. The Commissioner has reminded himself of the information being withheld in this instance; it’s guidance about handling FOI requests received about the UCEA. It’s not advice on education, employment or union matters but it’s still information the UCEA has specifically forbidden to be disclosed. Even though the final decision to disclose information under FOIA is the University’s, not the UCEA’s, the Commissioner accepts that disclosure of the guidance note would cause the University detriment. The University is concerned that disclosure would result in the suspension of its membership from the UCEA.

21. Although section 41 is an absolute exemption, it's accepted that if there is an overriding public interest in disclosure, this can be used as a defence against any breach of confidentiality that might be brought against a public authority disclosing information under FOIA. In other words, the Commissioner must balance the public interest in the information with the inherent public interest in preserving the principle of confidentiality.

22. The complainant has a specific interest in the UCEA, its role and its engagement with higher education providers, this is a valid interest for them to have. However, the Commissioner can’t identify any public interest in the requested information, beyond the general public interest in public authority’s being transparent and accountable by complying with requests that it receives under FOIA.

23. The University has argued that:

“Other than the general public interest in public authorities being transparent and accountable in their compliance with FOIA requests, we cannot identify any specific public interest in the Guidance Note being made public. The wording of the FOIA, and ample guidance in respect of it, is already available to the public from the Information Commissioner’s Office and other sources. However, it is not clear how the public would benefit from seeing the specific guidance that an employers’ association such as UCEA provides to its members.”

24. It's also argued that:

"UCEA already makes a large amount of information available to the public on its website at <https://www.ucea.ac.uk/>. For example, UCEA has a section on its website setting out details of the pay negotiations it is involved with (<https://www.ucea.ac.uk/our-work/collective-pay-negotiations-landing/>).

This information provided to the public satisfies the public interest in transparency of UCEA's work, and it would not be proportionate to damage the relationship of trust between UCEA and its members by requiring disclosure of the confidential information provided by UCEA to its members."

25. On this occasion, the Commissioner is satisfied that section 41 applies and the public interest lies in preserving the principle of confidentiality.

Right of appeal

26. 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

27. 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.
28. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Alice Gradwell
Senior Case Officer
Information Commissioner's Office
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