

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 25 April 2012

Public Authority: Cranfield University
Address: Cranfield
Bedfordshire
MK43 0AL

Decision (including any steps ordered)

1. The complainant requested copies of all teaching materials for the Information Operations PGCert course and associated modules. Cranfield University withheld the information under sections 24, 26, 40, 41 and 43. The Information Commissioner's decision is that the university has applied section 43 appropriately. The Information Commissioner does not require the university to take any steps.

Request and response

2. On 2 February 2011, the complainant wrote to the university and requested information in the following terms:

"I would like to see copies of all teaching materials including Module Handbooks, Reading Lists, Powerpoint Presentations and copies of any films or videos used in teaching the following courses and modules:

Courses

**Information Operations PGCert.*

Modules

**Contemporary Information Warfare.*

**The Science of Heart and Minds.*

**Influence Planning".*

3. The university responded on 28 March 2011. It stated that it was withholding the requested information under sections 24 (national

security), 26 (defence), 38 (health and safety), 40 (personal data) and 43 (commercial interests).

4. Following an internal review the university wrote to the complainant on 3 May 2011. It stated that it was withholding the requested information on the same grounds.

Scope of the case

5. The complainant contacted the Information Commissioner to complain about the way his request for information had been handled. He explained that he considered that the university had applied the exemptions in a blanket fashion. He also stated that, with regards to the names of staff who had contributed to the Information Operations PgCert (the course), their names could be redacted if there were concerns. The Information Commissioner will therefore not consider this point further.
6. The Information Commissioner will first consider the university's application of section 43 (commercial interests).

Reasons for decision

7. Section 43(2) of the FOIA provides that:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

This is a qualified exemption and is therefore subject to the public interest test.

8. The university argued that disclosure of the requested information would be likely to prejudice its own commercial interests. In order to determine whether prejudice would be likely to occur, the Information Commissioner has considered whether the possibility of prejudice is real, significant and more than hypothetical or remote.
9. The term 'commercial interests' is not defined in the FOIA. However the Information Commissioner's guidance states that such interests relate to the ability to participate competitively in a commercial activity such as the sale or purchase of goods or services.
10. The university explained that the requested information is designed to meet the requirements of the domain of professional practice of

- Military Information Operations Practitioners. The course and associated modules are designed by academics from the university who also run them, using their previous experience from classified research programmes in the area.
11. The university also explained that the course and associated modules are aimed at and designed for full-time and reserve military and other members of international organisations, including police, intelligence services, civil servants, contractor organisations and non-government organisations. It explained that prior to offering a place to applicants their suitability is assessed, to ensure they have the competencies and abilities to advocate the use of an information operations approach amongst decision makers at a senior and national level in military and other national security contexts.
 12. Further, the university explained that the course and associated modules were built in consultation with the UK Ministry of Defence (MoD) and their own international network of professional peers. The university explained that the full definition of their general approach, details of the scope of the elements included, the academic discipline coverage and the professional competencies that the course addresses, have not been published in the public domain.
 13. The university explained that it operates in the defence and security sector on a commercial basis. It argued that disclosure would mean commercially sensitive information was being disclosed which would prejudice its commercial interests. It explained that disclosure would mean that its competitors would have a clearer picture of how it operates with regards to the teaching and delivery of the course and modules.
 14. The university also explained that it was operating in an open market with private companies and other universities. It explained that it considered that the course was the only one like it in the world and is innovative and distinctive because of its practitioner focused, as opposed to process focused, approach. The university went on to explain that it had achieved its unique position by working closely and collaboratively with the MoD over many years.
 15. Further, the university went on to explain that it relies on the course and modules attracting suitably qualified externally funded students. It also confirmed that it held the intellectual property rights to the course and associated modules.
 16. The Information Commissioner is satisfied that the withheld information relates to a commercial activity. He accepts that the

university operates in a competitive environment with other higher education institutions and commercial teaching providers in delivering the course and associated modules in question.

Nature of the Prejudice

17. The Information Commissioner considers that for the exemption to be engaged there must be a causal link between the potential disclosure and the identified commercial prejudice. He also considers that the prejudice that could arise would need to be greater than insignificant or trivial.
18. Having considered the arguments presented by the university the Information Commissioner accepts that disclosure could harm its commercial interests. He further considers that the harm would not be insignificant or trivial.

Likelihood of Prejudice

19. When considering the likelihood of prejudice which would occur if the information were disclosed, the Information Commissioner considers that the risk of prejudice should be substantial rather than remote. In this case the Information Commissioner is satisfied, for the reasons given above, that disclosure of the requested information would be likely to prejudice the commercial interests of the university. In particular, disclosure of the courses and modules (over which it held intellectual property rights) would provide competitors with a clearer picture of its teaching and delivery, and this would potentially damage the public authority's position as a distinctive provider, with a consequent effect on its attractiveness to students. The exemption is therefore engaged.

Public interest in favour of maintaining the exemption

20. The university argued that disclosure of the requested information would affect its commercial advantage in attracting other related business, academic, training and consultancy in this domain. It explained that the teaching materials form part of a unique operational knowledge base which has allowed it to develop a trusted relationship with the wider security and military community. The university also argued that this is of significant importance to its commercial interests as this specialised knowledge attracts operators and sponsors to it rather than elsewhere.
21. The university went on to argue that it was operating in an open market with other private companies and universities, which was particularly significant now as there were problems with higher

education and public spending cuts. Further, the university argued that it was in the public interest to encourage higher education institutions to be innovative in the courses they offer and the methods of teaching that they employ, particularly in the current economic climate and the changing higher education market.

22. It also argued that there was an extremely strong public interest in maintaining a secure framework for teaching programmes contributing to national and international defence.

Public interest in disclosing the information

23. The Information Commissioner accepts that there is a strong public interest in transparency and openness in the operation of public authorities. Disclosure of the information could also ensure that the public understands how the course and the modules in question are taught, particularly given the subject matter.

Balance of the public arguments

24. The Information Commissioner has considered the public interest arguments. He has given particular weight to the fact that the course and associated modules are of a specialist nature, developed by the university in conjunction with the MoD. He also accepts that the university is operating in a commercial environment at a time when there are public spending cuts. He also accepts that there was an extremely strong public interest in maintaining a secure framework for teaching programmes contributing to national and international defence.
25. Having balanced the arguments in favour of and against disclosure, the Information Commissioner considers that the public interest in maintaining the exemption outweighs the public interest in disclosure.

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: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

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.

Signed

Jon Manners
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