

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 16 March 2016

**Public Authority:** University of Liverpool  
**Address:** Foundation Building  
765 Brownlow Hill  
Liverpool  
L69 7ZX

#### Decision (including any steps ordered)

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1. The complainant has requested from the University of Liverpool the identity of the two local rescue centres that supply it with canine cadavers for teaching purposes at its School of Veterinary Science. The University has withheld this information under sections 43(2) and 44 of the FOIA.
2. The Commissioner's decision is that the University of Liverpool has correctly applied section 43(2) of the FOIA.
3. The Commissioner therefore does not require the University of Liverpool to take any steps.

#### Request and response

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4. On 19 October 2014 the complainant wrote to the University of Liverpool (the University) and requested information in the following terms:
  - "1) Can the University please confirm the number of domestic canine cadavers that have been used for student dissections in the School of Veterinary Science. I would like a yearly break down of numbers of cadavers that have been used. Ideally I would like these statistics going back to 2009 but please supply all details that are available, even if you cannot go back to 2009.

- 2) Please confirm the source of the domestic canine cadavers used in the School Veterinary Science for dissection by students – ie. Who is the supplier of domestic canine cadavers to the University?
  - 3) Can the University please confirm the number of domestic feline cadavers that have been used for student dissections in the School of Veterinary Science. I would like a yearly breakdown of the numbers of cadavers that have been used. Ideally I would like these statistics going back to 2009 but please supply all details that are available even if you cannot go back to 2009.
  - 4) Please confirm the source of the domestic feline cadavers used in the School of Veterinary Science for dissection by students – ie. Who is the supplied of domestic feline cadavers to the University?
  - 5) Please confirm details and amounts of any fees paid to the suppliers cited in question 2 and 4 for the past few years (ideally back to 2009 but if not available please simply supply all that you have available). For instance, if the fees are paid 'per cadaver' then please say so''
5. The University responded to the complainant's questions on 27 October 2014 as follows;
- 1) 'The School of Veterinary Science uses 232 canine cadavers every year for student dissection classes.'
  - 2) 'All canine cadavers are collected from local rescue centres in the Merseyside and Cheshire areas.'
  - 3) 'No feline cadavers are used in student dissection classes in the School of Veterinary Science'.
  - 4) 'Not applicable – no feline cadavers are used in student dissection classes in the School of Veterinary Science'.
  - 5) 'No fees are paid, or have ever been paid, for the canine cadavers that are used in student dissection classes in the School of Veterinary Science. We have no influence on the numbers, or types of canine cadavers collected, we simply intercept the clinical waste. Cadavers are only to be used for teaching, and then disposed of as clinical waste by the University.
6. The complainant replied on 27 October 2014 and asked the University to elaborate on the identity of 'local rescue centres' referred to in its response to question 2 of his request.

7. The University responded on 29 October 2014 stating that it was withholding the identity of the local rescue centres under section 43(2) of the FOIA as it believed disclosure could potentially prejudice its commercial interests.
8. On 30 October 2014 the complainant requested an internal review in respect of the University's response to questions 1 and 2 of his request. In relation to question 1 he wanted clarification as to the number of canine cadavers used every year and in relation to question 2 he asked for further arguments in relation to the application of section 43(2) of the FOIA.
9. The University wrote to the complainant on 10 November 2014 with the outcome of its internal review. In relation to the number of canine cadavers, it said that it did not record this information. However, it did provide the complainant with an estimate of the numbers collected over the previous five years. In relation to the identity of the local rescue centres used, it said it was upholding its application of section 43(2) in respect of its own interests and those of the rescue centres. In addition, it said it was relying on sections 41 and 44 of the FOIA to withhold the information.

### **Scope of the case**

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10. The complainant contacted the Commissioner on 29 December 2014 to complain about the way his request for information had been handled and following an exchange of correspondence confirmed that the scope of his complaint could be restricted to the University's response to question 2 of his request dated 29 December 2014.

### **Chronology**

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11. On 4 February 2015 the Commissioner contacted the University with confirmation of the scope of his investigation and invited its further comments in relation to the application of sections 41, 43 and 44 of the FOIA and also requested sight of the withheld information.
12. The University responded 18 February 2015 with details of the withheld information. It also confirmed its reliance on sections 43(2) and 44 of the FOIA. In relation to section 43(2) it stated that disclosure of the requested information would be likely to prejudice its interests and those of the local rescue centres. In relation to section 44 it stated that disclosure would breach Competition Law. The University did not make any reference to section 41 in its response.

13. The Commissioner responded to the University on 25 February 2015 for clarification of its application of sections 41 and 44 of the FOIA and further evidence as to why disclosure of the requested information would be likely to prejudice its commercial interest and those of the rescue centres.
14. The University replied to the Commissioner on 31 March 2015. It stated that it no longer intended to rely on section 41 of the FOIA and provided further evidence of the prejudice it believed would be likely to occur to its commercial interests and those of the local rescue centres if the requested information was disclosed.
15. In its subsequent correspondence with the Commissioner, the University provided further information and clarification of the practices of its School of Veterinary Science and its relationship with the local rescue centres.
16. The Commissioner contacted the University again in November 2015 to see whether it was prepared to reconsider its position and disclose the requested information. The University responded by stating that it was maintaining its position.

### **Reasons for decision**

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17. The University has applied the exemptions under sections 43(2) and 44 of the FOIA to justify its decision to withhold the requested information. The Commissioner will now deal with each exemption in turn.

### **Section 43(2) – prejudice to commercial interests**

18. Section 43(2) of the FOIA provides an exemption from disclosure of information which 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.
19. The term 'commercial interests' is not defined in the FOIA, however, the Commissioner has considered his awareness guidance on the application of section 43<sup>1</sup>. This comments that:

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<sup>1</sup> [https://ico.org.uk/media/fororganisations/documents/1178/awareness\\_guidance\\_5\\_v3\\_07\\_03\\_08.pdf](https://ico.org.uk/media/fororganisations/documents/1178/awareness_guidance_5_v3_07_03_08.pdf)

"...a commercial interest relates to a person's ability to participate competitively in a commercial activity, i.e. the purchase and sale of goods or services."

20. The information which the University has withheld in this case consists of the identity of the two rescue centres from which it obtains canine cadavers for used in its School of Veterinary Science.
21. The University has explained that it collects the canine cadavers from the rescue centres free of charge for use in its School of Veterinary Science and then disposes of them as clinical waste at its own expense. This arrangement is of mutual financial benefit to both parties. The rescue centres benefit by saving the costs associated with the disposal of the canine cadavers. This indirect financial benefit is applied to the running costs of the centres allowing them to perform a valuable public service. The University benefits by receiving an invaluable and irreplaceable teaching resource that helps to prepare its veterinary students to competently perform surgery. The University has pointed out that this teaching facility is fairly unique as generally speaking many of the other veterinary colleges do not use canine cadavers so are unable to teach anatomy and surgery in the same way.
22. The Commissioner finds that the identity of the two rescue centres and their arrangement with the University relates to an activity resulting in commercial advantage. The Commissioner therefore finds that this commercial activity falls within the scope of section 43(2) of the FOIA.
23. Section 43(2) consists of 2 limbs which clarify the probability of the prejudice arising from disclosure occurring. The Commissioner considers that "would be likely to prejudice" means that the possibility of prejudice should be real and significant, and certainly more than hypothetical or remote. "Would prejudice" places a much stronger evidential burden on the public authority and must be at least more probable than not.
24. In this case the University has argued in its correspondence with the Commissioner that the lower threshold of section 43(2) is engaged as in its view disclosure of the requested information would be likely to prejudice its commercial interests and those of the rescue centres.
25. The Commissioner has considered how any prejudice to commercial interests would be likely to be caused by the disclosure of the requested information. This includes consideration of whether the prejudice claimed is "real, actual or of substance" and whether there is a causal link between disclosure and the prejudice occurring.

### Prejudice to the University's commercial interests

26. The University believes it is highly likely that if the identity of the rescue centres was disclosed, they would cease to provide it with canine cadavers. In its opinion this would have a very serious impact on its ability to discharge its teaching obligations to students. The effect of any change to the established protocol would result in delays while new procedures were established. This in turn could expose it to breach of contract claims from disgruntled students. The University also believes that loss of the canine cadavers and the adverse impact on its ability to teach would have a substantial detrimental effect of the student experience. This could then result in lower levels of student satisfaction which in turn could affect the University's national reputation and league table position.
27. Having considered the University's arguments the Commissioner is satisfied that disclosure of the requested information would be likely to prejudice its commercial interests.

### Prejudice to the rescue centres commercial interests

28. The University has provided the Commissioner with copy correspondence from the rescue centres in which they explain why disclosure of the requested information (namely their identity) would be likely to prejudice their commercial interests. They explained the current arrangement is that they accept stray and unwanted dogs from the surrounding area. These dogs are then retained for a minimum period of 7 days to allow owners the opportunity to reclaim them. After this time the dogs become the property of the re-homing centre. Any dogs suitable for re-homing are re-homed. Those that are unsuitable for re-homing because of injury or illness are euthanized by a qualified veterinarian once they have been properly assessed. The canine cadavers are then disposed of as clinical waste. The University then collects the cadavers at its own expense and uses them for the training of its veterinary students before incinerating them. This arrangement means that the rescue centres save the cost of clinical waste disposal which is borne by the University. The rescue centres have expressed concern that if their identity was disclosed under the FOIA this could be misconstrued by the public and could adversely affect the charity and charitable donations they receive. This would affect the rescue centres' commercial interests in two ways. Firstly, any reduction in charitable donations would effectively increase their running costs. Secondly, they might terminate the arrangement with the University for fear of adverse publicity and then have to fund the cost of clinical waste at their own expense.

29. The University has informed the Commissioner that it believes it is highly likely that disclosure of the requested information would result in the rescue centres no longer making canine cadavers available to it. In support of this argument it has referred to an example of where another Veterinary College tried to enter into a similar arrangement with a rescue centre, but the centre rejected the idea because of concerns over adverse publicity.
30. Having carefully considered the evidence from the rescue centres and the University, the Commissioner is satisfied that disclosure of the requested information would be likely to prejudice the commercial interests of the rescue centres.

### **The public interest**

31. As section 43(2) of the FOIA is a qualified exemption the Commissioner has gone on to consider the public interest arguments for and against disclosure.

### **The public interest arguments in favour of disclosure**

32. The Commissioner recognises there is a public interest in transparency and accountability in relation to how a public body carries out its activities.
33. The complainant believes there is a public interest in knowing the identity of the rescue centres used by the University so the public is aware as to how they dispose of canine cadavers and to which organisation(s). This would inform the public and allow them to make choices as to which centres to use and make donations to.

### **The public interest arguments against disclosure**

34. There is a public interest in the University being able to continue to run the course at its School of Veterinary Science which allows its students the opportunity to study anatomy and surgery with the benefit of using canine cadavers. The University believes it is highly likely that if the identity of the rescue centres that supplies these is disclosed it would no longer receive cadavers. It also believes that the loss of canine cadavers as an invaluable teaching tool would have a significant adverse impact on its ability to discharge its teaching obligations to students.
35. There is a public interest in the rescue centres being able to operate economically by minimising its costs and to continue to receive charity and charitable donations to assist with this.

## **Balance of the public interest arguments**

36. The Commissioner notes the comments made by the University that no dogs are euthanized at its request. He also notes the rescue centres' comments that only those dogs that are unsuitable for re-homing due to injury or illness are euthanized and that no healthy dogs are put down. Furthermore, the Commissioner acknowledges the statement by the rescue centres that those dog that are unsuitable for rehousing because of injury or illness are euthanized by a qualified veterinarian once they have been assessed.
37. The Commissioner accepts that there is a public interest in the University being able to continue to offer its current and prospective students the opportunity to learn anatomy and surgery at its School of Veterinary Science with the facility to practice on canine cadavers
38. The Commissioner also accepts that there is a public interest in the recue centres being able to continue to operate in the most efficient and economic manner without being burdened with the additional costs of clinical waste disposal which are currently borne by the University.
39. The Commissioner accepts there is a public interest in transparency and accountability but believes this is satisfied by the University's confirmation that it receives canine cadavers from two local rescue centres and the arrangements under which this takes place. He does not believe that the public interest would be further advanced by disclosing the identity of the rescue centres.
40. In conclusion, the Commissioner finds that the public interest is balanced in favour of maintaining the exemption under section 43(2) of the FOIA.

## **Section 44 – prohibition on disclosure**

41. As the Commissioner is satisfied that section 43(2) of the FOIA is engaged with the public interest balanced in favour of maintaining it, he has not gone on to consider the application of section 44.



## Right of appeal

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42. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

43. 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.
44. 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 .....

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
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**SK9 5AF**