

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 4 July 2016

Public Authority: University of Salford
Address: The Crescent
Salford
M45 4WT

Decision (including any steps ordered)

1. The complainant has requested information relating to the university's provision of consultancy and training services to Abu Dhabi Police GHQ ("ADP") in relation to the rehabilitation of juvenile offenders. The university disclosed some information but refused to disclose other information citing section 43 of the FOIA.
2. The Commissioner's decision is that the university has acted appropriately by refusing to disclose the requested information under section 43 of the FOIA. He therefore requires no further action to be taken.

Request and response

3. On 11 September 2015, the complainant wrote to the university and requested information in the following terms:
 - "1. The project management file maintaining the contractual performance of Salford Consultancy LLC which the university has told me it holds.
 2. Recorded information on the decision to create Salford Consultancy LLC
 3. Copies of any United Nations approved best practice guidance in a juvenile rehabilitation environment that has been issued to Salford workers in the UAE.

4. Details of the proportion of Salford's work with the Abu Dhabi police which specifically addresses "the introduction and encouragement of human rights".
5. Correspondence with [name redacted] relating to FOI request *FoIR150729-376.*"
4. The university responded on 12 November 2015. In relation to question one, it refused to disclose the requested information, citing section 43 of the FOIA. In relation to questions two, four and five, the university released the requested information. Regarding question three, the university confirmed that it does not hold the requested information.
5. The complainant requested an internal review on 20 November 2015.
6. The university carried out an internal review and notified the complainant of its findings on 22 December 2015. Only question one of the complainant's request was considered and the university confirmed that it upheld its previous decision to refuse to disclose the requested information under section 43 of the FOIA.

Scope of the case

7. The complainant contacted the Commissioner on 4 January 2016 to complain about the way his request for information had been handled. Specifically, the complainant confirmed that he was dissatisfied with the university's handling of question one of his request and disagreed that section 43 of the FOIA applied.
8. As no complaint was raised about questions two, three, four and five of the request, the Commissioner's investigation has focussed on question one only and the university's application of section 43 of the FOIA.

Reasons for decision

9. Section 43 of FOIA states that information is exempt if its disclosure would or would be likely to prejudice the commercial interests of the university, a third party or both.
10. Section 43 is a qualified exemption. Therefore, in addition to demonstrating that disclosure would or would be likely to prejudice the commercial interests of the university, a third party or both, it also needs to apply the public interest test. For this, the university needs to consider the public interest arguments for and against disclosure and

establish whether the public interest is best served by maintaining the exemption or by disclosure.

11. The University explained that it provides consultancy and training services to ADP in relation to the rehabilitation of juvenile offenders. The university was selected to partner with ADP for this purpose following an international search of potential partners and a competitive tendering process. As the requested information is the project management file maintaining the contractual performance of Salford Consultancy LLC, the university considers the requested information relates to a commercial activity, i.e. the provision of services by Salford Consultancy LLC and the university to the UAE authorities.
12. The university advised that it has an internationally renowned Centre for Prison Studies, which was established in 2008 as part of the university's centre for social research. It was selected to partner with ADP following an international search of potential partners and a competitive tendering process. It believes that there is a real and significant risk to its reputation and future interactions with the UAE, and more broadly as a provider of services, if the requested information was disclosed. The university advised that it considers the harm identified is 'likely to occur' and that the risk of harm is 'real and significant'.
13. The university explained that it understands that there must be a 'causal link' between the disclosure and the prejudice claimed. It considers that it is highly likely that disclosure of the requested information would be likely to prejudice the relationship between the University and the ADP, as the information is commercially sensitive as between the parties, and there is a very strong expectation on the part of the ADP that this information will not be disclosed to any third party.
14. It explained that ADP expect confidentiality and are not bound or indeed wholly aware of the FOIA in the UK and its purpose. For ADP there is therefore an overriding expectation that information relating to the performance of the contract will not be disclosed to another third party let alone the world at large, which disclosure under the FOIA effectively means. The university advised that it is in delicate negotiations with ADP in terms of the conduct of the services and any disclosure would damage, possibly irreparably, the business relationship with ADP as it has an expectation of absolute confidentiality of the work being carried out. It also advised that its relationship with ADP is very challenging due to the significant cultural differences between the UK and UAE and the existence of this information request and the media interest in the university's involvement has already caused friction between the two parties.

15. The university stated that although the requested information does not contain a great deal of controversial material the mere threat of disclosure is having a negative impact on the university's relationship with ADP and disclosure would be likely to have a catastrophic impact on this relationship. It explained that even the act disclosure itself is a cause of concern for ADP and although any such disclosure will relate only to the performance of the contract, the negative impact will still be substantial.
16. Furthermore, as the university develops its overseas commercial activities the university anticipates that it will be involved in negotiations with other overseas organisations for the provision of similar services in the future. It considers that disclosure of the requested information would be likely to negatively impact anticipated future negotiations with other organisations, as these future clients will have a reasonable expectation that commercially sensitive information (such as the performance of the contract) will not be disclosed.
17. The university is also of the view that the requested information would be useful to competitor institutions looking to provide similar services. Disclosure would give the university's competitors an insight into the composition and progress of the services provided by Salford Consultancy LLC and this could damage the university's commercial interests when negotiating with other overseas organisations in the future.
18. The Commissioner is satisfied that section 43 of the FOIA is engaged. He accepts that there are cultural differences between the UK and UAE and the UAE are not bound by similar legislation to the FOIA. He acknowledges that the project has attracted media interest and the existence of the request itself appears to have caused some friction between the university and ADP. Because the UAE is not bound by similar legislation, ADP does have a higher expectation in terms of confidentiality and has stressed to the university that it expects an overriding duty of confidence in relation to information which it considers is commercially sensitive.
19. The university has also explained that it is currently in delicate negotiations with ADP over the performance of the contract and any disclosure at this point would be likely to have a damaging impact of their working relationship and the delivery of the contract going forward.
20. Due to the unique relationship which appears to be in place between the university and ADP, the Commissioner is satisfied that disclosure would be likely to damage the commercial interests of the university. He accepts that disclosure would be likely to prejudice the working relationship currently in place and therefore the ability of the university

to deliver the contract and this would be likely to in turn damage its commercial interests.

21. He will now go on to consider the public interest test.
22. The university stated that it acknowledges there is a public interest in openness and accountability in the activity of public bodies and in allowing individuals to understand decisions made by public bodies. However, on this occasion the university considers that the public interest is best served by maintaining its competitive advantage and negotiating position at this time.
23. It stated that it understands that there is an inherent public interest in furthering the public's understanding of how services bought with public funds. However, in this instance, the university explained that the contract does not involve the expenditure of public money but rather the expenditure of a separate revenue stream for the university. The university considers the prejudice that disclosure would be likely to cause to its commercial activities is counter to the public interest, as such revenue streams ultimately benefit students through the provision of education.
24. The university also considers that there is sufficient information already in the public domain about its arrangement with the ADP, which was widely reported on upon its announcement. It considers the information already in the public domain meets the public interest in disclosure.
25. In addition, the university argued that it considers there is a strong public interest in the introduction and encouragement of human rights into developing countries; an activity which is supported by the university's participation in this contract. The university's role under this arrangement is to provide the ADP with advice and related training on the strategies, policies and operating procedures consistent with United Nations approved best practice in a juvenile rehabilitation environment. The university's team of academics, researchers and juvenile rehabilitation practitioners' work with the Mafraq Juvenile Rehabilitation Centre management and staff to introduce an innovative therapeutic model to support the rehabilitation of juvenile offenders back in to society. The scheme is benchmarked against World Health Organisation standards and international good practice. If the requested information was disclosed, this would be likely to seriously prejudice the university's relationship with the ADP, and its ability to take part in similar projects in developing countries. Accordingly, the university concluded that the public interest is best served in maintaining the exemption.
26. The Commissioner considers the public interest for and against disclosure is finely balanced due to the circumstances of this case. On

the one hand, the Commissioner accepts that there is a public interest in openness and transparency and a strong public interest in human rights, particularly when there may possibly be evidence that such rights have been violated during detention whether in the UK or another country, as the complainant has alleged.

27. He accepts that the university's contract with ADP has attracted media and public interest and that the public will wish to know how the project is progressing and what differences are being made.
28. However, on the other hand, the Commissioner accepts that there is also a strong public interest in ensuring that the delivery of this contract is not negatively affected due to the fact that it essentially attempting to introduce and encourage human rights in the UAE, in particular, in relation to the rehabilitation of vulnerable juveniles. There is a public interest in ensuring this work is completed and the necessary training and advice is delivered to enable practices in the UAE to improve and become more in line with the United Nations best practice.
29. The Commissioner also notes that the university has publicised its involvement with ADP and released information under the FOIA in relation to other aspects of the complainant's requests.
30. Although the Commissioner does consider the arguments for and against disclosure are finely balanced, he considers the public interest in ensuring the introduction and encouragement of human rights in the UAE and any other country whose practices are inconsistent with the United Nations best practice is not hindered carries significant weight and tips the balance in favour of maintaining the exemption. The university has explained the cultural differences between the UK and the UAE and how the UAE is not bound by similar legislation. It has also explained that it is currently in sensitive talks with ADP over the performance of this contract and that media coverage and the very existence of this request has already caused some issues. Whilst the Commissioner would not usually accept that such arguments warrant information being withheld, he considers due to the unique circumstances of this case and what the contract is essentially attempting to achieve the public interest rests in maintaining the exemption.

Right of appeal

31. 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

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

32. 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.
33. 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
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