

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 24 November 2020

Public Authority: The Governing Body of Hull College
Address: Queen's Gardens
Wilberforce Drive
Hull
HU1 3DG

Decision (including any steps ordered)

1. The complainant has requested from the Governing Body of Hull College (the College) the start and end date and total cost of its Club Stadium Naming Rights Agreement with Hull Kingston Rovers Football Club Limited (the Club). The College withheld the requested information under section 43(2) of the FOIA (Commercial interests).
2. The Commissioner's decision is that the College has not sufficiently demonstrated that section 43(2) of the FOIA is engaged in relation to the withheld information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the withheld information to the complainant.
4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the Act and may be dealt with as a contempt of court.

Request and response

5. On 29 November 2019, the complainant wrote to the College and requested information in the following terms:

"Can you please find out for me what the total cost to Hull College this "three-year stadium naming rights partnership" is and over what start and end period?"

6. On 5 December 2019 the complainant wrote to the College again and asked it to treat his (previous) email as a request under the FOIA.
7. On 30 December 2019 the College responded to the request. It said that it does not have a three-year stadium naming rights partnership. That the College and the Club have an educational partnership and due to this the Club's stadium was re-named 'Hull College Craven Park". It said that the requested information is contained within this partnership agreement but withheld it citing section 43(2) (commercial interests) of the FOIA as its basis for doing so.
8. On 30 December 2019 the complainant wrote to the College and asked it to carry out a review of its handling of the request.
9. On 29 January 2020 the conducted the review and wrote to the complainant upholding its original decision.

Scope of the case

10. The complainant contacted the Commissioner to complain about the way his request for information had been handled.
11. The Commissioner has considered whether the College was correct to apply section 43(2) of the FOIA to the withheld information.

Reasons for decision

12. Section 43(2) of the FOIA says that information is exempt if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). Commercial interests relates to a person's ability to participate competitively in a commercial activity.

13. In order for the exemption to be engaged the College would need to demonstrate that disclosing the information would result in some identifiable commercial prejudice to that ability which would, or would be likely to, affect one or more parties. Section 43(2) is a qualified exemption and is therefore subject to the public interest test.
14. The College has provided a copy of the withheld information to the Commissioner. She notes that it forms part of its Club Stadium Naming Rights Agreement with the Club, which sets out the terms the College has agreed to in order to be the Club's exclusive official stadium naming rights sponsor and the terms by which the Club has agreed to provide the sponsorship rights. The Commissioner is satisfied that the withheld information relates to a commercial activity, that is that it forms part of the terms negotiated and agreed during the acquisition of a stadium naming rights agreement with a sports club.

Likelihood of prejudice occurring

15. The ICO has been guided on the interpretation of the phrase 'would, or would be likely to' by a number of Information Tribunal decisions. The Tribunal has been clear that this phrase means that there are two possible limbs upon which a prejudice based exemption can be engaged; ie either prejudice 'would' occur or prejudice 'would be likely to' occur.
16. With regard to 'would be likely to prejudice', the Information Tribunal in *John Connor Press Associates Limited v The Information Commissioner* (EA/2005/0005) confirmed that 'the chance of prejudice being suffered should be more than a hypothetical possibility; there must have been a real and significant risk' (Tribunal at paragraph 15).
17. With regard to the alternative limb of 'would prejudice', the Tribunal in *Hogan v Oxford City Council & The Information Commissioner* (EA/2005/0026 & 0030) commented that 'clearly this second limb of the test places a stronger evidential burden on the public authority to discharge' (Tribunal at paragraph 36).

The College's position

18. The College considers that disclosure of the withheld information would be likely to prejudice both its and the Club's ability to participate competitively in the commercial activity.
19. The College said that it is situated in Hull, a small city with a small pool of opportunities to secure partnerships with local sports teams, which, it hopes to use as an effective means for promoting the College. In order to do this it often has to compete against other local educational institutions, including those colleges it considers as direct competitors as well as private commercial entities.

20. The College said that disclosure of the start and end date and the total sum agreed for the Club Stadium Naming Rights Agreement would provide its competitors with information that they could use to inform offers they make for other partnership agreements with the Club, that the College may also wish to make bids for. Consequentially, disclosure does not provide for a level playing field. It said that because of the small pool of opportunities locally and the large number of competitors there is a real likelihood of this prejudice occurring. This would harm the College's revenue stream reducing its ability to attract new students and employees.
21. The College said that third party bidders that are not subject to the FOIA will not be placed in to a position to have their bids released within the public domain. This would mean that the public would not have sufficient information to properly scrutinise all bidders. It also said that the information would be less commercially sensitive (having less detrimental impact) one year after expiry of the agreement. The College would therefore consider its release again under a similar request in the future.
22. The College also said that disclosure would be likely to seriously affect its ability to attract and negotiate with potential commercial partners in the future, jeopardising its ability to secure good value for money. Both existing and potential commercial partners could consider the amounts paid by the College to the Club for the partnership agreement to be inadequate for their purpose and decline to work with the College. Alternatively they may refuse to accept an offer for a lesser amount than that agreed with the Club, knowing the College has committed to providing higher sums previously. This would consequentially impinge on the College's position with its competitors (both public and private) to secure partners in a saturated education market.
23. The College has also provided the Commissioner with an email from the Club to it saying that it does not consent to disclosure of the withheld information because it would "*severely damage the club in future partnership negotiations down the line*". The College said that disclosure is likely to negatively impact bids received by the Club from potential partners in the future. The College also said that disclosure could deter current and potential investors from making offers of investment in the Club, or may reduce the amount of any such offers in light of the sum deemed to be an acceptable amount by the Club to justify entering into a partnership with the College.

The Commissioner's view

24. The Commissioner is not persuaded that the withheld information could be used by the College's competitors in a way that would be likely to prejudice its negotiating position when competing for other partnership deals with the Club.
25. The Commissioner has viewed the withheld information and notes that it forms part of a Club Stadium Naming Rights Agreement. She also notes that on 21 August 2019 the Club, on its website, published a news story titled 'Hull Kingston Rovers unveils educational partnership with Hull College Group'. It announced a 'bespoke educational partnership' with the College (including the renaming of the stadium) from 2020 onwards and said it is looking forward to working with the college for the next three years. On another page titled 'Our Partners' it published information about its current partners and sponsors. It says that it has one stadium naming rights partner (the College), three principal club partners, and fourteen sponsors (including the College).
26. It is clear to the Commissioner that the withheld information relates to a specific type of agreement, a Club Stadium Naming Rights Agreement, which, is part of a 'bespoke educational partnership' with the Club and has been advertised as lasting 3 years. That this differs to the other more common type of partnership offered by the Club (a principle club partnership), which does not appear to be exclusive to one organisation, whereas the naming rights (partnership) agreement is.
27. The Commissioner is mindful that upon expiry of the agreement any other parties interested in securing a naming rights agreement would be free to make offers to the Club as well as making other offers of partnership in the mean-time. However, she notes the information already in the public domain and that no other information within the agreement (such as terms, undertakings, rights etc) has been requested by the complainant. She is also mindful that there is no way of knowing the duration and value of any future naming rights agreement, particularly since the Club says the agreement is part of a 'bespoke educational partnership' and that these terms are likely to differ for other types of partnership agreements with the Club. She also notes that the College said it would consider a similar request for the same information one year after expiry of the agreement, indicating that the information is likely to become less commercially sensitive over time.
28. The Commissioner also notes that the College has failed to provide an explanation of how exactly any effect on its negotiating ability would impact its revenue stream and ability to attract new students and employees. She is therefore not persuaded that the withheld information could be used by the College's competitors to inform decisions about

making meaningful offers when competing for the same club partnership deal(s) and prejudice the College's negotiating position.

29. For the same reasons, the Commissioner is not persuaded that the withheld information could prejudice the College's and Club's ability to attract and negotiate with existing and potential commercial partners in the future. This is because, the nature of the withheld information is such that it relates to a specific type of agreement, a Club Stadium Naming Rights Agreement (lasting three years), that also forms part of a bespoke educational partnership and is not a principal club partnership or other type of agreement. It would therefore be of little or no value in other types of negotiations. She also notes that neither party has said that they are currently in active negotiations with any commercial partners. She also notes that neither party has provided any indication that proactive measures (prior to receiving the request) were taken to attempt to prevent disclosure of the withheld information or for that matter any of the other information contained in the agreement from competitors.
30. The Commissioner is also reminded that as a public authority, the College should be able to reasonably justify its spending of public funds. It is her view that that the College should also be able to justify the offer it made to secure the naming rights agreement during negotiations with future partners and explain why any increase in offers sought (in those negotiations) would not be proportionate, thus ensuring that it obtains the best value for money. Similarly the Club should be able to reasonably justify why the College's offer was acceptable during negotiations with future commercial partners and why any proposed offer(s) in those negotiations may not be.
31. The Commissioner acknowledges the Club's objection to disclosure of the withheld information. She however notes that the Club has not itself provided an explanation as to how exactly disclosure would be likely affect its future partnership negotiations. That the arguments provided by the College on behalf of the Club are speculative with no indication of whether the Club itself believes that the alleged prejudice is likely to occur if the information was disclosed. She is also reminded that the College said it would consider a similar request for the same information one year after expiry of the agreement.
32. The Commissioner is mindful that investment / sponsorship in a sports club is mutually beneficial to all parties involved. Investors and sponsors do not typically enter into these arrangements to merely provide funds to the sports club with no benefit to themselves. To the contrary, the publicity, commercial and financial benefits resulting from investment in or sponsorship of a sports club are often highly rewarding and can drive these opportunities to be proactively sought out by third parties.

33. It is the Commissioner's view that disclosure could therefore assist current and future investors in making more informed and beneficial offers of investment in-line with the Club's financial needs. She also reiterates the position above that the Club should be able to reasonably justify the cost of the Club's Stadium Naming Rights Agreement as well as its need for further investment and sponsorship during negotiations with current and future investors / sponsors. Including being able to explain why any proposed offers of investment and sponsorship may or may not be suitable.
34. The Commissioner considers that although the College has consulted with the Club in relation to this matter, the arguments relating to prejudice are speculative and generic.
35. As stated earlier, in order for the exemption to be engaged it is necessary to demonstrate that disclosure of the information would result in specific harm to a party or parties' commercial interests and to explain alleged prejudice. She considers that, whilst the College may have provided arguments alleging prejudice, it has failed to demonstrate and convince her of the likelihood of any real and significant risk of this prejudice actually occurring if the information was released.
36. In cases where a public authority has failed to provide sufficient arguments to demonstrate that exemptions are engaged, the Commissioner is not obliged to generate arguments on a public authority's behalf. In this case, the Commissioner does not consider that sufficient arguments have been provided to demonstrate that disclosure would be likely to prejudice either the College's or the Club's commercial interests.
37. For the above reasons, the Commissioner has no alternative but to reject the College's application of section 43 of the FOIA in this case and order disclosure of the withheld information.
38. The Commissioner has decided that the exemption is not engaged and has, therefore, not gone on to consider the public interest test.

Right of appeal

39. 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

40. 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.
41. 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

Pamela Clements
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