

# Freedom of Information Act 2000 (FOIA)

## Decision notice

**Date:** 2 March 2021

**Public Authority:** The Governing Body of the University of London  
**Address:** Senate House  
Malet Street  
London  
WC1E 7HU

### Decision (including any steps ordered)

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1. The complainant has requested information about LLB law degree examinations from the University of London ('the University'). The University has refused the request under section 43(2) of the FOIA (commercial interests) and considers that the public interest favours maintaining this exemption.
2. The Commissioner's decision is as follows:
  - The University is entitled to withhold the requested information under section 43(2) of the FOIA and the public interest favours maintaining this exemption.
3. The Commissioner does not require the University to take any remedial steps.

### Request and response

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4. On 13 August 2019 the complainant wrote to the University and requested information in the following terms:

"1 For each of the geographical areas listed below and in relation to each of the LLB subjects (including the dissertation),

(a) USA and Canada

- (b) Australia and New Zealand
- (c) West Indies – (Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, Bermuda, British Virgin Islands, Cayman Islands, Dominica, Grenada, Guyana, Jamaica, Montserrat, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos Islands.)
- (d) Europe (including all of Russia and excluding the UK and Channel Islands)
- (e) Hong Kong and China.
- (f) Malaysia and Singapore
- (g) Africa (including Mauritius)
- (h) Bangladesh
- (i) Pakistan
- (j) Sri Lanka
- (k) UK and Channel Islands
- (l) all LLB students in all geographical locations combined

(i) the average mark awarded. and (ii) the percentage of students who sat the May/June 2019 examination who were awarded a mark of 40% or more

- 2 The number of LLB students who, following the examinations in May / June 2019, were awarded: a. First class honours b. Upper second class honours c. Lower second class honours d. Third class honours e. Pass degree or other award
- 3 The number of male LLB students who, following the examinations in May / June 2019, were awarded: a. First class honours b. Upper second class honours c. Lower second class honours d. Third class honours e. Pass degree or other award
- 4 The number of female LLB students who, following the examinations in May / June 2019, were awarded: a. First class honours b. Upper second class honours c. Lower second class honours d. Third class honours e. Pass degree or other award
- 5 Of the LLB students who, following the examinations in May / June 2019, were awarded: a. First class honours b. Upper second class honours c. Lower second class honours d. Third class honours e. Pass degree or other award (a) the percentage who were male (b) the percentage who were female.
- 6 The total number of students registered on the LLB programme who took at least one examination in:

May / June 2016

Oct / Nov 2016

May / June 2017  
Oct / Nov 2017  
May / June 2018  
Oct / Nov 2018  
May / June 2019”

5. The University responded on 13 September 2019. It refused the request under section 43(2) of the FOIA and advised that it considered the public interest favoured maintaining this exemption.
6. The complainant requested an internal review on 25 September 2019. He presented a number of arguments for why the University could not rely on section 43(2) to withhold the information, and why the public interest favoured disclosing it. The complainant’s public interest arguments will be discussed elsewhere; his points about the University’s reliance on section 43(2) are summarised below. The complainant argued that:
  - the University had applied section 43(2) in a blanket fashion to all the information requested, without considering each part separately
  - the University had not provided evidence that prejudice would be likely to occur
  - the University had stated that the ‘level of granularity’ had played an important part in its decision to withhold the information, but had not provided sufficient explanation for this across all the parts of his request; and that
  - he had not requested information on the numbers of students passing or failing; the request is limited to percentages.
7. The University provided an internal review on 3 February 2020. It upheld its original position.

## **Scope of the case**

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8. The complainant contacted the Commissioner on 25 March 2020 to complain about the way his request for information had been handled.
9. The Commissioner’s investigation has focussed on whether the University can rely on section 43(2) of the FOIA to withhold the information the complainant has requested, and the balance of the public interest.

## Reasons for decision

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### Section 43 – commercial interests

10. Section 43(2) of the FOIA says that information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it). Section 43(2) is subject to the public interest test. In cases where information is exempt from disclosure the information may still be disclosed if the public interest in releasing the information is greater than in maintaining the exemption.
11. For section 43(2) to be engaged the Commissioner considers that three criteria must be met. First, the actual harm that the public authority alleges would, or would be likely, to occur if the withheld information was disclosed must relate to the applicable interests within the relevant exemption.
12. The University has described the withheld information as relating to its operation in a competitive international environment. The University provided the Commissioner with a copy of the information it is withholding. It is as the complainant has requested ie: LLB exam statistics on average marks across various regions; percentages of students achieving a particular grade; numbers of students achieving particular awards; numbers and percentages of male and female students achieving particular awards; and the number of students who took at least one LLB examination across a number of years. The complainant has argued that his request is limited to percentages; however the Commissioner notes that the parts of the request are for both numbers and percentages. The University has said that disclosing this information would benefit its competitors. The Commissioner is satisfied that the prejudice the University envisions does concern commercial matters and commercial interests, which are protected by section 43.
13. Second, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice that is alleged must be real, actual or of substance.
14. In its accompanying submission the University has explained why releasing the information would be likely to prejudice its own commercial interests. The University has explained that the nature of universities as public authorities competing against both private providers, other UK universities subject to FOIA and international universities not subject to FOIA mean that the risk of prejudice is more complex than that of a local authority or government department.

15. The University says that in its case the competition is more intense as the University's 'Worldwide' distance learning provision operates in a competitive international environment where students study and are assessed from their own countries. The University says it is competing with education providers in a truly global context.
16. The University goes on to explain that it has provided distance learning since 1858 and therefore through generations of change and upheaval. It says that the technology developments of the last decade have seen the pace and scale of this change increase dramatically. The University notes that the request dates from the pre-pandemic era but that even at that stage the University had formally acknowledged this environment in its Annual Statements:

"Distance learning programmes are a major source of income for the University. There are both opportunities and threats as the market for distance education is increasingly competitive with new institutions, new learning technologies and private capital accelerating the pace of change. The University is investing in developing new and existing programmes and infrastructure to ensure it continues to be a world-leading institution in this area."
17. In regard to this request, and a succession of others made by the same complainant, the University says that the detail and granularity of the data requested exceeds any statutory returns that it is required to produce for transparency requirements or regulatory obligation. The request requires bespoke reporting from its management information systems around specific modules.
18. The University says that the statistics provide a level of insight into its outcomes and activities which it would not provide on request to a competitor and which could clearly be used to present statistics in order to promote another provider at the University's expense. The statistics direct the University's strategy and investments in both global and regional markets for education. Disclosing the information would allow other providers to target regions around specific subjects or perceived strengths and weaknesses. In responses under the FOIA, made as public disclosures, the University says it has little control in how information is re-purposed and no resources to police how the information is re-used.
19. The Commissioner is satisfied a causal relationship exists between releasing the withheld information and prejudice to the University's commercial interests. This is because releasing the requested information would allow the University's commercial competitors to assess the University's strengths and weaknesses and to target their own provision around those, or to target regions, globally, in which the University currently operates. The University's competitors would have an indication of regions in which the University's students scored lower

marks and achieved particular classes of degree, and related information on the students' gender.

20. The Commissioner was initially less clear how disclosing the information requested in part 6 of the request would prejudice the University's commercial interests and she asked it for more detail on this. Part 6 concerns the number of LLB students who took at least one examination across a number of years. The University told the Commissioner that it considered the request for statistics as a whole and part 6 linked in with the breakdowns provided in the other parts of the request. The University also explained that, on its own, part 6 still provides an insight into how its distance students engage with assessment in its flexible learning model over time. It says that the argument it set out in its original submission to the Commissioner – at paragraph 17 and 18 – therefore still applies to part 6 of the request.
21. Parts 1 to 5 of the request are focussed on one year: 2019. Part 6 concerns the period 2016 to the first half of 2019. As such, it is not completely clear how information about 2016 to 2018 can be linked to the information requested about 2019. Particularly since those taking at least one examination in 2016 may have registered onto the LLB programme in 2015 or 2014 and the request does not cover those, or earlier, years. However, the Commissioner accepts that if the information requested in part 6 was to be released, it could, as the University says, indicate how the University's distance students engage with assessment in its flexible learning model over time. For example, it would show how many students took at least one examination in the years immediately before May/June 2019 and so indicate the extent of any reduction in student engagement by May/June 2019.
22. For the reasons above, the Commissioner considers that disclosing the requested information has the potential to weaken the University's commercial operation. The Commissioner is satisfied that such commercial prejudice is not trivial and would be of substance.
23. Third, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met – eg disclosure 'would be likely' to result in prejudice or disclosure 'would' result in prejudice.
24. The University's position is that the envisioned prejudice would be likely to happen. The Commissioner is satisfied that the chance of prejudice occurring is more than a hypothetical possibility and there is a real and significant risk.
25. Since the three criteria have been met, the Commissioner is satisfied that the information the complainant has requested engages the

exemption under section 43(2) of the FOIA. She has gone on to consider the public interest test associated with section 43.

### **Public interest test**

#### Public interest in disclosing the information

26. In his request for an internal review, the complainant notes the Commissioner's 2006 decision in FS50080353. In that decision the Commissioner had noted that because students and families make considerable personal investments in order to study at University, information about the standard and quality of degree courses is of particular importance to those who may wish to study in the future.
27. The complainant noted that many of those who consider enrolling on the University's LLB programme come from countries less economically developed than the UK. The economic investment of students from those countries is therefore often substantial. The complainant argued that there is a strong public interest in ensuring those potential students have access to information that allows them to make an informed choice about their investment.
28. The complainant also argued that, since the provision of academic support for the LLB is largely left to local providers, there is a public interest in prospective students being aware of regional variations in pass rates etc. Finally, the complainant said that he noted that some of the University's competitors were not subject to the FOIA but considered that there was still a public interest in ensuring that UK public authorities are accountable, even though private entities "may be exempt".
29. In its submission to her, the University acknowledges the public interest in it being transparent and accountable. It notes that it already publishes a wide range of information on its website, both of a formal nature and for its students. By way of examples, the University provided the Commissioner with links to its annual reports, to Office for Students Transparency Return information, to the governance area of its website and to two articles about its students' achievements (both of which post-date the complainant's request, however).

#### Public interest in withholding the information

30. The University argues that there is significant public interest in universities protecting their commercial interests, enabling them to compete fairly with other providers. The University says it has been guided by the Commissioner's statements recognising the public interest in protecting universities' commercial interests. It has noted the

Commissioner's decisions in: FS50668371, FS50668372, FS50636198 and FS50562736.

31. In addition, the University has noted that there is no evidence of a public concern or any suspicion of wrongdoing. Such concerns or suspicions might support a case for the information's disclosure.

#### Balance of the public interest

32. The complainant has referred to the Commissioner's decision in FS50080353 from 2006. In that case the Commissioner had ordered De Montfort University to disclose information it had withheld under section 43(2) that concerned De Montfort's pharmacy courses. While that case did broadly concern degree courses, the circumstances and the information requested were different from those in the current case. Specific concerns about that university's pharmacy courses had been raised.
33. As the University has noted, the complainant has not advanced any evidence of, for example, any specific concerns about, or wrongdoing by, the University that might tip the balance in favour of disclosing the requested information even though doing so would be likely to prejudice the University's commercial interests.
34. The Commissioner considers that Universities, including the University of London, routinely publish sufficient information about their courses and performance to enable prospective students (anywhere in the world) to make an informed choice. Other organisations also publish university rankings at institutional and/or subject level which prospective students can consider before deciding which University to register with.
35. The Commissioner has not been persuaded that there is sufficient wider public interest in the requested information to warrant the likelihood of the University's commercial interests being prejudiced by disclosing it. She is satisfied that, in this case, there is greater public interest in the University being able to compete fairly with other higher education providers.

#### **Right of appeal**

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

37. 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.
38. 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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**