

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 4 October 2021

**Public Authority:** University Council, Queen Mary University of London

**Address:** Mile End Road  
London  
E1 4NS

#### **Decision (including any steps ordered)**

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1. The complainant has requested Queen Mary University of London (the University) to disclose copies of weekly associated dean meetings from April 2020 to the date of her request and, also, data relating to medical school student placements, and correspondence with a named individual. The University refused to disclose the meeting minutes, citing sections 36(2)(b)(i) and (ii) and 36(2)(c) (prejudice the effective conduct of public affairs) and refused to comply with the remainder of the request, citing section 12 of the FOIA (cost limit).
2. The Commissioner's decision is that the University is entitled to rely on section 12 of the FOIA in this case. With regards to section 36(2)(c) of the FOIA, the Commissioner is satisfied that this exemption is engaged and the public interest in favour of disclosure is outweighed by the public interest in favour of maintaining the exemption.
3. The Commissioner does not require any further action to be taken.

#### **Request and response**

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4. On 11 September 2020, the complainant wrote to the University and requested information in the following terms:

"I would like to make a FOI request for copies of weekly associated dean meetings from April 2020 to date. I would also like a copy of all data

relating to medical school student placements, including correspondence with [name redacted].”

5. The University responded on 11 September 2020. It asked the complainant to clarify exactly what information she required and whether she was able to narrow the scope of one part of the request, perhaps to a time period, as it may incur section 12 of the FOIA (cost limit).
6. The complainant replied the same day. She confirmed that she required the minutes of the meetings. The complainant also asked the University to explain what it could potentially provide within the cost limit.
7. The University responded on 15 September 2020. It asked the complainant to confirm which meetings she was referring to. With regards to the potential application of section 12, it explained how the complainant’s request for correspondence about student placements is too wide a topic without further guidance from her on how to narrow this element of the request.
8. The complainant replied the same day. She stated:

“If the meetings you mention are the only associated dean meetings then those are the ones I am looking for, i.e. minutes of those meetings. The type of data I am looking for is the number of students requiring placements (by year) number of students currently placed or due to be placed in January 2021, any spare placemen [sic] capacity, measures taken to place students.”
9. The University provided its response to the complainant’s request on 15 January 2021. With regards to the correspondence, it refused to comply with this element of the complainant’s request citing section 12 of the FOIA. In respect of the minutes of meetings, the University confirmed that it holds this information but considers it is exempt from disclosure in accordance with section 36(2)(b)(i) and (ii) and 36(2)(c) of the FOIA.
10. The complainant requested an internal review on 18 January 2021.
11. There was correspondence between the complainant and the University between 19 and 22 January 2021 relating to this request for an internal review and a new request for information.
12. The University completed the internal review on 9 February 2021. It upheld the application of both section 12 and 36(2)(b)(i) and (ii) and 36(2)(c) of the FOIA.

## Scope of the case

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13. The complainant first contacted the Commissioner on 17 December 2020 to complain about the way her request for information had been handled. At this point the complainant had not received a response from the University. The Commissioner accepted the complaint for full investigation once the complainant received the University's internal review response.
14. The Commissioner considers the scope of her investigation to be to determine whether the University is entitled to rely on section 12 and 36(2)(b)(i), (ii) or 36(2)(c) of the FOIA. With regards to section 36, sections 36(2)(b) and 36(2)(c) are separate exemptions and the Commissioner will first consider section 36(2)(c) in this case. She will only go on to consider section 36(2)(b) if it is found that section 36(2)(c) is not engaged.

## Reasons for decision

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### Section 12 – cost exceeds the appropriate limit

15. Under section 1(1) of the FOIA anyone who requests information from a public authority is entitled under subsection (a) to be told if the authority holds the information and, under subsection (b) to have the information communicated to him or her if it is held and is not exempt information.
16. Section 12(1) of the FOIA says that a public authority is not obliged to comply with section 1(1) if the authority estimates that the cost of doing so would exceed the appropriate limit.
17. The estimate must be reasonable in the circumstances of the case. The appropriate limit is currently £600 for central government departments and £450 for all other public authorities. Public authorities can make a notional charge of a maximum of £25 per hour to undertake work to comply with a request; 18 hours work in accordance with the appropriate limit of £450 set out above, which is the limit applicable to the University.
18. If an authority estimates that complying with a request may cost more than the cost limit, it can consider the time taken to:
  - a. determine whether it holds the information

- b. locate the information, or a document which may contain the information
  - c. retrieve the information, or a document which may contain the information, and
  - d. extract the information from a document containing it.
19. Where a public authority claims that section 12 of the FOIA is engaged it should, where reasonable, provide advice and assistance to help the applicant refine the request so that it can be dealt with under the appropriate limit, in line with section 16(1) of the FOIA.
20. The University explained that the complainant had requested a copy of all data relating to medical school student placements, including correspondence with a named individual. It considers 'all data...including correspondence' is very wide in scope and that it did try to encourage the complainant to narrow this and offered to try to find some figures to be able to give the complainant the 'number of students requiring placements (by year), number of students currently placed or due to be placed in January 2021, any spare capacity', which it understood was ultimately the main thing the complainant wanted to know, but this was not taken up.
21. It advised that organising medical student placements is a sizeable undertaking requiring a great deal of co-ordination and co-operation. In any ordinary year potentially, there would be a very large amount of information relating to the placement exercise. It argued that due to the challenges presented by the Covid-19 pandemic, last year the volume is likely to have been greater with a lot more organisation and negotiation required, not least because of the pressures on the NHS.
22. The University made enquiries to the named individual in the request and they provided the following statement:

"[T]he amount of correspondence that deals with placements will be enormous. We are dealing with placements for something like 1700 medical students across five years. In addition we have something like 70 physician associates students over two years. Both degrees send students to approximately 11 hospitals and up to 150 general practices. The system is normally complex and is usually administered by four or five people in Student Office and 2-3 people in each trust. There is usually a single contact in each general practice.

However, given the problems we've been having this year, many more senior members of staff had become involved. I myself would not usually need to deal with clinical placements but, because of the

pressures, I have been in touch with several trusts' management (some on many more than one occasion), Health Education England, the group of Education Leads of London Medical Schools, the North East London Local Workforce Action Board and other groups. I know that [name redacted], as leader the Physician Associate programme, has had particular problems and has made many, many attempts to increase the number of clinical placement opportunities. And in each programme, several other senior members of staff have had repeated conversations with potential placement providers, both in primary and secondary care.

In order to have any chance of being comprehensive responding to this request, we would need to ask quite a large number of both academic and professional services members of IHSE to review their emails. Someone will then have to collate all these before sending them off."

23. It took from this that compliance with this element of the request would exceed the 18 hours cost limit. The University said that in this case, a large number of staff would each have to conduct searches of emails and other files for a 5.5 month period and then extract what is relevant. It argued that the number of applicable staff is likely to be at least in the teens, meaning the average time each might spend on the tasks required for this request would only need to be approximately 60 to 90 minutes. Many colleagues would have been corresponding with multiple external partners about numerous students over weeks and months and so it contended that compliance would comfortably exceed the cost limit.
24. At the Commissioner's request, the University carried out a sampling exercise in order to provide additional evidence. The University asked the named individual in the request to run a search of their emails. Over 4000 results were returned. It referred to the statement this named individual provided and how they would not be so involved in clinical placements, but 2020 was not an ordinary year, and they believe that their deputy is likely to have even more emails. The University therefore said that just for this single individual, even at 30 seconds per email, which is a conservative estimate, it would take approximately 33 hours to review this information.
25. The University asked a few other (but not all) members of staff, who were involved in the student placements process in 2020, to run similar searches on their mailboxes. It stated that the number of results returned were 504, 423, 104 and 2097. The University commented that even if not all these messages turned out to be relevant, they would still need to be reviewed and there are clearly thousands of emails with multiple internal and external colleagues.
26. The Commissioner considers the scope of this element of the complainant's request to be limited to the data explained in paragraph 8

above and correspondence with the named individual. The Commissioner does not consider the scope of the request extends to correspondence with any other members of staff that were involved in the process of organising student placements, although she accepts from the statement that the named individual provided, that this would be required in order to provide the complainant with a full picture.

27. Bearing this in mind, the Commissioner is therefore limited to considering the volume of correspondence with the named individual only and whether she considers retrieving this information and extracting what is relevant would alone exceed the cost limit.
28. The University has explained that the named individual was asked to carry out a search of their emails to identify how many potential emails would fall in scope. The result was 4000. It explained why this result would be higher than expected and how this was due to the named individual having to be more involved in the process over the timeframe specified as a result of the impact of the Covid-19 pandemic. The University advised that each email would have to be reviewed to identify whether it falls in scope or not (it stated that there could be other discussions about general hospital operations, education or involvement of personnel in the emails identified) and even if it only took 30 seconds per email, compliance would comfortably exceed the cost limit of 18 hours.
29. Given the broad nature of this element of the request, the volume of emails returned and the very conservative estimate of 30 seconds per email, the Commissioner is satisfied that it would comfortably exceed the 18 hour cost limit for the University to comply with this element of the request. She is therefore satisfied that section 12 of the FOIA applies.

### **Section 16 advice and assistance**

30. Section 12 triggers the duty to provide advice and assistance. The Commissioner notes that discussions took place with the complainant over the timeframe specified in the request and it was suggested to the complainant that it could be narrowed. The University also said in its correspondence of 15 January 2021 that it could potentially provide the complainant with some raw data of student placement numbers within the cost limit. The issue appeared to be the request for copies of correspondence.
31. The Commissioner considers the University tried to provide advice and assistance so far as it felt it was practicable to do so, by suggesting a narrowing in timeframe or the provision of just raw data. She is

therefore satisfied that it has met its obligations under section 16 of the FOIA.

32. The Commissioner considers it is for the complainant to decide whether she wishes to make a new request for correspondence over a much shorter timeframe or for the raw data. The University is reminded that section 16 is also about providing advice and assistance whilst an applicant is making or wishing to make a request. Therefore, if the complainant approaches the University for further advice or assistance on how to phrase a new request, it should proceed to provide that advice or assistance so far as it is reasonable for it to do so.

### **Section 36 – prejudice to the effective conduct of public affairs**

33. Section 36(2) states that information is exempt from disclosure if, in the reasonable opinion of the qualified person, disclosure of the information –

(b) would, or would be likely to, prejudice–

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

(c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs.

34. The University confirmed that the qualified person for the purposes of section 36 of the FOIA is Professor Colin Bailey, the President and Principal of the University. His opinion was initially sought on 22 October 2020 and a response was received on 15 January 2021. The qualified person approved the application of sections 36(2)(b)(i) and (ii) and section 36(2)(c) of the FOIA.
35. The University advised that there were four meetings during the period in questions and minutes were taken. These meetings each had around 40 attendees drawn from the School of Medicine and Dentistry and the Associate Deans of the partner hospitals with which the University works to place students. It advised that some parts of the minutes are not within the scope of the complainant's request, as they address matters concerning the hospital or the pandemic more generally. But for those parts that are, it is the qualified person's opinion that they are exempt under sections 36(2)(b)(i) and (ii) and 36(2)(c) of the FOIA.
36. Before addressing the qualified person's opinion in more detail, the Commissioner disagrees with the University's interpretation of the scope of the request. The request asks for the minutes of the meetings and no

reference is made to what specific information is required from them. The original wording of the request clearly states that the second part of the request is a separate element; the word 'also' is used suggesting in addition to the minutes the complainant requires data on student placements. The clarification the University sought and that which was obtained from the complainant discusses the two parts of the request as separate elements. The Commissioner therefore considers the minutes in their entirety fall within the scope of the request and she is to go on to consider the withheld information on this basis.

37. The Commissioner must first consider whether the qualified person's opinion is a reasonable opinion to hold. It is important to highlight that it is not necessary for the Commissioner to agree with the opinion of the qualified person in a particular case. The opinion also does not have to be the only reasonable opinion that could be held or the 'most' reasonable opinion. The Commissioner only needs to satisfy herself that the opinion is reasonable or, in other words, it is an opinion that a reasonable person could hold.
38. The Commissioner is satisfied that it is a reasonable opinion to hold that disclosure of the withheld information would be likely to otherwise prejudice the effective conduct of public affairs and therefore she is satisfied that section 36(2)(c) of the FOIA is engaged in this case.
39. Considering how close the meetings were to the request itself, the fact that discussions and arrangements were still ongoing, the unique and demanding circumstances at that time due to the Covid-19 pandemic, the Commissioner considers it is a reasonable opinion to hold that disclosure would be likely to prejudice the ongoing working relationships the University has with the trusts and the ability of the University and its stakeholders to deliver, as effectively as possible, its medicine and dentistry programmes in such unique and pressing times.

### **Public interest test**

40. The University stated that it recognised the public interest in increasing the transparency of the University and providing access to information which would demonstrate how the University has liaised with NHS partners and show what challenges it has faced in 2020.
41. However, it felt the public interest in disclosure was limited and only a few individuals would be interested in the withheld information, as opposed to the world at large. The University therefore decided that the public interest rests in maintaining the exemption. It felt disclosure would be likely to be detrimental to the processes required to organise such placements and the complex arrangements that were required to organise effective teaching and learning during a pandemic. It stated



that it was important for it to maintain the trust of its partners to ensure that they can all work together to find solutions. The University considered disclosure would be likely to damage those relationships, which are critical to the delivery of medicine and dentistry programmes and this is not in the interests of the students that are on such programmes or the wider public. The University advised that there were unprecedented concerns over the arrangements for student placements and the delivery of the programmes as a whole due to the unique circumstances at the time of the request.

42. The Commissioner considers the public interest test considerations under section 36 of the FOIA require her to consider the extent, severity and frequency of the prejudice claimed by the public authority.
43. The Commissioner disagrees with the University that there is very limited public interest in disclosure. There are the public interest arguments in favour of openness, transparency and accountability. The public interest arguments in understanding more clearly how such placements are managed and how those arrangements impact on the overall delivery of programmes. The value for money these programmes provide for those students enrolled (placements being a fundamental part of those programmes) and for which they have paid significant fees. Additionally, the public interest in understanding how such placements were being managed in light of the Covid-19 pandemic and how the unique circumstances and challenges the University and trusts faced as a result were being addressed.
44. That being said, the Commissioner has decided in this case that the public interest rests in maintaining the exemption. She considers it is finely balanced (and potentially a different decision may be reached if a further request for the same information were made now) but due to the timing of the request and the very unique circumstances at that time as a result of the pandemic, the public interest rests in maintaining the exemption.
45. She notes that the request itself was made very close to the meetings in question; the most recent taking place only two weeks prior. The discussions were still very much live and ongoing and both the University and the various trusts involved faced unique, unprecedented challenges as a result of the pandemic. The Commissioner considers there was a continuing need for safe space at the time of the request to manage and address these challenges and to work with its stakeholders to secure student placements and the ongoing learning and teaching existing students required. Disclosure at the time of the request would have been premature, would have been likely to hinder and prejudice the ongoing working relationships between the trusts and the University

and been detrimental to the University's ability to deliver its medicine and dentistry programmes in such unique and challenging times.

46. As the Commissioner has found section 36(2)(c) to be engaged and the public interest to lie in non-disclosure, she has not gone on to consider the University's citing of sections 36(2)(b)(i) and (ii).

## **Right of appeal**

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47. 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)

48. 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.
49. 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**

**Samantha Coward**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
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