

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 15 July 2022

Public Authority: The Council of the University of Liverpool
Address: Foundation Building
Brownlow Hill
Liverpool
L69 7ZX

Decision (including any steps ordered)

1. The complainant has requested minutes of several minutes of the University of Liverpool Council meetings. The University refused the request citing section 22 of the FOIA (information intended for future publication).
2. The Commissioner's decision is that that University was entitled to rely on section 22 of the FOIA to refuse the request.

Request and response

3. On 20 April 2021 the complainant made a request to the University of Liverpool for information under the FOIA in the following terms:

"According to the schedule there are two sets of University Council Meeting minutes that have not yet been posted onto your website for the dates of 9 February 2021, and 13 April 2021.

<https://www.liverpool.ac.uk/governance/c...>

Please can I have copies or links to:

- (1) The University Council Meeting minutes for 9 February 2021
- (2) The University Council Meeting minutes for 13 April 2021
- (3) The written agenda for the University Council Meeting for 13 April 2021

Part (1) ought to be easy as the information should already have been prepared to put onto your webpage.

For part (2), I would like to know the precise FOI exemption you rely on when not complying with my request promptly. (I don't believe it has been decided whether or not the policy of delaying publication of these minutes till after the following meeting is consistent with the FOI Act.)

Part (3) is optional only if Part (2) is complied with."

4. The University responded on 19 May 2021. It withheld the information at parts 1 and 2 of the request citing section 22 of the FOIA (information intended for future publication). With regard to part 3 of the request it provided a copy of the agenda for the meeting on 13 April 2021.
5. On 25 May 2021, the complainant wrote to the university and asked it to complete a review of its handling of the request. They referred to subsection 22(c) of the FOIA and a hypothetical scenario involving meeting minutes for an annual meeting. The complainant said that it would be 'nonsense' to refuse disclosure for a whole year based on formality that minutes had not been approved at a subsequent annual meeting, and argued that it is similarly unreasonable to use this "*approved minutes*" argument for a delay of three months in this case.
6. On 22 June 2021, the university completed a review of its handling of the request and wrote to the complainant maintaining its original decision.

Scope of the case

7. The complainant contacted the Commissioner to complain about the way their request for information had been handled.
8. The Commissioner considers the scope of his investigation to be to determine if the University has correctly refused to provide the information under section 22 of the FOIA.

Reasons for decision

9. Section 22(1) states that information is exempt from disclosure if;
 - (a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a).

10. The exemption will be engaged if, and only if, the three conditions listed at (a) – (c) are satisfied. As a qualified exemption, section 22 of FOIA is also subject to the public interest test.
11. The Commissioner's guidance on the exemption explains that for section 22 to apply, the public authority must, at the time of the request, hold the information and intend that it or 'any other person' will publish it in future. This means that the public authority must have a settled expectation that the information will be published at some future date.
12. It is not disputed that the information was held by the University at the time of the request. The University strongly asserts it has an intention to publish Council minutes. The University's website¹ states that Council minutes will be published after they have been approved at the next business meeting.
13. The University acknowledges it did not have a precise date for publication but that it has a clear process in place. It received the request on 20 April and responded on 19 May explaining that minutes of the February Council meeting would be approved at the next normal business meeting on 25 May 2021. The April minutes would also be approved at this same meeting. The February minutes had been unable to be approved at the April meeting as this was an 'Away Day' so was not a normal business meeting (although minutes were produced for this for approval at the May meeting). The February and April minutes were then published on 27 May, two days after the 25 May meeting.
14. The Commissioner's guidance on section 22² does allow for situations where there is no fixed publication date. The guidance makes it clear that the key point is the information must be held at the time of the request with a view to its publication, a specific date does not have to be in place if, for example, publication will take place once other actions

¹ [Council - Governance - University of Liverpool](#)

² [information-intended-for-future-publication-and-research-information-sections-22-and-22a-foi.pdf \(ico.org.uk\)](#)

have been completed – in this case the next normal business meeting taking place.

15. In view of the above, the Commissioner considers that all three conditions (a)-(c) above were satisfied as, the University held the information at the time of the request, it had a settled intention to publish the information at the time of the request. For part (c) to apply it must also have been reasonable to withhold the information prior to publication. In this case the information was withheld prior to publication in line with its current practices.
16. The complainant has stated that he understand the decisions recorded in the minutes of each meeting go into force immediately after they have been agreed and the minutes of the meeting do not get amended or corrected at the subsequent meeting so there is no reason to delay their publication until the next meeting. The complainant used an example of a committee meeting on an annual basis and the minutes of this meeting waiting until the next annual meeting before being published. He considered that it would not be reasonable to wait a whole year for minutes to be published based on a formality that minutes do not get published until after the next meeting.
17. The process of waiting for the next meeting to verify the minutes is not an unusual process and is adopted by many public authorities in many different areas. Minutes of ordinary meetings are often available through a public authority's publication scheme and having a schedule for their publication does not seem to be unreasonable. The example given by the complainant regarding annual meetings is a different scenario and is not relevant to the facts of this case.
18. The Commissioner does recognises that, as the complainant points out, the minutes rarely undergo significant amendment so there is a rationale for saying they do not need to wait to be accepted at the next meeting. That being said, having a schedule for publication is not unreasonable to allow a public authority to manage resources. Whilst the minutes may not change and the process may be simply a matter of routine it allows the University the time to collate and draft the minutes and manage its time and resources effectively. As such the Commissioner considers that section 22(1)(c) is met as it is reasonable in all the circumstances that the information is withheld until the minutes have been agreed at the next meeting.
19. The exemption is a qualified exemption and therefore even though the Commissioner considers the exemption has been correctly applied he must still consider the public interest test as there may be circumstances where although it is reasonable to withhold the

information under section 22, the public interest in disclosure outweighs the public interest in withholding it.

20. The University identified some factors in favour of disclosing the information. It acknowledged that disclosure would help to demonstrate the University's commitment to the principles of accountability and transparency as well as empowering individuals to analyse and question the activities of the University.
21. Against disclosure the University identified a number of factors. Primarily the University consider it appropriate that public authorities have the freedom to determine their own publication timetables; allowing them the ability to best administer their resources. It considered the public interest was best served by maintaining its current practice of publishing minutes after the next meeting had taken place.
22. The University argued there is no pressing public interest in disclosing the information early. The public interest in transparency and compliance with the legislation is achieved by publication of the minutes on the website.
23. The Commissioner does not consider there are compelling arguments for disclosing the information outside the agreed publication schedule. The information is published regularly and it does not appear to create any issues by not being published immediately after the meeting takes place. The Commissioner recognises that public authorities need to manage their resources and having a regular schedule assists with this. The University is still meeting its obligations to be transparent by providing minutes detailing the discussions taking place, and decisions being made in, meetings and he does not consider there is any compelling public interest argument for disclosing the information sooner.

Right of appeal

24. 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: 0203 936 8963

Fax: 0870 739 5836

Email: grc@justice.gov.uk

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

25. 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.
26. 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

Jill Hulley
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Wycliffe House
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