

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 2 March 2022

Public Authority: The Governing Body of the University of Leeds
Address: Woodhouse Lane
Leeds
LS2 9JT

Decision (including any steps ordered)

1. The complainant has requested the interview score that would have guaranteed entry into the course 'Medicine A100' for 2021.
2. The University of Leeds ('the University') withheld this information under section 36(2)(c) (Prejudice to the effective conduct of public affairs) of FOIA
3. The Commissioner's decision is that the exemption is engaged and the public interest lies in maintaining the exemption.
4. The Commissioner does not require the University to take any steps to ensure compliance with the legislation.

Request and response

5. On 23 May 2021, the complainant wrote to the University and requested the following information:

"Medicine A100 2021

Could you please let me know the interview score that would have secured an offer for 2021 entry."

6. The University responded on 22 June 2021 and refused to provide the requested information citing section 36(2)(c). The University confirmed that its Qualified Person is the Vice-Chancellor, Professor Simone Buitendijk.

7. Following an internal review, the University wrote to the complainant on 21 July 2021. It upheld its original position.

Scope of the case

8. The complainant contacted the Commissioner on 23 July 2021 to complain about the way that their request for information had been handled.
9. The complainant was concerned that, without the disclosure of this information, candidates have no way of assessing their performance.
10. The scope of the Commissioner's investigation is to consider whether section 36(2)(c) is engaged and, if so, whether the public interest lies in disclosure or in maintaining the exemption.

Reasons for decision

Prejudice to the effective conduct of public affairs

11. Section 36(2)(c) states:

"Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act –

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

12. Section 36 differs from all other prejudice exemptions in that the judgement about prejudice must be made by the legally authorised Qualified Person ('QP') for that public authority. The QP's opinion must also be a 'reasonable' opinion for the exemption to be engaged.
13. The only instance in which the QP's opinion does not need to be sought, when applying section 36, is when statistical information is being withheld. Statistical information, according to the Commissioner, 'includes statistics (i.e., factual information presented as figures), and any further mathematical or scientific analysis of those figures. It is not simply a view or opinion which happens to be expressed numerically.'
14. Both an applicant's interview score and the threshold for entry to the course are determined by a member of the University, using their expertise and judgement. Therefore, the Commissioner is satisfied that

the withheld information, although expressed numerically, is not statistical information.

15. It is not necessary for the Commissioner to agree with the opinion of the QP for the exemption to be applied appropriately. Furthermore, the opinion does not have to be the only reasonable opinion that could be held or the 'most' reasonable opinion.
16. The Commissioner only needs to satisfy himself that the opinion is reasonable or, in other words, it is an opinion that a reasonable person could hold. To do this the Commissioner considers:
 - Who the QP is and how their opinion was sought?
 - Whether the QP's opinion is a reasonable one.
17. To determine whether the QP's opinion is reasonable, the Commissioner takes the following into account; whether the prejudice identified relates to the specific subsection that has been cited, in this case 36(2)(c), the nature of the information and the timing of the request and the QP's knowledge of, or involvement in, the issue.
18. Section 36 is a qualified exemption, other than for information held by Parliament. This means that even if the Commissioner finds that the exemption has been applied properly, the public authority must still disclose the information unless the public interest in maintaining the exemption outweighs the public interest in disclosure.

Who is the qualified person and how was their opinion sought?

19. The University has confirmed that its QP is Vice-Chancellor Professor Simone Buitendijk and their opinion was sought on 16 June 2021. The Vice-Chancellor was provided with a draft response to the complainant, which justified the University's application of section 36. This draft response included supporting arguments of the section 36 exemption, public interest arguments in maintaining the exemption and details surrounding the effects of disclosure.
20. The Commissioner has had sight of the submission provided to the QP to help inform their opinion. The Commissioner notes that no counter arguments in relation to section 36 were put forward. Furthermore, no public interest arguments in favour of disclosure were provided to the QP for their consideration
21. The Commissioner notes that the Vice-Chancellor was not provided with the score itself but it was described to them clearly what the withheld information was.

22. On 18 June 2021 the office of the Vice-Chancellor approved the draft that had been submitted to Professor Buitendijk. In doing so, the QP confirmed that the requested information should be withheld.

Is the qualified person's opinion reasonable?

23. The Commissioner must be satisfied that the QP has given a reasonable opinion that disclosure would prejudice the effective conduct of public affairs.
24. The Commissioner's guidance¹ states 'Prejudice to the effective conduct of public affairs could refer to an adverse effect on the public authority's ability to offer an effective public service or to meet its wider objectives or purpose.'
25. The QP is concerned that disclosure would prejudice the University's admissions process, specifically for medicine for 2021. The University has elaborated 'It is essential that applicants do not aim for a specific interview score in an attempt to unduly influence the process. To release information which would be likely to encourage this behaviour would jeopardise our ability to objectively judge candidates and make offers accordingly.'
26. The University has explained 'candidates who attempt to 'learn the test' or 'game the system' may well have short term success (i.e., a score sufficient to secure an offer) but lack the inherent values and attributes to study medicine. It is therefore important to ensure that candidates are offering an honest account of themselves at interview; it would be imprudent to release information which could increase the likelihood of candidates being coached to pass the selection process, only to struggle while on the course.'
27. The University has expanded and explained that 'It would also be likely to unduly damage the prospects of prospective applicants to the medicine course; disadvantaging genuinely strong candidates who may lose out on places in favour of candidates whose artificially strong applications belie poor overall suitability.'
28. The University seems to be implying that there are applicants who are naturally stronger at the application and interview process. It may play to their advantage, and the disadvantage of equally qualified applicants, to have a numerical target to aim for in the interview.

¹ [section 36 prejudice to effective conduct of public affairs.pdf \(ico.org.uk\)](#)

29. The University has also explained that 'We do not want (applicants) to try to reach a score which may not be the same score for any future year as it is cohort specific and scoring mechanisms change.'
30. The Commissioner, at the time of conducting his investigation, asked the University to explain how disclosure of the threshold would assist an applicant in actually being successful at the interview. The Commissioner noted that it is only the score that is being requested and not the marking criteria or any other information about the interview process.
31. The University itself has confirmed that 'on its own, without our scoring mechanisms and scoring descriptors, this information is of no use.' The Commissioner agrees; assigning a numerical figure to this pass mark does not, he believes, disclose any detail which gives the applicant any advantage or guarantees they will reach this pass mark.
32. The University has confirmed 'Due to the competitive nature of obtaining a place at medical school there are a number of organisations who work to 'support' candidates through the admissions process. These courses can be costly and some justify this cost by claiming that they have the key information or expertise required to assist someone through the process.'
33. The requested information is exactly the type of information that these courses, (which neither the University or the Medical Schools Council endorse) claim to possess and what makes them so appealing to applicants. Again, the University is concerned disclosure of the threshold, whilst the application cycle for 2021 was ongoing, may encourage applicants to 'learn the game' at their own detriment.
34. The University is relying upon the lower threshold of prejudice, disclosure 'would be likely' to prejudice the effective conduct of public affairs. This is a lower level of probability than 'would', but one which the University still considers significant.
35. To reiterate, the Commissioner does not necessarily need to agree with the QP's opinion in order for the exemption to be engaged. As long as it is a reasonable opinion for the QP to have then the exemption can apply.
36. Whilst the Commissioner may not agree with the QP's opinion, he acknowledges that, to the University, it is vital that all applicants enter the process based on their own strengths. The University wants its applicants to focus on demonstrating the skills and competencies of a good doctor and not be distracted by aiming to hit a numerical target.

37. The Commissioner's guidance states that 'An opinion formed purely on the basis of a 'blanket ruling' may not be reasonable if it does not take account of the circumstances at the time of the request. The qualified person should consider the facts in each case, weigh the relevant factors and ignore irrelevant factors in order to reach their opinion.' In this instance, the Commissioner notes that the request for 2021's interview score was requested in May 2021 when the application period may not have concluded and places will not yet have been offered.
38. The Commissioner is satisfied that the criteria outlined in paragraph 17 has been met and therefore the QP's opinion is a reasonable one. The complainant has expressed concerns that other Universities have disclosed this information. The Commissioner can't verify this claim but notes that if other establishments have chosen to disclose this information, this does not obligate the University to do so.
39. Whilst he does not necessarily agree with the QP's reasoning, the Commissioner considers the QP's opinion to be a reasonable one and therefore the exemption is engaged. The Commissioner has gone onto consider if the public interest lies in disclosure or maintaining the exemption.

Public interest test

Public interest in disclosing the information

40. In its submission to the Commissioner the University has failed to identify any public interest arguments in favour of disclosure.
41. The Commissioner notes that there is always an inherent public interest in promoting transparency and accountability, the principles that underpin FOIA.
42. Furthermore, disclosure would demonstrate a fair and transparent application and interview process, specifically in relation to the University's medical course.

Public interest in maintaining the exemption

43. The University has directed the Commissioner to the public interest arguments it outlined in its refusal notice to the complainant.
44. Firstly, disclosure would be likely to prejudice the application process and affect the quality of the course. Students who have been able to 'learn the game' may struggle in the course and it would not be within their best interest to be accepted into a programme to which they are not suited.

45. Furthermore, this would be likely to prejudice the University's ability to train and develop future medical practitioners. The University has explained that it is not in the public interest to do so.
46. The University is further concerned that devaluing the course, which is recognised as high quality and therefore naturally selective, would be likely to result in fewer applications and therefore decreased income. In turn this would be likely to prejudice the University's ability to provide excellent teaching which is not in the public interest.

Balancing the public interest arguments

47. The complainant has not brought to the Commissioner's attention any specific concerns about, or wrongdoing by, the University or its medical course that might tip the balance in favour of disclosure even though doing so, according to the QP, would be likely to prejudice the University's ability to accept the most appropriate students and undermine the integrity of its medical course.
48. The University has indicated support for applicants is offered in a number of ways. Firstly, the Medical Schools Council² is the representative for UK medical schools. Its website collates all proactively published information on each course and is designed to support applicants, give them all equal footing and allow them to make an informed decision as to where they wish to apply. The University itself³ also proactively publishes this information.
49. The University has also explained that 'The Head of Admissions for Medicine only last week took part in a national free webinar hosted by the Medical Schools Council to teachers and careers advisors providing them with useful information on what the interview process was and how best candidates could prepare.'
50. Furthermore, 'All candidates who are unsuccessful at interview stage are given focussed feedback to enable them to work on future applications. This information is carefully constructed to make sure that candidates do not focus on individual stations or scores as attributes are assessed across different stations and vary between cycles. To focus efforts in this way would in fact be likely to lessen their chances of success and would therefore not be in their interests.'

² [Home | Medical Schools Council \(medschools.ac.uk\)](https://www.medschools.ac.uk/)

³ [Medicine and Surgery MBChB | University of Leeds](https://www.leeds.ac.uk/medicine-and-surgery-mbchb/)

51. Having considered the information that is being withheld, the QP's envisaged consequences for disclosure and the information that is already published to support applicants, the Commissioner has determined that the public interest lies in maintaining the exemption.

Right of appeal

52. 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

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

53. 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.
54. 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

Alice Gradwell
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