

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 November 2023

**Public Authority:** The Council of the University of Nottingham  
**Address:** University Park  
Nottingham  
NG7 2RD

#### Decision (including any steps ordered)

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1. The complainant has requested information on skills bootcamps run by HyperionDev and accredited by the University of Nottingham (the University). The University disclosed or answered the majority of the parts of the request but withheld information relating to the financials of the arrangement and whether the contract had a finite end date under section 43(2) of FOIA.
2. The Commissioner's decision is that the University has correctly engaged the exemption in relation to part (3) of the request and the public interest favours maintaining the exemption and withholding the information. In terms of part (17), the Commissioner finds the University has failed to demonstrate section 43(2) is engaged.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation.
  - Disclose the information requested at part (17)
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

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5. On 3 May 2023, the complainant wrote to the University and requested information relating to any bootcamp or course provided by HyperionDev in partnership with or accredited by the University. The request was in the following terms:

“(1) How much money has the university been paid by HyperionDev to accredit or partner the courses, provided by HyperionDev?

(2). How much money has the university been paid by the UK government to accredit or partner the courses, provided by HyperionDev?

(3). How much money in total has been agreed to be paid to the university by HyperionDev to accredit or partner the courses, provided by HyperionDev? (whether with/without certain conditions being fulfilled - please state)

(4). How much money in total has been agreed to be paid to the university by the UK government to accredit or partner the courses provided by HyperionDev? (whether with/without certain conditions being fulfilled - please state)

(5). How much money has HyperionDev been paid by the university to provide the courses, in partnership or accreditation?

(6). How much money has the UK government been paid by the university to provide the courses, in partnership or accreditation?

(7). How much money has HyperionDev been allocated, by the university to provide the courses, in partnership or accreditation? (whether with/without certain conditions being fulfilled - please state)

(8). How much money has the UK government been allocated, by the university to provide the courses, in partnership or accreditation? (whether with/without certain conditions being fulfilled - please state)

(9). How many students have received a university partnership or accredited certificate from HyperionDev?

(10). How many certificates, accredited or in partnership from the university have been allocated, in total, by the university?

(11). How many complaints has the university received regarding HyperionDev? (even if they were then subsequently signposted to the UK government or HyperionDev)

- (12). Please outline the exact relationship between HyperionDev and the university to provide these bootcamps.
  - (13). Please state whether the course certificates are “partnered” or “accredited” by the university, and exactly what that means.
  - (14). Please describe the full reasons as to why the university entered the partnership with HyperionDev, to partner or accredit these bootcamps? (from the person or team who agreed to it)
  - (15). Please outline what oversight or involvement the university has had in HyperionDev’s curriculum for these bootcamps.
  - (16). Please outline whether any requirements for a student receiving a university (partnered or accredited) certificate changed, stating what the change of requirements was and the date of that change.
  - (17). Please outline whether there is a finite date that the partnership or accreditation agreement ends.”
- 6. The University responded on 31 May 2023 answering all but two parts of the request. Parts 3 and 17 were refused under section 43(2) of FOIA.
  - 7. Following an internal review the University wrote to the complainant on 24 July 2023. It provided additional explanations for some parts of the request and upheld its position in relation to parts 3 and 17.

### **Scope of the case**

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- 8. The complainant contacted the Commissioner on 18 August 2023 to complain about the way their request for information had been handled.
- 9. The Commissioner considers that the scope of his investigation is to determine if the information at parts 3 and 17 of the request has been correctly refused under section 43(2) of FOIA.

### **Reasons for decision**

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- 10. By way of background to this request; Skills Bootcamps are free, flexible courses of up to 16 weeks that give people the opportunity to build up sector-specific skills, with an offer of a job interview on completion. Training is designed and delivered in partnership with employers. There are more than 1000 Skills Bootcamps available across the country.
- 11. HyperionDev is a technology education provider based in southern Africa that provides online coding learning. The Department of Education and

HyperionDev, in partnership, offer enrolments on a government-funded online coding bootcamp. The end result is a non-degree certificate from HyperionDev and some limited certifications issued in partnership with Universities.

12. Section 43(2) of FOIA states that:

"Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)."

13. The exemption can be engaged on the basis that disclosing the information either "would" prejudice commercial interests, or the lower threshold that disclosure only "would be likely" to prejudice those interests.

14. In order for a prejudice based exemption, such as section 43, to be engaged the Commissioner believes that three criteria must be met:

- Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
- Secondly, 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 which is alleged should be real, actual or of substance; and
- Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, ie disclosure 'would be likely' to result in prejudice or disclosure or 'would' result in prejudice.

15. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner's view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.

16. The term 'commercial interests' is not defined in FOIA. However, the Commissioner has considered his guidance on the application of section 43, which clarifies that: "A commercial interest relates to a legal person's ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent."

17. The Commissioner has accepted that universities operate in commercial environments. The information that has been withheld and challenged by the complainant is how much money in total has been agreed to be paid to the University by HyperionDev to accredit or partner the courses provided by HyperionDev and whether this is a finite date the partnership or accreditation agreement ends. This information is commercial information as it relates to a contract involving the exchange of money for services.
18. The University has argued it is both its own and HyperionDev's commercial interests that would be likely to be prejudiced by disclosure of both the monies paid, allocated or budgeted for Skills for Life bootcamps and the contract period. It stated that specific negotiations were undertaken with HyperionDev with regard to the contract and financial aspects of the contract with the University.
19. It further argued that negotiations were specific to each individual university and there may not be one individual pricing strategy and disclosing the information would disadvantage the University and HyperionDev by revealing their pricing strategies to competitors.
20. HyperionDev has stated that information relating to the pricing structure of the contract would be likely to prejudice its commercial interest as the university-bootcamp partnerships are key to its online coding bootcamp market plans. It argues that the coding bootcamp market is highly competitive and most universities will partner with just a single provider. As such any potential insight into business models or contractual arrangements with partners could be utilised by a competitor to gain a strategic advantage.
21. HyperionDev has provided the Commissioner with further detail on the negotiation process with university partners and has explained it is a complex process that takes several months if not years and is unique to each partnership. Pricing structures are based on various factors, such as the contribution of each party to marketing and delivering the bootcamps.
22. In addition to this, HyperionDev argues disclosure would impact on its existing partnerships as partners with a lower contract value may want to renegotiate their contracts or may switch to other bootcamp partners.
23. HyperionDev has also provided the Commissioner with recent expansion and growth plans and specific examples of negotiations that are upcoming.
24. On this basis the Commissioner accepts that there is a causal link between disclosing the information at request (3) and the prejudice that is likely to occur to HyperionDev's commercial interests as there is

evidence of planned negotiations and clear examples as to how it would be likely to be impeded in a competitive market place.

25. However, the Commissioner does not accept the University has demonstrated there would be a likely prejudice to its own commercial interest if the information were to be disclosed. It has simply stated the information could be used to determine a starting point for negotiations and would impact the University's ability to enter negotiations on an equal footing and obtain best value for money. The Commissioner does not consider this demonstrates a causal link between the information and the prejudice as there is no evidence of any future or ongoing negotiations taking place. Should such negotiations take place again in the future it is highly likely situations and the landscape will have changed and future tenders will not be identical.
26. Turning to request (17) – whether there is a finite date the partnership or accreditation ends – HyperionDev has argued knowing the end date of the partnership or accreditation would allow competitors visibility of when a contract is up for renewal. It argues this would allow competitors to approach its partners with a more competitive offer prior to renewal and thus lower HyperionDev's ability to negotiate. Again HyperionDev has provided the Commissioner of a real-time example of an ongoing contract negotiation that involves the term of contract as a negotiation point.
27. The issue for the Commissioner to consider here is not whether disclosing the contract length and/or end date of a contract might be commercially prejudicial to HyperionDev as this is not what (17) asked for – the request asked if there was a finite date the partnership ends and the Commissioner can so no reason why confirming this with a simple yes or no answer would be prejudicial to HyperionDev's commercial interests. As such he finds section 43(2) is not engaged in relation to (17) and the University is now required to disclose the information.
28. With regard to (3), the Commissioner accepts section 43(2) is engaged and as this is a qualified exemption the Commissioner must consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Public interest arguments in favour of disclosure**

29. The complainant has provided extensive public interest arguments to the Commissioner. They have raised concerns about the DfE's skills bootcamps and the particular company used in this case to deliver the online bootcamp.

30. The complainant is concerned the company has no UK regulation or oversight and has provided details of what they describe as questionable behaviour and misleading practices.
31. The complainant is concerned that universities are being paid a fee to partner the HyperionDev certificates and this money ultimately comes from taxpayers as it indirectly is from the DfE.
32. The complainant has provided anecdotal evidence to the Commissioner that MP's have had concerns raised with them by constituents about the skills bootcamps and as such it is in the public interest to know the "scale of the misuse of public funds".
33. Concerns have been raised to the complainant that government funded skills training programmes are not delivering quality and value for money and there is public interest in the contracts awarded by the DfE to ensure they are delivering quality for programme participants and value for money for the taxpayer and also in knowing how much universities are getting paid to put their name to the certificates.
34. The complainant further argues that releasing the information would enable individuals to make better informed decisions and there is a public interest in transparency and openness in government and the administration of public authorities.
35. The complainant does not consider this is solely a DfE issue as the individual arrangements with the universities are crucial in giving the wider picture of where the Department for Education's money has gone.

### **Public interest arguments in favour of maintaining the exemption**

36. The University does not consider disclosing HyperionDev's specific pricing strategy will meet the public interest goals the complainant has highlighted as providing financial information will not expose alleged incompetence and misconduct. The University further argues that releasing the information will not enable individuals to make better decisions as students wishing to take part in the bootcamp do so free of charge.
37. HyperionDev points out that the University are not actually spending any money so it cannot understand how it would be in the public interest to disclose confidential and commercial information. It argues that the certifications issued as a result of the partnerships with universities are an important part of improving the employability of students through the added credibility they provided and disclosing information that may deter the DfE or universities from working with it in the future would only impact learners and the Skills for Lie initiative.

## **Balance of the public interest arguments**

38. Because the Commissioner has accepted that some degree of prejudice is likely to result from disclosure, there will always be some inherent public interest in preventing this from happening. How strong that interest is will depend on the likelihood and severity of the envisaged prejudice.
39. The Commissioner is of the view that there are a number of factors affecting the likelihood of the prejudice to HyperionDev's commercial interests. These include the fact that HyperionDev, by its own admission, has negotiated separately with individuals universities so no two agreements will look exactly the same. The Commissioner considers it is unlikely a 'copy and paste' approach will be taken to each negotiation as there will be other factors that come into play in each negotiation.
40. However, revealing information such as a pricing strategy cannot be said to have no impact on the negotiating process. If a rival organisation knows the pricing strategy of a competitor this can be exploited. universities are receiving money from HyperionDev / DfE and other skills bootcamp providers and both the providers and the universities will want to be in the strongest negotiating position possible to obtain value for money and maximum profitability. Even if there are other factors that may influence the pricing strategy in place with each university and why this differs, revealing this information will put both HyperionDev and the University at a commercial disadvantage even if the likelihood of this is not substantial.
41. Weighed against this the complainant has provided arguments focused on the public interest in full transparency about HyperionDev's bootcamps and its relationship with the DfE and the universities it is partnered with. The arguments are centred around students being misled, the courses not being as advertised and allegations of misconduct. Whilst there is anecdotal evidence of this in online forums such as Reddit and Trust Pilot and the Commissioner accepts this does raise some questions, the key issue is whether disclosing the specific information in this case will further the public interest in this matter.
42. On this point the Commissioner is not convinced that revealing HyperionDev's pricing strategy will further the public interest in uncovering whether HyperionDev are operating as advertised and whether this is a valuable use of taxpayer money. The University is not paying HyperionDev any fee so there is no argument that disclosing the pricing strategy would reveal anything about the use of taxpayer money in this respect.



43. The complainant considers that it is in the public interest to know how much money universities are accepting to accredit these courses given the concerns raised. Whilst there may be some merit to this argument it is not particularly weighty. The University has entered into a commercial arrangement with a course provider, selected and audited by the DfE. Revealing the pricing strategy will reveal how much the University stands to receive for accrediting the courses but it will not reveal anything about the courses, how they are run and whether they are running as advertised. All it will do at this stage is to potentially prejudice the commercial interests of HyperionDev and weaken the marketplace and negotiation platform for any parties entering into negotiation in the future.
44. The Commissioner therefore considers, on balance, there is sufficient public interest in favour of withholding the information and maintaining the information and he accepts the University has correctly withheld the information requested at (3).

## Right of appeal

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45. 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](mailto:grc@justice.gov.uk)

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

46. 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.

47. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
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