

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2024

Public Authority: The Governing Body of the University of Birmingham

Address: Edgbaston
Birmingham
B15 2TT

Decision (including any steps ordered)

1. The complainant has requested copies of an audit of the Guild of Students. The above public authority ("the public authority") relied on sections 31 (law enforcement), 41 (breach of confidence) and 43 (commercial interests) of FOIA to withhold the information.
2. The Commissioner's decision is that only a small part of the information engages section 31 of FOIA – though where it does, the public interest favours maintaining that exemption. Where section 31 is not engaged, neither section 41 nor section 43 is engaged either.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
 - Disclose the five documents it identified to the Commissioner as comprising the withheld information – with the exception of the second paragraph under the subheading "Positive Observations". The public authority may also make appropriate redactions to protect personal information.
4. The public authority must take these steps within 30 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

5. On 12 January 2024 the complainant requested information of the following description:

"As the university is responsible for overseeing the Guild of Students' financial position, can you confirm if the University has reviewed the Guild's Financial Procedures Manual?

"If so, were there any relevant findings or comments made?

"Additionally, would you be able to provide a copy?"
6. On 7 February 2024, the public authority responded. It confirmed that a review had been carried out but refused to provide a copy. It relied on section 43 of FOIA to withhold the requested information.
7. The complainant requested an internal review on 18 February 2024. The public authority sent the outcome of its internal review on 15 March 2024. It upheld its original position but additionally relied on section 31 of FOIA.

Scope of the case

8. During the course of the Commissioner's investigation, the public authority relied additionally on section 41 of FOIA – though indicated that its primary position was that section 31 applied to all the information.
9. The following analysis will consider whether section 31 was engaged. If it is not, the Commissioner will also look at the remaining exemptions.

Reasons for decision

10. Section 31 of FOIA allows a public authority to withhold information whose disclosure would make it easier for people to commit crimes.
11. The public authority argued that every single part of the withheld information engaged the exemption, implying that every part would make it easier for someone to commit a crime. This was because:
 - "The internal audit report details the circumstances in which the Guild completes a competitive tendering process when procuring goods/services. Knowledge of the monetary thresholds which

engage the process would allow a motivated individual to exploit the process for fraudulent purposes.

- The internal audit report contains details of which individuals within the Guild have access to its bank accounts and the restrictions on access to those bank accounts. Again, knowledge of the individuals' identities and the restrictions on access to the Guild's bank accounts would assist the pursuit of fraudulent activities.
 - The internal audit report sets out findings in relation to the procedure by which the Guild's staff claim expenses. Again, knowledge of those findings would assist a motivated individual to exploit the procedure with fraudulent results."
12. The Commissioner accepts that the processes the public authority has described are outlined in the withheld information – though the withheld information also covers information about the process of audit too. However, he is not persuaded that this information, if disclosed, would make it easier for anyone to commit a crime.
 13. Firstly, the information is not particularly granular. Such details as it provides about the Guild's internal financial controls are relatively high level, rather than describing specific things it looks out for when checking for potentially fraudulent transactions. The processes also seem relatively generic rather than bespoke to this organisation.
 14. Secondly, the Commissioner notes that, even if he were to accept that the withheld information did contain specific detail, that detail is useless to anyone not already employed by the Guild. Only those already employed (or who the Guild employs in future) would be capable of exploiting such information because it describes processes that only staff would follow. In the Commissioner's view, those who could potentially be in a position to exploit any of this information are probably aware of it anyway.
 15. Thirdly, the Commissioner notes that the final version of the report was produced in June 2023 – seven months prior to the point at which the University responded to the request. The Guild had already had ample opportunity to address any recommendations for strengthening its processes at the point the request was responded to.
 16. The Commissioner notes that one paragraph in one document does contain slightly more detail about the Guild's banking arrangements. Whilst he still considers this to be relatively generic, , he is prepared to accept that this particular paragraph does have more than a remote chance of making it easier for someone to commit a criminal offence. He

therefore accepts that section 31 is engaged in respect of this paragraph and this paragraph only.

Public interest test

17. In respect of the paragraph mentioned above, the Commissioner considers that the public interest favours maintaining the exemption. Whilst the information the paragraph contains would shed light on the Guild's processes of financial assurance, the Commissioner considers that this interest is limited and outweighed by the public interest in protecting the Guild from being a victim of crime.

Section 43 – commercial interests

18. Section 43 of FOIA allows a public authority to withhold information if disclosure would harm its commercial interests or those of a third party.
19. At the outset of his investigation, the Commissioner pointed out to the public authority that the arguments it had put forward in support of this exemption largely mirrored its section 31 arguments. He noted that avoiding fraud seemed unlikely to be a **commercial** interest.
20. The public authority argued that disclosure would prejudice both its own and the Guild's commercial interests because:

“the disclosure of the withheld information would assist a motivated individual to fraudulently extract money from the Guild. It would therefore, by extension, be likely to prejudice the Guild's commercial interests:

- Money being stolen from the Guild would lead to the Guild suffering reputational harm in that it might acquire a reputation among its students, and would acquire a reputation within the University, for displaying a lack of security with regard to its finances.
- The Guild's ability to maintain and form commercial relationships with other third parties would likely be diminished. Specifically, the Guild runs societies, and hosts events and campaigns organised by third parties. Those activities would be impacted if the parties were aware, or thought, that the Guild was financially unaccountable or unstable.
- The Guild would have less money available to it by consequence of the fraud. The Guild's ability to effectively compete and participate competitively in the marketplace for related commercial relationships and any associated contracts or business would therefore likely be prejudiced.

"The disclosure of the withheld information would be likely to prejudice the University's commercial interests for the following reasons:

- The University is inextricably linked to the Guild. The Guild is the University's only students union, and occupies land on the University's campus on a long term basis
 - If money was stolen from the Guild, it would harm the reputation of the University in that the University would be associated with a financially unaccountable and unstable Guild. This, in turn, would harm the University's ability to attract students to apply for admission to its programmes of study (compared with, say, another university associated with a financially robust students union), and therefore its ability to compete and participate competitively in the higher education marketplace."
21. As all the above arguments assume that disclosure of the withheld information would make it easier for someone to commit a crime and, as the Commissioner has already found that, with the exception of one paragraph, none of the withheld information would assist anyone to commit a crime, it follows that the Commissioner does not accept that disclosure would harm either the public authority or the Guild's commercial interests – even if he were persuaded that the public authority had identified distinct commercial interests in the first place.
22. The Commissioner is therefore satisfied that the remaining withheld information does not engage section 43 of FOIA.

Section 41 – actionable breach of confidence

23. The Commissioner will deal with this exemption – introduced by the University during the investigation – briefly.
24. Section 41 allows a public authority to withhold information, that it has received from a third party, where publication would leave it exposed to an action for a breach of confidence.
25. The Commissioner notes that the documents themselves were generated by the public authority. For two of the documents, this appears to be purely internally-generated information, has therefore not been provided by another person and thus cannot engage the exemption.
26. However, the analysis three of the documents contain draws heavily on information provided by the Guild – to the point where it is difficult to separate the internally-generated information from the information the public authority received from the Guild. The Commissioner therefore

accepts that the public authority received the information within the documents from another party (the Guild) and in circumstances (an audit) that would imply a duty of confidence. The information, outlining as it does details of the Guild's mechanisms for financial assurance, is not trivial and is not in the public domain.

27. However, in order to bring an action against the public authority, the Guild would need to demonstrate that the publication of this information had caused or would be likely to cause it harm. In explaining why detriment would arise, the public authority pointed to the same arguments set out above.
28. For the reasons already described above, the Commissioner is not satisfied that either the public authority or the Guild has demonstrated any realistic prospect of harm that arises from disclosure. Therefore the Commissioner is not persuaded that the Guild would be able to establish the conditions for a breach of confidence action. Consequently, section 41 of FOIA is not engaged.

Section 40(2) – third party personal information

29. The Commissioner notes that there is a small amount of personal information within the reports. The public authority has not addressed this specifically – presumably because it considers this information to be covered by other exemptions.
30. The Commissioner does not consider that publishing this personal information would serve any legitimate interest and therefore section 40(2) of FOIA would apply to it.
31. As the remaining information within the documents is not covered by any exemption, it must be disclosed.

Right of appeal

32. 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

33. 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.
34. 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

Roger Cawthorne
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