

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

### **Decision notice**

**Date:** 30 August 2024

**Public Authority:** The Governing Body of the University of Cambridge

**Address:** The Old Schools  
Trinity Lane  
Cambridge  
CB2 1TN

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

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1. The complainant has requested model solutions to questions in mathematics exams. The above public authority (“the public authority”) relied on sections 43(1) and 43(2) of FOIA (trade secrets and commercial interests) to withhold the requested information.
2. The Commissioner’s decision is that the public authority is not entitled to rely on either sections 43(1) or 43(2) of FOIA to withhold the information.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Disclose the information it has relied upon the exemptions to withhold.
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.

## **Background**

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5. On 8 January 2024 a different individual contacted the public authority via the [whatdotheyknow.com](https://www.whatdotheyknow.com) website and asked for copies of model solutions for the public authority's maths exams from 2006 to 2018.
6. The public authority disclosed the information. However, because of the size of the file, once collated, the public authority was unable to transfer it via email. It asked the individual to provide another email address so that it could send them a google drive link.
7. There is nothing to prevent the public authority from complying with its obligations under FOIA in this manner. However, the practical result was that the information was not published on the [whatdotheyknow.com](https://www.whatdotheyknow.com) site – which is usually the case for requests that are fulfilled.

## **Request and response**

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8. On 6 March 2024, the complainant wrote to the public authority and referencing the above request, asked to receive the same information that the public authority had previously provided.
9. The public authority responded on 4 April 2024. It relied on sections 43(1) and 43(2) of FOIA to withhold the information – a position it upheld following an internal review.

## **Reasons for decision**

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### **Section 43(1) – trade secrets**

10. Section 43(1) of FOIA allows a public authority to withhold information if that information is a trade secret.
11. In order to be a trade secret, information must not generally be known – even amongst those who usually handle such information – and the owner of the information should take reasonable steps to keep the information secret. Finally the information must have some commercial value.
12. Famous examples of trade secrets are the recipes used by Coca Cola and by KFC. Both companies employ hundreds of people, but only a very small handful are entrusted with the recipe.

13. The Commissioner does not accept that the requested information in this case is a trade secret.
14. Just over a month prior to the request being made, the public authority chose to disclose the exact same information, under FOIA, to a different individual. Although the information was not published, the individual may have shared it and, at the point of disclosure the public authority relinquished control over its future re-use – other than via copyright. There is also evidence that various parts of the information had already been disclosed in response to even earlier requests, increasing the likelihood that the information has been spread to many people.
15. Up until a month before the request was made, the public authority was willing to make this information available to anyone who asked for it. It was not taking any steps to keep the information secret.
16. The public authority says that it has changed its procedures since the first request and now wishes to keep such information private. That may be true, but it makes no difference. Information cannot be a trade secret if it is not secret.
17. Section 43(1) of FOIA is therefore not engaged.

### **Section 43(2) – commercial interests**

18. Section 43(2) of FOIA allows a public authority to withhold information if disclosure would harm someone's commercial interests.
19. The public authority explained to the Commissioner that, although it had previously been willing to give out this sort of information, following a meeting of the Faculty of Mathematics, it was decided that this practice should stop.
20. Among the issues the Faculty was concerned about was that previous disclosures could be used by private tutoring companies in a way that could infringe the copyright. The Faculty was also concerned that students would be too tempted to reach for model answers rather than trying to solve the problem themselves.
21. The public authority explained that its exams were famously rigorous and were designed to test both the mathematical knowledge of its students and their ability to apply that knowledge to solve problems. Examiners spend a considerable amount of time devising questions and there are strict rules on re-using previous questions. Taken together, the University estimated that the information represented around ten years' work.

22. In addition, the public authority noted that the work involved in setting questions would often involve the insight of the question-setter into areas of new research. By allowing this work to be made public, the public authority argued, it would allow others to copy or exploit this research.
23. Finally, the public authority argued that large language AI models such as ChatGPT are increasingly being used to harvest solutions – which can then be sold on for profit. It was concerned that disclosing the information would undermine its reputation, thereby harming its ability to compete for students.

### **The Commissioner's view**

24. The Commissioner has set out, in [previous decision notices](#), his view on the harm that disclosure of previous exam questions. Although he notes that what are being sought here are the marking schemes.
25. In respect of undermining an institution's position in the wider higher education market, the Commissioner does not agree. The value of the public authority's "offer" to students is not just based on the quality of its exam questions. It will also include the quality of the teaching, the facilities on offer and the fact that a student can, should they meet the required standards, finish their study with a qualification. With access only to previous exam questions and the mark schemes, a person cannot recreate the same experience and they certainly won't receive a qualification at the end.
26. The Commissioner relies on the same arguments set out in paragraphs 15-24 of decision notice [IC-145419-V8Q0](#).
27. In terms of the IP rights in the information, the Commissioner notes that disclosure does not remove any protection. If the public authority or its staff believe that their intellectual property rights have been infringed, they can still take action to enforce those rights.
28. To the extent that the withheld information may reveal active research, the Commissioner notes that the most recent of the questions was set six years ago, thus allowing ample time for research to have been published. The information has also been placed into the public domain already so such insights as are present have already been revealed.
29. The Commissioner is not satisfied that the public authority has demonstrated why disclosure of this specific information would be likely to harm its commercial interests. Section 43(2) of FOIA is therefore not engaged and so the information must be disclosed.

## Right of appeal

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30. 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)

31. 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.
32. 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**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**