

Decision Notice 098/2022

Exam past papers

Applicant: The Applicant

Public authority: Robert Gordon University

Case Ref: 202101345



Scottish Information
Commissioner

Summary

The University was asked for exam past papers for three specific modules that are delivered by its Aberdeen Business School. The information was withheld on the grounds that its disclosure would, or would be likely to, prejudice substantially the effective conduct of public affairs. The Commissioner investigated and found that University had complied with FOISA in responding to the request. This was because it had correctly applied the exemption relating to the effective conduct of public affairs.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions) and 30(c) (Prejudice to effective conduct of public affairs)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 7 July 2021, the Applicant made a request for information to Robert Gordon University (the University). The information requested was:
“...a copy of the most recent exam papers (you can release) for the following modules: Financial Accounting for Groups & Companies (BS4111), and Financial Reporting Issues & Applications (BS4215), and External Reporting (BS3142)”
2. The University responded on 4 August 2021. It refused to provide the information, arguing that it was exempt from disclosure under section 30(c) (Prejudice to the effective conduct of public affairs) of FOISA.
3. On 12 August 2021, the Applicant wrote to the University, requesting a review of its decision on the basis that he did not accept the exemption applied. He argued that the public interest favoured disclosure.
4. The University notified the Applicant of the outcome of its review on 9 September 2021. It maintained that the information was exempt from disclosure under section 30(c) of FOISA and that the public interest favoured upholding the exemption. The University provided the Applicant with additional arguments supporting its view.
5. On 22 October 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the University’s review because he did not accept that the exemption applied; he argued that the University had failed to recognise the greater public interest in disclosure.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 27 October 2021, the University was notified in writing that the Applicant had made a valid application. The University was asked to send the Commissioner the information

withheld from the Applicant. The University provided the information and the case was allocated to an investigating officer.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The University was invited to comment on this application and to answer specific questions. These related to its reasons for withholding the information under section 30(c) of FOISA.

Commissioner's analysis and findings

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the University. He is satisfied that no matter of relevance has been overlooked.

Withheld information

10. The University is withholding 15 past exam papers for the modules Financial Accounting for Groups & Companies (BS4111), Financial Reporting Issues & Applications (BS4215), and External Reporting (BS3142). The past exam papers date from 2017 to 2021. The University confirmed that it only retains past exam papers for five years.

Section 30(c) of FOISA

11. As noted above, the University is withholding all of the information under section 30(c) of FOISA.
12. Section 30(c) of FOISA provides that information is exempt information if its disclosure would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
13. The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority applying it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure.
14. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the harm in question would require to be of real and demonstrable significance. The authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur: therefore, the authority needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some time in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.

Submissions from the University

15. The University submitted that placing recent past exam papers into the public domain would substantially prejudice the integrity of the study, examination and assessment process, which in turn would substantially prejudice the effective conduct of public affairs.
16. The University explained that a limited amount of past exam papers are made available to students within its Aberdeen Business School (the School) to help them in their exam preparations. However, it argued that this takes place under strict controlled conditions, to safeguard the integrity of the exam process in this subject area.

17. The University also argued that past papers can be used in a number of ways within the teaching, learning and assessment environment. They may be used within seminars or as part of assessment practice activities. In some instances, they may be used as a basis for future assessment design. The University argued that, if these papers were in the public domain, then their use for some of these purposes might be limited or not possible and this would be detrimental to the learning experience of students on the course.
18. The University submitted that those who are seeking to develop essay mills or cheating platforms, actively seek past papers in order to build up a picture of teaching, learning and assessment at specific institutions, for the purpose of encouraging students to engage in academic misconduct.
19. The University noted that it has previously issued “cease and desist” letters to websites that have acquired papers from current or past students.
20. It argued that cheating platforms and essay mills are an acknowledged area of concern across the UK and the Scottish Government has committed to exploring legislation that would ban essay mills from operating in Scotland. It noted that the Education, Children and Young People Committee in the Scottish Parliament has published a letter from the Cabinet Secretary for Education and Skills, in response to its own enquiries about how the Scottish Government plans to tackle essay mills.
21. In the letter, the Cabinet Secretary praises the Quality Assurance Agency’s (QAA) work to tackle essay mills, including the guidance that it developed, its introduction of the Academic Integrity Charter, and the work of its Academic Integrity Advisory Group. The Cabinet Secretary notes that the proposed legislation in Westminster applies only to England, which risks driving contract cheating services out of England and into other jurisdictions. Therefore, the Cabinet Secretary says that the Scottish Government is “*now actively considering options for similar provisions in Scotland, including pursuing our own legislation*”. [Extract from QAA Member Update, 14 December 2021].
22. The University contended that even older exam papers give some insight into teaching and assessment practices which could be taken advantage of. It argued that this is particularly relevant as teaching and assessment methods have changed in response to the COVID-19 pandemic and many of the University’s examination assessments have moved online and will continue to be held this way. The University submitted that this has increased the opportunity for students to cheat as they are not coming onto campus to sit these examinations. The University argued that it actively seeks to preserve academic integrity as a key component of academic standards, but the public dissemination of exam past papers would compromise that integrity.
23. The University submitted that it has a range of mechanisms in place to promote academic integrity amongst the student body and to identify use of cheating/essay mills in the production of student work. Making past papers available would increase the opportunity for cheating and increase the risk of graduates exiting with degrees not based entirely on their own work. The University argued that it has a wider societal responsibility of feeding the job market with graduates who have been adequately assessed with academic integrity. If cheating increased as a result of the disclosure of past exam papers, this would be undermined and would impact reputationally on the University.

24. The University argued that the risk to its reputation would jeopardise accreditation of the course. It explained that the School holds international accreditation by [AACSB](https://www.aacsb.edu/)¹. The accreditation confirms that “accredited institutions have met rigorous standards and are committed to upholding and advancing the quality of their business and accounting programs”. The University submitted that such accreditation is an international kitemark of excellence and is instrumental in attracting students to the University. If this accreditation was lost, the University argued that the course, School and, by extension, the University itself, would lose its attractiveness to students and this would lessen its competition with other Higher Education Institutes (HEI).
25. The University contended that all of the above arguments indicated how disclosure would, or would be likely to, prejudice substantially, the effective conduct of public affairs.

Submissions from the Applicant

26. In his requirement for review, the Applicant challenged the University’s reliance on section 30(c) of FOISA. In particular, he contended that he could not see how past exam papers related to public affairs, and he questioned how disclosure of the information would cause substantial harm to the effective conduct of public affairs.

Commissioner’s conclusions on section 30(c)

27. In the circumstances, the Commissioner is satisfied that the University’s activities in relation to teaching and learning are public affairs for the purposes of section 30(c) of FOISA. The Commissioner is also satisfied that disclosure would have the effects claimed by the University, which can reasonably be concluded to amount to substantial prejudice to the effective conduct of public affairs, and that the exemption contained in section 30(c) of FOISA does apply to the past exam papers.
28. Disclosure under FOISA is full disclosure, to the world at large. It cannot be restricted to a particular group or purpose. That being the case, the Commissioner accepts that there is a likely and realistic chance that third parties (individuals or organisations running “essay mills”) will use the content of the exams to create and then sell “stock answers” to students. He considers that the research of the QAA and the concerns expressed by the UK and Scottish Governments indicate that the existence of “essay mills” threatens the academic integrity of the Higher Education sector in the UK. The Commissioner also acknowledges the University’s own experience of issuing “cease and desist” letters to websites which have obtained past exam papers from its students.
29. The Commissioner is also satisfied that students who had access to an extensive collection of past exam papers or “stock answers” to past exam questions would have an advantage over those students who only had access to a limited number of past exam papers. Students who accessed resources via essay mills would be able to draw on their knowledge of previous exam questions, to help them respond to new questions. The Commissioner considers that if rates of cheating increased as a result of the disclosure of exam past papers, and the subsequent opportunity to buy stock answers from essay mills, it would harm the University’s reputation, threatening the accreditation of its courses by professional bodies.
30. Furthermore, the Commissioner is satisfied that if this occurred, and if students who were taking these modules were able to “cheat” in exams, it would undermine the University’s

¹ <https://www.aacsb.edu/>

ability to carry out its core functions (teaching and learning) and this would, or would be likely to, prejudice substantially the effective conduct of public affairs.

Public interest test

31. As mentioned above, the exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.
32. The public interest is not defined in FOISA, but has been described in previous decisions as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interests of the public", i.e. disclosure must serve the interests of the public.

Applicant's comments on the public interest

33. In his submissions to the Commissioner, the Applicant referred to [research](#)² which found that since 2010 the percentage of first class degrees awarded to students has increased from 15.7% to 29.5%, and that the Higher Education sector has been unable to identify any reasons for this increase.
34. The Applicant argued that there is increasing concern amongst the public, employers and politicians in this unexplained increase in first class degrees. He submitted that every UK Minister for State for Universities, from 2017 onwards, has expressed concern over the increase in the number of first class degrees awarded. The Applicant referred the Commissioner to a letter that the Scottish Minister for Higher Education and Further Education, Youth Employment and Training, sent in September 2021, which acknowledged this increase in upper awards.
35. The Applicant argued that this case had similarities with a previous [appeal](#)³ heard by the Information Tribunal Service, in which the University of Central Lancashire argued many of the points raised by the University but the tribunal found:

“There was a general interest in the opening up of educational processes to a broad public ... a need for accountability where very large public funds were involved. The public should have the means to see how its money was spent ... By what methods and to what standard? There was a powerful interest in opening up the content of courses to other institutions in the interests of improved teaching techniques and learning. There was no evidence that innovation was blunted by exposure. On the contrary, it could well galvanise the whole sector”.

² <https://www.officeforstudents.org.uk/media/55b365fd-2d77-46c0-a8ad-45304047a0be/analysis-of-degree-outcomes-over-time-2020.pdf>

³ [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i357/UCLAN_v_IC_&Colquhoun_\(EA-2009-0034\)_Decision_08-12-09_\(w\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i357/UCLAN_v_IC_&Colquhoun_(EA-2009-0034)_Decision_08-12-09_(w).pdf) (pg. 13)

36. The Applicant noted that the [Scottish Government provides over £1.9bn funding annually](#)⁴ to Higher Education, representing [4.27% of Government funding](#)⁵, in addition to the [£6.5bn loaned to students from the rest of the United Kingdom](#)⁶. He also argued that there are currently no empirical studies on the cognitive difficulty of examinations, something which he is attempting to do with the information he has requested, which may lead to a better understanding as to the unexplained increase in the number of first degrees awarded.

University's comments on the public interest

37. The University recognised there is a general public interest in transparency, accountability and the use of public funds to provide the best standard of education for students. The University also acknowledged the media and political interest in the statistics showing an increase in “good grades” from Higher Education Institutes in Scotland, and therefore there was a public interest in ensuring the credibility of degrees.
38. However, the University balanced this against the growing danger of essay mill type organisations, as described above, and online assessments. The University submitted that there is a serious concern that the disclosure of exam questions could be facilitating this practice, by making the information available publicly. In particular, the University contended that, while many exams are still running online, providing a previous question to non-current students could present a significant danger to the integrity of these assessments. The University argued that if this occurred, it would not be in the public interest.
39. The University noted the Applicant’s comments that he plans to use the requested information to add a new analysis to the debate of increased good grades, and the University acknowledged that it has responsibility to ensure its academic integrity.
40. However, the University contended that the information it would disclose into the public domain to facilitate the Applicant’s analysis would lead to an increased risk of plagiarism and cheating, and this would risk the integrity of its own assessment processes. The University submitted that it provides five-year trend analysis on grade profiles to its external examiners and that this forms part of its quality control processes.
41. The University submitted that it was concerned that the Applicant’s proposed analysis of looking at one assessment instrument in isolation without further context of marking grids, evaluation of module content, entry grade, student support etc. would not provide the whole picture nor would it provide the Applicant with the knowledge to make an informed judgement. The University submitted that it has a rigorous and robust quality assurance framework, a summary of which was provided to the Applicant at the internal review stage. The University indicated that the public interest lies in allowing it to continue to ensure academic integrity and allowing it to protect the robustness of its assessment procedures.
42. The University acknowledged that it has a responsibility to ensure value for money as part of its wider ethical duties under the Nine Principles of Public Life in Scotland, and it submitted

⁴ <https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2021/12/scottish-budget-2022-23/documents/scottish-budget-2022-23/scottish-budget-2022-23/govscot%3Adocument/scottish-budget-2022-23.pdf?forceDownload=true> (pg. 10)

⁵ <https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2021/12/scottish-budget-2022-23/documents/scottish-budget-2022-23/scottish-budget-2022-23/govscot%3Adocument/scottish-budget-2022-23.pdf?forceDownload=true> (pg. 14)

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992344/sl_csp042021.pdf

that these are upheld by employees and reflected in the University's policies and daily activities.

43. The University argued that disclosure of this information would lead to increased costs for the institution. Teaching staff would be required to dedicate resources to creating replacement materials of the information to be released and resources would also be required to rectify the negative impacts to the University. It contended that these costs would not be proportionate to the benefits of releasing the information.
44. The University argued that it has robust processes to ensure the quality and standards of the assessment process and it referred to the [Enhancement Led Institutional Review 2021](#)⁷ which found that:

“The University has an effective approach to using external reference points in setting, maintaining and enhancing academic standards and quality. The University's academic quality framework, as expressed in its Academic Quality Handbook, is aligned to the UK Quality Code. The University has mapped its approach to the new Quality Code to Robert Gordon University 31 ensure that it complies with the Expectations for quality and standards and their respective Core practices. As a result, it is aware of areas for further enhancement; these include the review of the Assessment Policy and revisions to student handbooks.

Courses and their constituent modules are designed using the Scottish Credit and Qualifications Framework (SCQF) and the European Credit Transfer System (ECTS) is also referenced in its academic regulations. QAA Subject Benchmark Statements and the requirements of PSRBs are taken into account in course validation and revalidation procedures and the outcomes of ILSRs reflect the use of external reference points. Graduate Apprenticeships are designed to map to the appropriate Skills Development Scotland framework. The University uses external expertise from academia, business and industry throughout its approval and review processes.”

45. The University also rejected the Applicant's assertion that HE academics have no formal training. It argued that the University actively trains and supports staff and, by 2018-19, 67.9% of academic staff had membership/associate membership of Higher Education Academy. Furthermore, it submitted that the vast majority of the University's teaching staff hold teaching qualifications and this is a condition of their probation of employment. The University referred again to the recent Enhancement Led Institutional Review (ELIR) 2021, carried out by the QAA, which found that:

The University's Advance HE-accredited Professional Teaching Framework comprises a taught programme (PgCert) for less experienced staff and an Experiential Programme for those with more substantial experience. The framework was redeveloped and enhanced in 2017 and has resulted in a 46% increase in the number of staff achieving HEA Fellowship (from 328 in 2016-17 to 479 in 2018-19) and growth in Senior Fellowships from 19 in 2015-16 to 59 in 2018-19. It is a requirement for all new staff to gain Fellowship Status as part of their probation. While, deliberately, no institutional targets have been set, the percentage of staff at RGU with HEA Fellowship status is 20% above the UK sector average. Staff, including non-academic staff, are encouraged to seek Senior Fellowship status and are supported to do this through the Experiential Programme route.

⁷ https://www.qaa.ac.uk/docs/qaa/reports/robert-gordon-university-elir-outcome-21.pdf?sfvrsn=ed34d681_4

46. The University found that, on balance, the whole public interest lay in ensuring its academic integrity by not releasing past exam papers.

Commissioner's conclusions on the public interest

47. The Commissioner accepts there is a general public interest in ensuring that information is accessible, and in understanding how the University assesses whether students have obtained the requisite level of knowledge in each subject area. The disclosure of past exam papers may enable the Applicant, and the general public, to compare exam questions across multiple years and reach a view as to whether the questions in each consecutive exam were of a similar high standard.
48. However, the public interest in the disclosure of the information must be balanced against the public interest in withholding the information and maintaining the exemption. The Commissioner has accepted that disclosure would, or would be likely to, cause substantial prejudice to the effective conduct of public affairs, because the information could lead to third parties using the past exam papers to create "stock answers" that could be sold to students, thus undermining the teaching and learning activities of the University. The Commissioner has also accepted that if rates of "cheating" increased as a result of the disclosure and the University was unable to guarantee its academic integrity, it is likely that the professional bodies providing accreditation to specific courses would withdraw that accreditation, and this would harm the University's reputation and its ability to attract students.
49. Whilst there is inevitably public interest in knowing that the academic standards that underpin exams in a particular subject area are consistent from year to year, the Commissioner is satisfied that there is already extensive and sufficient scrutiny in place, without the need for public disclosure of the exam past papers. It is the Commissioner's view that disclosure of the information would add little to the ongoing scrutiny that University modules and exams are already subject to, and would simply increase the likelihood of "cheating", which would not be in the public interest.
50. The Commissioner considers disclosure would be likely to substantially prejudice the University's ability to deliver its functions as a teaching and learning institution. If the University's exam papers were publicly available, it is inevitable (given the scale of essay mills) that third parties would exploit this information for profit, and if this occurred, it would severely harm the University's ability to ensure that, year on year, students who obtain the same qualifications have reached the same standard.
51. Although there is some public interest in the disclosure of the information, the Commissioner does not consider it strong enough to outweigh the public interest in maintaining the exemption. On balance, therefore, the Commissioner is satisfied that the public interest in withholding the information (and maintaining the exemption) outweighs the public interest in disclosing it.
52. The Commissioner therefore finds that the University was entitled to withhold the information under section 30(c) of FOISA.

Decision

The Commissioner finds that Robert Gordon University complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

Appeal

Should either the Applicant or Robert Gordon University wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Margaret Keyse
Head of Enforcement

6 October 2022

Appendix 1: Relevant statutory provisions

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

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

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