

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

### **Decision notice**

**Date:** 16 November 2015

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

**Address:** The University of Liverpool  
Foundation Building  
Brownlow Hill  
Liverpool  
L69 7ZX

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

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1. The complainant requested from the University of Liverpool ("the University") information concerning a post-mortem report prepared by its Veterinary Pathology Department on a horse. The University withheld the information under sections 41 and 43(2) of FOIA.
2. The Commissioner's decision is that the University has correctly applied section 43(2) to the withheld information and so he does not require it to take any further steps to ensure compliance with the legislation.

#### **Request and response**

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3. On 2 June 2015 the complainant wrote to the University and requested the following information under FOIA regarding a post-mortem report prepared by the University's Veterinary Pathology Department on a horse:

*"1/ Preliminary report sent 26<sup>th</sup> April 2013.*

*2/ Application request forms and any associated correspondence from instructing veterinary surgeons practice. [Name and address of veterinary practice]"*

4. The University responded on 23 July 2015 and refused to provide the requested information citing the exemption in section 41 of FOIA.

5. The University provided the result of its internal review on 30 July 2015. It maintained its original position.

## **Scope of the case**

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6. The complainant contacted the Commissioner on 21 August 2015 to complain about the way his request for information had been handled, specifically that the University had refused to provide the information that he had requested.
7. During the course of the Commissioner's investigation, the University also sought to rely on the exemption in section 43(2) of FOIA to withhold the requested information.
8. The Commissioner considered whether the University correctly applied the exemptions in sections 41 and 43(2) of FOIA to the withheld information.

## **Reasons for decision**

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

9. Section 43(2) provides that information is exempt if its disclosure would, or would be likely to prejudice the commercial interests of any person.
10. The University argued that disclosure of the information withheld under section 43(2) would prejudice its own commercial interests.

### **Engagement of section 43(2)**

11. The Commissioner initially considered whether the relevant criteria for the engagement of section 43(2) were satisfied.

### **The University's arguments**

12. The Commissioner notes that the withheld information is a preliminary post-mortem report on a horse prepared by the University's Veterinary Pathology Department on behalf of an instructing veterinary surgery in connection with an RSPCA investigation. The University also withheld an application request form and associated correspondence from the instructing veterinary surgeons and the RSPCA.
13. The Commissioner understands from the University that the RSPCA investigation related to the alleged mistreatment of the horse in question and that it resulted in legal proceedings against the former

owners of the horse. The horse had been taken from the former owners by the RSPCA and West Yorkshire Police.

14. The University explained that it believed that disclosure of the withheld information would breach client confidentiality with its clients, the veterinary surgery and the RSPCA. In its view, the withheld information was clearly of a sensitive nature as it was connected with legal proceedings. If the information were to be disclosed, it believed that it would jeopardise its reputation for discretion and confidentiality in dealing with sensitive animal cases. This in turn would threaten its role in providing post-mortem services to veterinary hospitals and the RSPCA, who might choose not to use the University for such services in future. This would have significant reputational and financial consequences for it.

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

#### **Prejudice to the commercial interests of the homecare providers**

15. The Commissioner initially considered whether section 43(2) was engaged in relation to potential prejudice to the commercial interests of the University.

#### **(i) Applicable interest within the exemption**

16. The Commissioner considered whether the prejudice claimed by the University is relevant to section 43(2). In light of the University's arguments, the Commissioner is satisfied that the potential prejudice that it has identified relates to its commercial interests.

#### **(ii) The nature of the prejudice**

17. The Commissioner next went on to consider whether the prejudice being claimed was "real, actual or of substance" ie not trivial and whether there was a causal link between disclosure and the prejudice claimed. The Commissioner is satisfied that the prejudice being claimed is not trivial or insignificant and that there is a relevant causal link between the disclosure of the withheld information and the prejudice to the commercial interests of the University.

#### **(iii) The likelihood of prejudice**

18. The University argued that the disclosure of the withheld information would prejudice its own commercial interests.
19. If a public authority claims that prejudice would occur, the Commissioner has taken this to mean that the chain of events is so convincing that prejudice is clearly more likely than not to arise. This

could be the case even if prejudice would occur on only one occasion or affect one person or situation. Alternatively, given the potential for prejudice to arise in certain circumstances, and the frequency with which such circumstances arise (ie the number of people, cases or situations in which the prejudice would occur) the likelihood of prejudice is more probable than not.

20. The University informed the Commissioner that it believed that disclosure of the withheld information would breach its duty of confidence to its clients on a sensitive matter. This would adversely affect its reputation with potential clients and lead to them not using the University's services in future.
21. The Commissioner accepts that the disclosure of the withheld information would be more likely than not to have the effects identified by the University, particularly in relation to sensitive cases such as the one in question. He therefore accepts that section 43(2) is engaged in respect of prejudice to its commercial interests. As section 43(2) is a qualified exemption, he went on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.

### **Public interest test**

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

22. The Commissioner acknowledges that there is a significant public interest in not disclosing information which would prejudice the commercial interests of a public authority. In this case, disclosure may have an adverse effect on the number of clients using the University's post-mortem veterinary services. This in turn would impact on its finances and could result in a reduction in the services it was able to offer.

#### **Public interest arguments in favour of disclosing the information**

23. The Commissioner recognises that there a general public interest in accountability and transparency in relation to the activities of public authorities. He understands that the complainant made his request in order to try to obtain more information about the circumstances surrounding the death of the horse in question. He believes that disclosure of the withheld information might provide him with some further information about the cause of its death.
24. The Commissioner notes however that, when considering the disclosure of information under FOIA, any such disclosures are in effect to the world at large and not merely to an individual requester. He therefore has to consider, when assessing the public interest in the disclosure of information, whether disclosure would serve a wider public interest

rather than whether it would serve the private interests of the requester. In this case, he has to consider how the public would benefit from the disclosure of information connected to a post-mortem on an individual horse as opposed to how this might benefit the complainant.

25. The Commissioner accepts that there may be some very limited public interest in the disclosure of the withheld information to provide some insight into the processes followed by the University's Veterinary Pathology Department in carrying out a post-mortem on a horse.

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

26. The Commissioner has accepted the University's argument that disclosure of the withheld information "would" prejudice its commercial interests. He notes that his guidance on the public interest states that:

*"'Would' is a higher standard to meet than 'would be likely'. So, if the authority can establish that prejudice would happen, the argument for maintaining the exemption carries greater weight than if they had only established that prejudice would be likely to happen. This does not mean that where prejudice would happen, the public interest will always be in favour of the exemption - there may be equally weighty arguments in favour of disclosure - but it does make it more likely that the balance of public interest will be in favour of maintaining the exemption."* (paragraph 54)

27. As a consequence of finding that disclosure "would" prejudice the commercial interests of the University, the Commissioner accepts that it is more likely that the balance of the public interest will favour withholding the information. He notes the limited public interest arguments in favour of disclosure but he believes that these are outweighed by the public interest in protecting the commercial interests of the University. After weighing the public interest arguments, the Commissioner has therefore determined that the public interest factors in favour of withholding the requested information outweigh those in favour of disclosure and that, consequently, the withheld information is exempt from disclosure under section 43(2).
28. Having determined that the requested information is exempt from disclosure under section 43(2), the Commissioner has not considered whether section 41 is applicable to the same information.

## Right of appeal

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29. 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@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

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

30. 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.
31. 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 .....**

**Rachael Cragg**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**