

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 14 November 2022

Public Authority: The Governing Body of the University of Salford

Address: 43 Crescent
Salford
Manchester
M5 4WT

Decision (including any steps ordered)

1. The complainant has requested the University of Salford (the university) to disclose an independent audit report into potential breaches of financial rules and regulations by AquaUoS. The university refused to disclose the requested information citing section 30 of FOIA. During the Commissioner's investigation it withdrew the application of section 30 and applied section 31(1)(g) by virtue of subsection 2(b) and (c).
2. The Commissioner's decision is that the university is entitled to rely on section 31(1)(g) by virtue of subsection 2(b) of FOIA. He therefore does not require any further action to be taken.

Request and response

3. On 6 May 2021, the complainant wrote to the university and requested information in the following terms:

"...I would like to request a copy of the report by the independent auditor [named redacted] commissioned by the university to investigate possible breaches of the University financial rules and regulations by AquaUoS which led to that unit being halted from bidding for consultancy work."

4. The university responded on 3 June 2021. It refused to disclose the requested information citing section 30 of FOIA.
5. The complainant wrote to the university on 14 November 2021. They said they were considering whether to request an internal review. In the meantime, the complainant made a further request for information, as follows:

"...can I please request a copy of the terms of reference sent to the investigator [named redacted]..."
6. The university issued a further response on 9 December 2021. Again it refused to disclose the requested information citing section 30 of FOIA.
7. The complainant requested an internal review on 3 January 2022.
8. The university carried out an internal review and notified the complainant of its findings on 1 February 2022. It upheld its previous application of section 30 of FOIA.

Scope of the case

9. The complainant contacted the Commissioner on 5 March 2022 to complain about the way their request for information had been handled. The complainant does not consider the exemption cited applies and believes the withheld information should be disclosed.
10. The Commissioner has received a copy of the withheld information and obtained further submissions from the university. These submissions say that the university now wishes to rely on section 31(1)(g) by virtue of 31(2)(b) and (c). It has withdrawn its reliance on section 30.
11. The Commissioner considers section 31(1)(g) by virtue of 31(2)(b) is engaged. The following section will explain why.

Reasons for decision

12. Section 31 of FOIA states that information is exempt from disclosure if its disclosure would or would be likely to prejudice the exercise of any of the public authority's functions specified in subsection (2).
13. The Commissioner consider section 31(2)(b) applies, which states the function of ascertaining whether any person is responsible for any conduct which is improper.

14. Being a qualified exemption it is subject to the public interest test.
15. The university has said that there were concerns raised that some expenses claims submitted by a member of staff were inflated or should have been expenses covered by their new company. So a forensic accountant was appointed to investigation with a view to potential litigation.
16. It stated disclosure would be likely to prejudice the university's ability to carry out future investigations to establish whether any person is responsible for any conduct which is improper. The Commissioner accepts the potential prejudice claimed by the university which clearly relates to the interests the exemption contained at section 31(1)(g) by virtue of section 31(2)(b) is designed to protect.
17. The Commissioner is also satisfied that the prejudice being claimed is "real, actual or of substance", and that there is a causal link between disclosure of the withheld information and the prejudice claimed. It is clearly logical to argue that the disclosure of this investigation report into potential inflated expenses claims would be likely to prejudice the ability of the university to carry out such investigations effectively and efficiently in the future. Disclosure would be likely to deter those engaged in the process from being willing to do so in the future and volunteering the information and evidence the university needs to carry out this function.
18. In terms of the public interest test, the Commissioner is satisfied that the public interest rests in maintaining the exemption. It is clear that the complainant's interest in the withheld information is purely private. He accepts there is a public interest in openness and transparency and in allowing the public access to information to enable them to understand how the university conducts such investigations. However, there are no significant or overwhelming wider public interest arguments in favour of disclosure in this case.
19. The Commissioner considers the public interest rests in maintaining the exemption and the ability of the university to carry out such investigations efficiently and effectively in future, with the full co-operation and assistance of parties required to assist that process. It is not in the public interest to hinder the ability of the university to investigate such potential financial irregularity in the future and if necessary bring those involved, for any conduct improper, to account via civil proceedings or referral to the police for criminal investigation.

Other matters

20. The Commissioner also notes that the withheld information contains the personal data of the complainant and a number of third parties. The complainant's own personal data would be exempt under section 40(1) and the third parties' personal data would be exempt under section 40(2), based on the purposes of the investigation and the reasonable expectations of privacy and confidentiality that those third parties would hold.
21. The complainant is reminded the FOIA is applicant blind. The relevant consideration is not whether the applicant can have access to the requested information but whether the requested information can be released into the public domain for anyone to see and without restriction.

Right of appeal

22. 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

23. 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.
24. 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

Samantha Coward
Senior Case Officer
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF