

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

### **Decision notice**

**Date:** 1 November 2022

**Public Authority:** The Board of Trustees  
University of Bristol

**Address:** Beacon House  
Queens Road  
Bristol  
BS8 1QU

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

---

1. The complainant has requested draft copies of the report 'The Colston Statue: What next?'
2. The University of Bristol refused to provide the requested information, citing section 36(2)(b)(ii) (prejudice to the effective conduct of public affairs) of FOIA.
3. The Commissioner's decision is that section 36(2)(b)(ii) is engaged but the public interest favours disclosure.
4. The Commissioner requires the public authority to take the following steps:
  - Disclose the withheld information, with all personal data redacted.
5. The public authority must take these steps within 35 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 FOIA and may be dealt with as a contempt of court.

## Request and response

---

6. On 7 April 2022 the complainant requested:

“Full copies of all draft versions of the 'The Colston Statue: What Next?' report by the We Are Bristol History Commission.”
7. On 12 May 2022 the University responded and confirmed that it was withholding the requested information under section 36(2)(b)(i) and (ii) (prejudice to effective conduct of public affairs) of FOIA.
8. The complainant requested an internal review on 13 May 2022.
9. The University provided the outcome to its internal review on 10 August 2022. It upheld its previous position.
10. The Commissioner understands that there are two versions of the report in question, a full version<sup>1</sup> and a short version<sup>2</sup>.
11. The information that is being withheld in this instance is draft copies, including insertions and comments, of both versions of the report. There are nine draft reports being withheld in total.

## Reasons for decision

---

12. Section 36(2)(b) of FOIA states that:

“Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of this information under this Act would, or would be likely to inhibit-

    - (i) the free and frank provision of advice, or
    - (ii) the free and frank exchange of views for the purposes of deliberation.”
  13. Section 36 is a unique exemption which relies upon the opinion of the public authority's 'qualified person' in order to be engaged. With section
- 

<sup>1</sup> [Microsoft Word - History Commission Full Report Final.docx \(bristol.gov.uk\)](#)

<sup>2</sup> <https://www.bristol.gov.uk/files/documents/1824-history-commission-short-report-final/file>

36, the Commissioner does not necessarily need to agree with the opinion of the qualified person in order for the exemption to be engaged. He needs only satisfy himself that the qualified person's opinion is an opinion that a reasonable person could hold.

14. In the University's refusal notice and internal review, it explained it was relying upon section 36(2)(b)(i) and section 36(2)(b)(ii). However, the submission that it provided to the qualified person only put forward arguments in relation to section 36(2)(b)(ii). Therefore, the Commissioner considers that section 36(2)(b)(i) cannot be engaged.
15. The qualified person, and the University, is concerned that 'if staff feel unable to express themselves freely, sensitive topics might not be fully explored, which might impair the University's ability to make decisions on its approach to such topics.'
16. The University has expanded that the 'We are Bristol History Commission' is a joint venture in which the University collaborates with a number of other authorities, including Bristol City Council. Disclosure of the documents would inhibit the free and frank provision of advice and exchange of views between academics and the council officers, especially for those who may be working on future reports for the History Commission, who could become reluctant to comment on future draft reports on the basis they could become public.' This is what is known as the chilling effect argument.
17. The University has failed to make clear which threshold of prejudice it is relying upon, disclosure 'would' or 'would be likely to' occur as a result of disclosure. In the absence of any evidence that demonstrates that disclosure would be more probable than not, the Commissioner considers the exemption is engaged on the lower threshold of prejudice.
18. The University's main concern relates to 'any differences between the content of the drafts and the final text, and to any comments made within the drafts. This is especially sensitive where the drafts contain factual inaccuracies, contentious comments and discussion of the statistical methods used which could give a misleading impression.'
19. Firstly, the Commissioner notes that FOIA allows individuals access to official recorded information – whether it is accurate or not. If the University is concerned about the reception of the drafts it can publish a supplementary statement alongside disclosure, although the Commissioner notes that most readers will be aware that, by their nature, drafts are a work in progress.
20. The University has also stated that 'Unfortunately, the draft versions of the full report that are held do not feature markups or tracked changes, and only one of the versions features any comments, so it is not easy to identify where changes have been made.'

21. With the above in mind, the Commissioner has compared the oldest report draft to its published version. He can't see any substantive differences between the two versions; the draft covers exactly the same ideas that the published version does just in a briefer, rougher format. In other words, it looks exactly how one would expect a draft copy to look.
22. Furthermore, when considering chilling effect arguments, the Commissioner must take into account factors like: the timing of the request, whether the issue is still live, and the actual content and sensitivity of the information in question.
23. The Commissioner acknowledges that the University has concerns that it 'has seen the impact of unnecessary and malicious scrutiny of the activities of its academic community when they conduct legitimate initiatives involving engagement with third parties. This has resulted in some contributions to specific endeavours being stopped or withdrawn.' However, the Commissioner notes that the University was not forced to withdraw its contribution to the report in question. The Commissioner considers the University has overestimated the likelihood of prejudice that disclosure of this particular withheld information would cause.
24. Whilst the University has expressed concerns about 'contentious' comments within the drafts the Commissioner has not been able to identify any particular example and, more importantly, the University has also not identified them. Furthermore, the matter is no longer live - both reports had been published at the time that the request was made and the draft copies do not differ substantially or add anything new into the public domain. Neither do the draft comments.
25. When it comes to determining whether the public interest lies in maintaining the exemption or in disclosure, the Commissioner must consider the weight attached to the chilling effect arguments which, to reiterate, the Commissioner thinks the University has exaggerated.
26. He also considers there is a public interest in how the University contributed to the report and how the thinking and decision making processes around the Colston statue developed, which disclosure of the draft reports would show.
27. The Commissioner has weighed the public interest arguments and can only give limited weight to the chilling effect arguments and so has decided that the public interest lies in disclosure. The Commissioner notes that the We Are Bristol History Commission,<sup>3</sup> who wrote the

---

<sup>33</sup> [We Are Bristol History Commission](#)

report, was commissioned to work with the people of Bristol to help it better understand its history. In the Commissioner's opinion, there is a public interest in allowing those who contributed their thoughts and opinions to the report in seeing how it developed over time. Ultimately, the drafts will be of significant interest not only to Bristolians but also to others.

## **Right of appeal**

---

28. 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)

29. 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.
30. 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**

**Alice Gradwell**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**