

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 13 March 2023

Public Authority: The Governing Body of Ulster University
Address: Cromore Road
Coloraine
BT55 7EL

Decision

1. The Commissioner's decision is that Ulster University ('the University') correctly applied section 21(1) and 43(2) of FOIA to information the complainant has requested in three parts of their request for information about students. The exemptions concern information that is already accessible and commercial interests, respectively. He also finds that, on the balance of probabilities, the University does not hold the information requested in the final part of the request and complied with section 1(1). The University breached section 10(1) and 17(1) of FOIA, however, which concern the timeliness of the response and refusal.

Request and response

2. The complainant made the following information request to Ulster University on 6 July 2022:
 - "[1] Can Ulster University provide a financial breakdown on what each student enrolment, on each campus, generates for UU?
 - [2] How many full-time equivalents (FTEs) are based at each of UU's campuses?
 - [3] Can you provide documentation for the FTE figures you have shared with DfE and HESA?
 - [4] Can you also provide the number of MasN places you have allocated to each campus?"

3. The University's final position was to withhold the information requested in part 1 under section 43(2) of FOIA, to withhold the information requested in parts 2 and 3 under section 21(1) and to confirm that it does not hold the information requested in part 4.

Reasons for decision

4. This reasoning covers whether the University holds the information requested in the fourth part of the request and its application of section 43(2) and 21(1) of FOIA to three parts of the request. It will also consider and the timeliness of the University's response and refusal.

Section 1 – general right of access to information held by public authorities

5. Under section 1(1) of FOIA anyone who requests information from a public authority is entitled (a) to be told if the authority holds the information and (b) to have the information communicated to them if it is held and is not exempt information.
6. In part 4 of their request the complainant has requested the number of "MaSN" places the University has allocated to each of its campuses. The University advised that it does not hold this information.
7. The University has explained that "MaSN" is short for Maximum Student Number. It says that, unlike the remainder of the UK, universities in NI have a cap on the number of Northern Ireland/EU students they can enrol – this is called a MaSN. If a university exceeds its MaSN, it can face a financial penalty from the government. The University says that the government gives the MaSN to each university – MaSNs are not allocated, either by the government or the University, on a per campus basis.
8. The Commissioner accepts that the University does not hold the information requested in part 4 of the request and complied with section 1(1) of FOIA. It is not clear from the way part 4 is phrased whether the complainant considered that the University allocated the MaSN or whether they considered the University had the MaSN allocated to it. However, either way, they had requested the allocation by campus and the University has confirmed that the MaSN is not allocated by campus – by either the University or government.

Section 21 – information accessible to applicant by other means

9. Under section 21(1) of FOIA, information which is already reasonably accessible to the applicant is exempt information.
10. In part 2 of their request the complainant requested the number of full-time equivalent (FTE) [students] based at each of the University's campuses; in part 3 they requested documentation for the FTE figures it had shared with the Department for the Economy (DfE) and the Higher Education Statistics Agency (HESA).
11. In response to part 2, the University advised that, "student numbers are returned annually to HESA" and so the information was available from HESA directly. In response to part 3, the University advised that, "HESA provide detailed guidance for Universities on the information required for their annual returns" and so, again, the information was available from HESA directly.
12. In their request for an internal review, the complainant said that information that the University and HESA had previously provided did not align. They therefore considered the HESA figures were unreliable which is why they were requesting a breakdown of the figures from the University.
13. In its internal review, the University explained the discrepancy (having, it said, already done so previously) and maintained its reliance on section 21.
14. In order for section 21 of FOIA to be engaged, the University must first hold the requested information itself.
15. The University has confirmed to the Commissioner that it holds the number of FTE students at each of its campuses which is requested in part 2 of the request.
16. Regarding part 3, the University has explained that the DfE is the University's sponsoring government department. DfE requires the University to submit its student related data to HESA, in line with the HESA Collections Guidance, and the University submits data on that basis. Accordingly, this represents the documentation asked for in part 3 of the request.
17. However, the University says that while it gathers information on its FTE students, it does so for the purposes of uploading this to the HESA website and not for reporting "meaning it is therefore not readily available." The Commissioner understands the University to mean that the information is not readily available to the University, because it gathers that information purely to upload to HESA's website. The University must, however, hold the 'building blocks' to generate the requested information in order to provide the associated information to

HESA. As such, the Commissioner is satisfied that the University also holds the information requested in part 3.

18. For section 21 to be engaged, the requested information must also be already reasonably accessible to the complainant.
19. The University has explained to the Commissioner that the complainant requests information on student headcounts on a regular basis. They have, in the past, secured this information directly from the HESA Tailored Datasets Service. In light of this the University says it applied section 21 as the requested information is already in the public domain and accessible through HESA. The University also says that the HESA data is also a particularly reliable source of information of this nature given that it is verified and audited by the University prior to submission.
20. The University noted that in their request for a review the complainant quotes figures they secured from HESA in arguing that these differ from those the University previously provided. Based on this, the complainant has proved they have access to the HESA service and that they have used it effectively in the past.
21. The Commissioner is satisfied that the information requested in parts 2 and 3 of the request is accessible to the complainant via the HESA website, through which they have accessed similar information in the past.
22. The Commissioner has therefore decided that the University correctly applied section 21(1) of FOIA to the information requested in parts 2 and 3 because the requested information is already reasonably accessible to the complainant. Section 21 is not subject to the public interest test.

Section 43 – commercial interests

23. Section 43(2) of FOIA states that information is exempt information if its disclosure would, or would be likely to, prejudice the commercial interests of any person, including the public authority holding it. Section 43 is subject to the public interest test.
24. The University has applied section 43(2) to the information requested in part 1 of the request, which is a financial breakdown of what income each student enrolment, on each campus, generates for the University.
25. In its response to the request the University said that disclosing this information would mean placing detailed financial information into the hands of other universities. This would give them an unfair commercial advantage in their ability to compete with the University. The University

confirmed disclosing the information would therefore prejudice Ulster University's commercial interests.

26. The Commissioner considers three tests when he is considering whether a party's commercial interests may be prejudiced by disclosure. First, he is satisfied that the harm the University envisages relates to commercial interests; its own.
27. Second, the Commissioner accepts that a causal link exists between disclosure and commercial prejudice; those the University explained above and which it discussed further in its submission to the Commissioner. In its submission the University explained that disclosing how much income each student enrolment generates for the University would weaken its position in a competitive environment. This is because it would reveal market sensitive information or information of potential usefulness to its competitors.
28. The University noted that the higher education market is very competitive, with each competing entity always looking for opportunities to gain a competitive edge over the others. In this context, Ulster University competes with other higher education institutions regionally, nationally, and globally to recruit high calibre students.
29. The University confirmed that it felt that providing detailed information on student income would give new or existing competitors key information about its operations and would affect its ability to be competitive in the area of student recruitment. Disclosing the information would provide other institutions with otherwise undisclosed knowledge about its potential future recruitment strategies.
30. Finally, the likelihood of prejudice occurring. In its correspondence to the complainant and its submission to the Commissioner the University indicated that the envisioned prejudice **would** happen. The Commissioner does not consider that the University has presented a compelling case that disclosing the information would be more likely to prejudice its commercial interests than not. However, he will accept that disclosure would be likely to prejudice the University's commercial interests. Since the three tests have been met, the Commissioner's decision is that the University is entitled to apply section 43(2) to the withheld information. He will go on to consider the associated public interest test.
31. The complainant has not presented any specific public interest arguments for the information's disclosure, in their request for an internal review or complaint to the Commissioner. However, they have indicated that they do not consider that the University is as transparent as it could be.

32. In its response to the request the University acknowledged that there is a public interest in transparency and disclosure. It considered this was outweighed by the public interest in the University being able to protect its commercial interests to ensure it is able to compete fairly in a commercial environment.
33. In a very competitive environment, and in the absence of compelling arguments for the information's disclosure, the Commissioner considers that there is greater public interest in the University being able to compete from as strong a financial position as possible. Ultimately this helps to make sure that there is a good choice of well performing higher education providers for prospective students to choose from. On balance therefore, the Commissioner finds that the public interest favours maintaining the exemption.

Procedural matters

34. Under section 10(1) of FOIA a public authority must comply with section 1(1) promptly and within 20 working days following the date of receipt of the request.
35. Under section 17(1) if a public is refusing to disclose information it must provide the applicant with a refusal notice within the same timescale.
36. In this case the complainant submitted their request on 6 July 2022. In respect of part 4, the University did not confirm it does not hold the requested information or issue a refusal notice in respect of the remaining three parts until 1 September 2022. The University therefore breached sections 10(1) and 17(1) of FOIA.

Right of appeal

37. 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@justice.gov.uk
Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

38. 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.
39. 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

Cressida Woodall
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Wycliffe House
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