

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

### **Decision notice**

**Date:** 5 June 2023

**Public Authority:** The Council of the University of Sheffield  
**Address:** Western Bank  
Sheffield  
S10 2TN

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

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1. The complainant has requested clinical targets relating to the University's dental course. The University withheld the requested information, citing section 43(2) of FOIA (commercial interests).
2. The Commissioner's decision is that section 43(2) is not engaged.
3. The Commissioner requires the University to take the following steps to ensure compliance with the legislation:
  - Disclose the withheld information
4. 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 the Act and may be dealt with as a contempt of court.

## Request and response

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5. On 10 February 2023 the complainant requested from the University:
- “For your primary dental degree programme (BDS or equivalent):
- Do you have any clinical targets that student[s] are required to achieve in order to graduate (e.g., do they need to have performed a certain number of specific procedures)?
  - Please could you provide a copy of the clinical targets for the current academic year (2022-23)
  - Have the clinical targets changed over the last 5 years?
  - If the targets have changed, please could you provide a copy of the targets for the previous 4 academic years (2018-19, 2019-20, 2020-21, 2021-22)”
6. On 9 March 2023 the University confirmed that its clinical targets had changed within the last five years but withheld all other information under section 43(2) (commercial interests), a position it upheld at internal review.

## Reasons for decision

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7. Section 43(2) states that information may be withheld if its disclosure would, or would be likely to, prejudice the commercial interests of any legal person (including the public authority holding the information).
8. In order to engage section 43(2), it's not sufficient to argue that because information is commercially sensitive, its disclosure would, or would be likely to, prejudice commercial interests. There must be a causal link between disclosure and the prejudice envisaged.
9. The University is concerned that 'The clinical targets have been created and refined over many years and are a component of our curriculum and assessments that have been accredited by the General Dental Council.'
10. The University is concerned that, were it to disclose the requested information, competitors might try to replicate its dentistry course and, in doing so, make its course more appealing. The University has explained 'Another Dental School could use this information to either short cut the creation of a new curriculum, or to make improvements to a weaker one.' The University believes that this would result in fewer applicants applying to its own course, which would affect the University's income.

11. The Commissioner accepts that, though first and foremost an education provider, the University is also a business which must be allowed to operate in a highly competitive environment. The Commissioner also acknowledges that the University is 'renowned for its School of Dentistry.'
12. The complainant disputes the University's position, claiming 'Targets are obviously not the same as teaching.' The complainant argues that disclosure of the targets wouldn't allow a competitor to improve its own course to the extent that it would detract from the University's. The Commissioner accepts the complainant's point; just because a competitor of the University is privy to the clinical targets of the course, it doesn't follow that it can replicate entirely the University's course, teaching, resourcing, experience and what makes it so renowned.
13. The Commissioner accepts that the amount of clinical experience a course offers will be a big factor in an applicant's decision where to study dentistry. An applicant might be swayed more by a course that offers and requires more practical experience in order to graduate over one that requires less. He accepts that, if a competitor of the University were to become privy to the clinical targets that make up its course, it might attempt to replicate this formula.
14. However, the Commissioner must consider what information is actually being requested and the circumstances at the time that the request was made.
15. The complainant has requested the clinical targets for the current year, 2022-2023, and did so in February 2023. The requested information relates to targets that students must hit in order to graduate – the Commissioner doesn't believe that disclosure of the clinical targets for this academic year would influence a competitor to change their own clinical targets half way through a student's final academic year, considering the student will already be working towards those targets.
16. As the University has confirmed, the clinical targets are subject to change and the complainant has also requested the clinical targets for previous years. Even if this information is disclosed, and it influences a competitor's clinical targets, the Commissioner questions the prejudice that this would, or would be likely, to cause. It would allow a competitor to replicate a clinical target that the University no longer uses itself; rather than tailor its course to try and compete directly with the University's current course offering.
17. Whilst the Commissioner accepts the requested information is unique to the University, he doesn't believe that the University has demonstrated a causal link between disclosure and the prejudice envisaged. Therefore section 43(2) is not engaged and the information must be disclosed.

## Other matters

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18. During this investigation the Commissioner requested a copy of the withheld information which the University declined to provide. The Commissioner explained that the withheld information was required in order for the Commissioner to fulfil his obligations under section 50 of FOIA and wouldn't be disseminated further.
19. Section 131(1)<sup>1</sup> of the Data Protection Act 2018 states that:

“No enactment or rule of law prohibiting or restricting the disclosure of information precludes a person from providing the Commissioner with information necessary for the discharge of the Commissioner’s functions.”
20. The Commissioner had considered issuing an information notice, compelling the University to provide the withheld information. However, he has decided that the University’s arguments were too vague to engage the exemption, no matter what the withheld information actually is.
21. The Commissioner recognises that there are instances where a public authority might be subject to legislation which restricts their ability to share certain information. This does not appear to be the case in relation to the withheld information, no matter how sensitive the University considers it. However, even if it was, as section 131(1) of the DPA 2018 states this does not exempt a public authority from providing information to the Commissioner for the purposes of section 50 of FOIA. In future, he expects the University to be aware of the Commissioner’s obligations under FOIA, including a duty to inspect any withheld information, and to provide any withheld information upon request.

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<sup>1</sup> [Data Protection Act 2018 \(legislation.gov.uk\)](https://legislation.gov.uk)

## Right of appeal

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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](mailto:grc@justice.gov.uk)

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

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