

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 22 October 2012

Public Authority: University of Cambridge
Address: The Old Schools
Trinity Lane
Cambridge
CB2 1TN

Decision (including any steps ordered)

1. The complainant has requested examination materials including papers and marking schemes used in clinical pathology exams. The University of Cambridge (“the University”) refused to provide this information on the basis of section 36(2)(c) after seeking the opinion of its qualified person.
2. The Commissioner’s decision is that the University has correctly applied this exemption and the public interest favours withholding the information.

Request and response

3. On 20 March 2012, the complainant wrote to the University and requested information in the following terms:
“Examination materials (to include at least papers, supplementary documents, and mark schemes used, for main and resit exams) in any university clinical pathology exams during the past six years.”
4. The University responded on 18 April 2012. It stated that the information was held but was exempt from disclosure on the basis of section 36(2)(c) – prejudice to the effective conduct of public affairs.
5. Following an internal review the University wrote to the complainant on 17 May 2012. It upheld its original decision to withhold the information under section 36(2)(c) of the FOIA.

Scope of the case

6. The complainant contacted the Commissioner to complain about the way his request for information had been handled. In particular, the complainant raised concerns about how the opinion of the qualified person had been sought and whether the argument that releasing the examination questions would deplete a finite bank of questions is a valid argument.
7. The Commissioner considers the scope of his investigation to be to establish if the section 36(2)(c) exemption is engaged and, if so, where the balance of the public interest lies.

Reasons for decision

8. Section 36(2)(c) of the FOIA states that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, prejudice the effective conduct of public affairs. This is a qualified exemption so is subject to a public interest test. However, before considering the public interest the Commissioner must first consider whether the exemption is engaged.
9. For section 36(2)(c) to apply the qualified person for the public authority must give their reasonable opinion that the exemption is engaged. The qualified person for the University is the Vice-Chancellor. The University has provided the Commissioner with evidence to demonstrate that the opinion has been sought and provided. The Commissioner has next gone on to consider whether the opinion of the Vice-Chancellor was a reasonable one.
10. The Commissioner has recently issued guidance on section 36 of the FOIA. It states the following:

*"The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is 'In accordance with reason; not irrational or absurd'. If the opinion is in accordance with reason and not irrational or absurd – in short, if it is an opinion that a reasonable person could hold – then it is reasonable."*¹

¹ Information Commissioner's section 36 FOIA guidance, http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freed

11. In order to determine whether section 36(2)(c) is engaged the Commissioner will consider:
 - whether the prejudice claimed relates to the specific subsection of section 36(2) that the University is relying upon;
 - the nature of the information and the timing of the request; and
 - the qualified person's knowledge of or involvement in the issue.
12. The University has explained that sample questions, answers and materials from past clinical pathology examinations including full specimen papers for the essay component are available to all current students on the University's intranet. Besides this, the University has explained that it retains a limited bank of clinical pathology exam questions which are recycled regularly in examination papers. Publication of these questions would allow students to target and narrow their revision to the detriment of the standard of the quality and scope of education in this area.
13. The University considers that the question bank for clinical pathology examinations is particularly difficult and time-consuming to develop as it relies on accurate statistics from within the field and the formulation of clinically relevant questions. The University explained it followed advice from the US National Board of Medical Examiners in this respect which stated, in relation to clinical sciences, that *"the preparation of good exam questions is very time consuming and, over time, the quality of test material can deteriorate if faculty have to develop new test materials each time a course is taught. The best approach may be to make sample good-quality test material available in order to influence student learning, but maintain a bank of 'secure' questions for repeated use."*
14. In further support of its decision to withhold the requested information, the University has highlighted that other larger institutions do not publish their question banks even though they are more extensive than the University's question banks. Additionally, a national initiative is underway to introduce a level of standardisation to the final medical board examinations offered by UK medical schools. This initiative has

[om_of_Information/Detailed_specialist_guides/section_36_prejudice_to_effective_conduct_of_public_affairs.ashx](#), November 2011, page 6.

been mandated by the Department of Health and led by the Medical Schools Council Assessment Alliance² with the aim of creating a bank of core questions to be used by all UK medical schools. The University considers that if it were to disclose its question banks and examination materials it would prejudice this initiative and the integrity of the assessment and examination process.

15. The University has been keen to stress that it considers the arguments it has presented as being specific to the requested information and not arguments it would use in relation to requests for any examination materials it holds. The University considers the examination materials for the clinical pathology examination to be different as the examinations form part of the final medical board examinations which constitute the final stages of assessment and training for medical doctors and that this is important when considering whether disclosure would prejudice the effective conduct of public affairs particularly as high examination standards are likely to lead to better levels of patient safety.
16. The Commissioner's view is that the nature of the withheld information and the specific subject area the information covers is such that the disclosure of the information is likely to impact on the University's ability to ensure a high standard of examination is achieved. In turn the Commissioner recognises that if the University is unable to set an examination to test the ability of candidates fully then this will prejudice the effective conduct of public affairs by impacting on the standards of patient safety.
17. The University has provided sufficient evidence to illustrate that the Vice-Chancellor had prior knowledge of the issues to which the information relates before offering his opinion. The Vice-Chancellor was provided with a memo on 3 April 2012 containing a description of the information, the nature of the information and the arguments in favour of maintaining the exemption and disclosing the information, and explained that the Vice-Chancellor was required to provide his reasonable opinion in relation to the application of section 36(2) of the FOIA. It is clear that having reviewed this information the Vice-Chancellor formed the opinion that the disclosure of the withheld information would prejudice the effective conduct of public affairs.
18. For the reasons outlined above the Commissioner is satisfied that the opinion is a reasonable one. Therefore he considers that section 36(2)(c)

² <http://www.medschools.ac.uk/MSCAA/Pages/default.aspx>

is engaged. He has now gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Public interest arguments in favour of disclosure

19. The Commissioner recognises the general public interest argument that disclosure of information increases accountability within public authorities. He also considers it promotes transparency in the use of public funds to provide the best standard of students and, in this case, doctors. The information in question may enable the public to gain a greater understanding of the testing and standards required to qualify as a doctor.
20. The complainant has argued that, contrary to the University's arguments that disclosure would deplete a finite bank of questions; disclosure would in fact be beneficial to the effective conduct of public affairs by encouraging examiners to set more effective examinations by requiring them to produce more questions and clinical materials each year.
21. The Commissioner is aware that should examination materials be disclosed students will have more of an awareness of what is expected from them in an examination. The purpose of the clinical pathology examination is to establish students have the required standard of knowledge to pass their final medical boards and practice medicine. This should not be tested by simply memorising sets of questions but if clinical examination materials were made publicly available the students would be able to have a greater understanding of what is expected of them. Additionally, if the information was released it would be available to all students and thus would potentially ensure a level playing field.
22. However, the Commissioner has also considered the current levels of transparency of the University in this area. He notes that the University does provide students with sample questions and examination materials via its intranet in order to assist their understanding of the structure of the examinations and the types of questions that may be asked. The Commissioner considers therefore that students are relatively well informed about what is required from them and how the clinical pathology examination is structured. He does not accept that the public interest in transparency and accountability can be fully addressed by the release of the withheld information.

Public interest arguments in favour of maintaining the exemption

23. When making a judgement about the weight of the public authority's arguments, the Commissioner will consider the severity, extent and frequency of prejudice to the effective conduct of public affairs.

24. The University considers the disclosure of the information would prejudice the effectiveness of the examination process in the current year and in subsequent years. The University when setting the clinical pathology examination does so to test the knowledge and understanding of students who will go on to be responsible for patient care. It has explained that the questions based as they are on scenarios and clinical data, are not easy to produce, and any disclosure of examination materials will limit the available number of questions that can be used on future examinations.
25. If the University is unable to set examinations in clinical pathology without using questions or materials which are already publicly available, it argues that it will not be adequately able to test the broad knowledge and understanding of students as they will be able to revise specific areas based on the questions which have been made publicly available. If the University is unable to set examinations which test the full knowledge of students then it considers this could have an effect on the standard of medical students passing their final boards and ultimately in patient care.

Balance of the public interest arguments

26. The Commissioner is mindful that the public interest test relates to the interests of the public as a whole as opposed to interested individuals or groups. The Commissioner has to therefore consider the likely impact of disclosure on the University's ability to assess competence via the clinical pathology examination and the consequent prejudice to the effective conduct of public affairs.
27. By accepting the exemption is engaged, there is an acknowledgement that the disclosure of this information would prejudice the effective conduct of public affairs. In this case, the University is required to ensure that its examinations adequately test students' knowledge and understanding of subjects and the Commissioner accepts that disclosure of the last six years of examination materials would prejudice its ability to do this.
28. The Commissioner does accept that the clinical pathology examination materials (and other examinations that make up part of the final medical board examinations) should be considered differently from other examination materials for a number of reasons. Firstly, because the question banks for this exam are much smaller than for other subject areas and the questions are developed using clinical data so are not as easily generated and secondly, because if the examination was to fail to adequately assess the knowledge of future doctors this may potentially impact on future standards of medical and patient care.

29. The Commissioner affords significant weight to these factors in favour of withholding the information and does not consider that it would be in the public interest for the University to be in a position where it cannot set examinations that do not contain significant numbers of publicly available questions and therefore ensure a high standard of learning and testing.
30. The Commissioner has also taken into account the fact that whilst there is a general public interest in transparency there is not likely to be a general public interest in the release of examination materials and the public interest will lie with a group of individuals, in this case students of the course.
31. Having taken into account the public interest factors outlined above, the Commissioner considers that on balance the public interest in maintaining the exemption outweighs the public interest in disclosing the information. The University is therefore not obliged to disclose the information withheld on the basis of section 36(2)(c).

Right of appeal

32. 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: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

33. 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.
34. 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

**Pamela Clements
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