

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

### **Decision notice**

**Date:** 29 January 2013

**Public Authority:** The Governing Body of Coventry University  
**Address:** Priory Street  
Coventry  
CV1 5FB

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

---

1. The complainant has made a request to Coventry University (the University) for information relating to the setting up of Coventry University College (CUC). The University provided much of the requested information but withheld some information under section 22, section 43(2), section 41 and section 36(2)(b)(ii) of the Freedom of Information Act 2000 (FOIA).
2. The Commissioner's decision is that the University has correctly applied section 22 FOIA in this case to make the redactions to the information requested at part 1 of the request and to withhold in full the information requested at parts 3 and 5 of the request.
3. The Commissioner requires no steps to be taken.

#### **Request and response**

---

4. On 25 January 2012, the complainant wrote to the University and requested information in the following terms:
  - a. Minutes of the meetings of Coventry University governors discussing and approving the setting up of CUC and related documents.
  - b. Names of CUC board members.
  - c. Minutes of CUC meetings.

- d. The committees at Coventry University that were involved in the process of setting up CUC.
  - e. Relevant minutes relating to (4).
  - f. Details of the processes for the assurance of academic standards and quality.
  - g. A set of student complaints and disciplinary procedures and other procedures relating to students at CUC.
5. The University responded on 22 February 2012. In relation to point 1, 3 and 5 of the request, the University refused to disclose this information under section 43(2) and section 36(2)(b)(ii) FOIA. In relation to point 3 (CUC board minutes) it said that this was also exempt under section 41(1) FOIA. In relation to point 2 of the request it said this information was already reasonably accessible and applied section 21 FOIA. It provided the information requested at points 4 and 6 of the request, and said that the information which was requested at point 7 was due for imminent publication. It said it would provide the complainant with the information requested at point 7 of the request once it had been published.
  6. Following an internal review the University wrote to the complainant on 13 April 2012. It provided the complainant with all information which had not yet been provided or in relation to which she had sought clarification. It did however continue to withhold the information requested at points 1, 3 and 5 of the request under section 43(2), section 36(2)(b)(ii) and section 41 in relation to part 3.
  7. During the course of the Commissioner's investigation, the University provided the complainant with some of the information requested at part 1, but made redactions under section 43(2) and section 36(2)(i)(b) FOIA. It continued to withhold the information requested at parts 3 and 5 as it said this was intended for future publication and therefore section 22 FOIA was applicable. It also continued to rely upon the other exemptions previously applied to parts 3 and 5 of the request. On 21 January 2013 the University also said the minutes requested at part 1 of the request were intended for future publication in an unredacted format.

## **Scope of the case**

---

8. The complainant contacted the Commissioner to complain about the way her request for information had been handled on 16 April 2012. The complainant said that she was unhappy with the application of section

22 as the University has not provided her with a date by which the information will be published. She is also unhappy with the redactions made to the information requested at part 1 of the request.

9. The Commissioner will therefore consider whether the University was correct to make redactions to the information provided in relation to part 1 of the request under section 43(2), section 36(2)(b)(ii) and section 22 and whether it was correct to withhold the information requested at part 3 and 5 in full under section 22, 36(2)(b)(ii), 43(2) and in relation to part 3 section 41 also.

## Reasons for decision

---

### Section 22 – Information intended for future publication

10. Section 22 of the FOIA says that information is exempt if, at the time a public authority receives a request for it:
- the public authority holds it with a view to its publication;
  - the public authority or another person intends to publish the information at some future date, whether determined or not; and
  - in all the circumstances it is reasonable to withhold the information prior to publication.
11. In reviewing the University's application of this exemption, the Commissioner has considered each of the above requirements and reached the following conclusions. He has also referred to his own guidance<sup>1</sup>.

#### *Information held at the time of the request*

12. The University has confirmed that it held the information at the time of the request and originally applied other exemptions to withhold this information at that time. The Commissioner therefore finds that the information was held at the time the request was received.

---

<sup>1</sup> Published on the ICO website  
here: [http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/section\\_22\\_information\\_intended\\_for\\_future\\_publication.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/section_22_information_intended_for_future_publication.ashx)

*Intention to publish at the time request received*

13. This exemption only applies when the information is held with a view to publication at the time the request for it is received. In this case the University has explained that it intends to publish the requested information at a future date in line with its publication scheme. The Commissioner considers that the publication scheme was in place at the time the request was received and therefore finds that this was the situation when the request was received.

*With a view to publication*

14. The Commissioner interprets the words in section 22 of 'with a view to' to indicate an intention has been made to publish or at the very least that the information is held in the settled expectation that it will be published.
15. Publication requires the information to be generally available to the public. It is not enough if the intention is to make it available to a restricted audience. If during the course of the preparation of the information for publication some material will be redacted, section 22 will not apply to the redacted information. This is because the public authority will no longer hold the information with a view to publication in the future.
16. In this instance, the University has confirmed that the withheld information will be published and that there is a firm publication date planned. It has not indicated that other exemptions will still apply at this date. It has also said that the redactions made to the information requested at part 1 of the request is also due to be published. It has confirmed that there is an intention to publish these minutes in full.

*At some future date (whether determined or not)*

17. The publication date does not need to be definite for the exemption to apply. As long as a decision has been made that the information requested will be published at some time in the future or there is a settled expectation that this will happen, the exemption can be considered.
18. The University has confirmed that the information relates to the setting up of CUC, in relation to which, the launch of the new delivery model began in September 2012. The University has indicated that it does intend to publish the requested information at a date after the CUC has opened. The Commissioner has, therefore, concluded that the information falls within the scope of the exemption and has gone on to consider whether the exemption is engaged.

*Reasonable in all the circumstances to withhold the information prior to publication*

19. In order to engage section 22 of the FOIA, a public authority must first determine whether or not it is reasonable in all the circumstances to withhold the requested information prior to publication before considering the public interest test.
20. In considering the reasonableness of withholding the information, the Commissioner's guidance states that authorities should first give separate consideration to whether or not such an approach is "...sensible, in line with accepted practices, and fair to all concerned to withhold the information prior to publication."
21. The Commissioner's guidance also advises that, in considering what is reasonable in all the circumstances, authorities may also wish to consider:
  - Is it the right decision to manage the availability of the information by planning and controlling its publication?
  - Is it necessary to avoid any advantage that would be obtained by the requester in obtaining the information prior to general publication?
  - Does the timetable properly require internal or limited consideration of the information prior to its public release?
22. The University said that accelerating the planned publication would mean that the University and College would not be ready in time to deal with resultant queries and demands likely to flow from disclosure and this would distract them from their core operations as well as the launch of the new delivery model (CUC), opening in September 2012. It said that preparations are ongoing and at key stages, and distraction and interference would be likely to have a major detrimental impact on the preparations in readiness for the launch.
23. The Commissioner is aware that the withheld information relates to the setting up of CUC which is due to open in September 2012. The Commissioner accepts that disclosure of the requested information is likely to result in further queries which would then distract the University and the new CUC from its preparations for CUC's launch in September 2012. The Commissioner does therefore consider that it is reasonable in all of the circumstances that the requested information should be withheld until the planned date of publication after the September 2012 opening.

24. As the Commissioner considers that it would be reasonable in all of the circumstances to withhold the information prior to publication, he has gone on to consider the public interest arguments in this case.

### **Public interest factors in favour of disclosure**

25. The University acknowledged that there is a public interest in promoting accountability and transparency in decision making particularly in relation to the expenditure of public money. It also acknowledged that there is a public interest in providing information to allow those affected by decisions to understand them and where relevant to challenge them.

### **Public interest factors in favour of maintaining the exemption**

26. The University has argued that it is not in the public interest to disclose the requested information during this crucial time period leading up to the launch of CUC. The University has argued that disclosure of the requested information is likely to lead to further queries and demands placed upon the University as well as CUC. This would divert time and resources away from the launch of the new delivery model at this crucial period which it does not consider is in the public interest. Particularly as it has planned to disclose the requested information at a later date after the launch of CUC when the University will have more time and resources to spare to deal with the questions and demands that are likely to stem from the disclosure.

### **Balance of the public interest arguments**

27. The Commissioner considers that there is a public interest in openness and accountability in relation to decision making about the spending of public funds. He also considers that there is a public interest in the disclosure of information which is going to enable the public to discuss and sometimes challenge issues from a more informed standpoint.
28. The Commissioner does however consider that as the University does plan to disclose the requested information once CUC has been launched, this will then provide the public with information to enable the decision making processes behind the project to be evaluated. This goes some way to meeting the public interest factors set out above.
29. The Commissioner also considers that there is a very strong public interest in public authorities being able to deliver on ongoing projects without disclosing information which may impede this process at a crucial time. The Commissioner considers that where a public authority has a clear intention to publish information which will inform the public as to why and how decisions were made there is a strong public interest in enabling it to do this at a time when the delivery of a project relating to those decisions is not going to be encumbered. In this case since the

request was made, the University has been working towards the opening of CUC in September 2012. It is in the public interest that it has been able to focus upon this without distractions which may delay this process.

30. Taking all of the above into account, the Commissioner considers that the public interest arguments in favour of disclosure are outweighed by the public interest arguments in favour of maintaining the exemption.
31. The Commissioner considers that section 22 was correctly applied to make the redactions to the information requested at part 1 of the request and to the information requested at parts 3 and 5 of the request which was withheld in full. He has not therefore gone on to consider the application of the other exemptions any further.

## 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](mailto:informationtribunal@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm](http://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**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**