

# Decision Notice 097/2022

---

## Exam past papers

---

**Applicant: The Applicant**

**Public authority: University of Strathclyde**

**Case Ref: 202101344**



Scottish Information  
Commissioner

## Summary

---

The University was asked for exam past papers for two specific modules run by its Accounting and Finance department. The information was withheld on the grounds that its disclosure would both prejudice substantially the effective conduct of public affairs and the University's commercial interests. The Commissioner investigated and found that University had complied with FOISA in responding to the request. This was because it had correctly applied the exemption relating to the effective conduct of public affairs.

## Relevant statutory provisions

---

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1) and (6) (General entitlement); 2(1)(b) (Effect of exemptions) and 30(c) (Prejudice to effective conduct of public affairs)

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

## Background

---

1. On 7 July 2021, the Applicant made a request for information to the University of Strathclyde (the University). The information requested was:  
*...a copy of the most recent exam papers (you can release) for the following modules: Intermediate Financial Reporting (AG218), and Advanced Financial Reporting (AG311)*
2. The University responded on 3 August 2021. It refused to comply with the request, arguing that the information was exempt from disclosure under sections 30(c) (Prejudice to effective conduct of public affairs) and 33(1)(b) (Commercial interests and the economy) of FOISA.
3. On 12 August 2021, the Applicant wrote to the University, requesting a review of its decision on the basis that he did not accept that either of the exemptions applied. He argued that disclosure of the information was in the public interest.
4. The University notified the Applicant of the outcome of its review on 9 September 2021. It maintained that the information was exempt from disclosure under sections 30(c) and 33(1)(b) of FOISA, and provided the Applicant with additional arguments supporting its view.
5. On 22 October 2021, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the University's review because it had refused to provide him with the information he had requested and he believed the public interest favoured disclosure.

## Investigation

---

6. The application was accepted as valid. The Commissioner confirmed that the Applicant made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.
7. On 27 October 2021, the University was notified in writing that the Applicant had made a valid application. The University was asked to send the Commissioner the information withheld from the Applicant. The University provided the information and the case was allocated to an investigating officer.

8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The University was invited to comment on this application and to answer specific questions. These related to its reasons for withholding the information under sections 30(c) and 33(1)(b) of FOISA.

## **Commissioner's analysis and findings**

---

9. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both the Applicant and the University. He is satisfied that no matter of relevance has been overlooked.

### **Withheld information**

10. The University is withholding 12 exam past papers for the modules Intermediate Financial Reporting (AG218) and Advanced Financial Reporting (AG311). The past papers date from May 2017 to May 2021. The University confirmed that the Accounting and Finance department only retains past exam papers for the last five years.

### **Section 30(c) of FOISA**

11. As noted above, the University is withholding all of the information under section 30(c) of FOISA.
12. Section 30(c) of FOISA provides that information is exempt information if its disclosure would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
13. The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority applying it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure.
14. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the harm in question would require to be of real and demonstrable significance. The authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur: therefore, the authority needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some time in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.

### *Submissions from the University*

15. The University submitted that its activities in relation to teaching and learning are considered to be "public affairs", as these are functions set out in the University Charter. It explained that the Charter defines the objects, powers, officers, and statutory bodies of the University, and it defines the University as a teaching, research and examining body which has the powers to award degrees.
16. The University acknowledged that exam papers for the modules specified by the Applicant are made available to students as a teaching resource. However, it explained that its argument was not that harm is caused by students being aware of previous exam questions which might help them prepare for future exams. Rather, it believed harm would be caused

by public disclosure enabling third parties to access exam questions to prepare stock answers, thereby undermining both the use of the papers as a teaching resource and the integrity of future examinations.

17. The University argued that it knows that teaching materials are exploited by third parties to conduct or facilitate contract cheating, and that online “essay mills” (commercial entities that make money by encouraging students to cheat) pose a significant problem to the Higher Education sector. The University referred to research undertaken by the QAA (Quality Assurance Agency for Higher Education), revealing that there are well over 1,000 essay mills in operation. The University also referred the Commissioner to a website which lists hundreds of sites offering essay writing services.
18. The University submitted that the QAA has campaigned against essay mills for some time and, in October 2021, the UK Department of Education [announced](#)<sup>1</sup> that it was bringing forward legislation to criminalise such sites in England. If passed, this legislation, the *Skills and Post-16 Education Bill*, will make it a criminal offence to provide, arrange or advertise these cheating services for financial gain to students taking a qualification at any institution in England providing post-16 education, including universities.
19. The University also referred to [views expressed by the Scottish Government](#)<sup>2</sup> that similar measures (to those planned in England) are needed in Scotland to prevent contract cheating services being driven out of England into neighbouring jurisdictions. The Scottish Government is considering options for similar provisions in Scotland, including pursuing separate legislation.
20. The University explained that acts of academic dishonesty (such as plagiarism, work obtained from essay banks, commissioning work from a third part (contract cheating), or collusion and examination irregularities) are dealt with in line with its [Academic Dishonesty](#)<sup>3</sup> guidance. The University argued that it considers academic dishonesty as a serious matter which can, in some cases, lead to formal proceedings being brought against a student under its [Student Discipline Procedure](#)<sup>4</sup>.
21. The University submitted that it makes significant efforts to uphold academic integrity by investing in software to detect plagiarism and by imposing penalties on students found to have acted dishonestly. However, as the QAA guidance [“Contracting to Cheat in Higher Education- How to Address Essay Mills and Contract Cheating”](#)<sup>5</sup> advises, while detection and penalties are important, they cannot provide the whole solution. The QAA has recommended that organisations should also find ways of reducing opportunities to cheat.
22. The University argued that it takes active steps to detect and restrict the presence of its teaching materials on third party websites. It noted that, in the past, it has taken action to

---

<sup>1</sup> <https://www.gov.uk/government/news/essay-mills-to-be-banned-under-plans-to-reform-post-16-education>

<sup>2</sup> <https://www.parliament.scot/chamber-and-committees/committees/current-and-previous-committees/session-6-education-children-and-young-people-committee/correspondence/2021/essay-mills-response-from-scottish-government>

<sup>3</sup> <https://www.strath.ac.uk/sees/studentpolicies/policies/appealscomplaintsdiscipline/academicdishonestyguidance/>

<sup>4</sup> <https://www.strath.ac.uk/sees/studentpolicies/policies/appealscomplaintsdiscipline/studentdisciplineprocedure/>

<sup>5</sup> <https://www.qaa.ac.uk/docs/qaa/guidance/contracting-to-cheat-in-higher-education-2nd-edition.pdf>

ask third party websites to remove such material, or to ask students to take down documents they have posted. However, the University submitted that it is not always easy to do this.

23. The University noted that it may not always be aware that teaching material is available on a third-party website, especially if it appears in a different language. It explained that the Accounting & Finance department have previously found their teaching material on Chinese language websites.
24. The University also contended that it may not be straightforward to get the material removed. It explained that exam papers made available via the Library are accompanied by a copyright statement, which means that the University may be able to impose penalties on its own students if they post material that is subject to copyright. However, the University commented that it is more difficult to take action against a website with unidentified owners/managers, which may be based in an overseas or unknown jurisdiction.
25. Given this, the University submitted that it is careful to control access to its teaching materials in the first place. The University argued that disclosure of exam papers into the public domain in response to FOI requests would undermine its ability to uphold academic integrity, by increasing the risk of materials being used on a “cheat site” by third parties.
26. The University argued that, a student who has access to stock answers to previous exam questions, prepared by third parties (such as those discussed above), would have an advantage in any assessment process over a student who has access only to the previous exam questions.
27. For the reasons set out above, the University contended that disclosure of the exam past papers requested by the Applicant, would cause harm to the effective conduct of the University’s “public affairs” in relation to teaching, learning and assessment

#### *Submissions from the Applicant*

28. In his requirement for review, the Applicant challenged the University’s reliance on section 30(c) of FOISA. In particular, he contended that he could not see how past exam papers related to public affairs, and he questioned how disclosure of the information would cause substantial harm to the effective conduct of public affairs.

#### *Commissioner’s conclusions on section 30(c)*

29. In the circumstances, the Commissioner is satisfied that the University’s activities in relation to teaching and learning are public affairs for the purposes of section 30(c) of FOISA. The Commissioner is satisfied that disclosure would have the effects claimed by the University, which can reasonably be concluded to amount to substantial prejudice to the effective conduct of public affairs, and that the exemption contained in section 30(c) of FOISA does apply to the past exam papers.
30. Disclosure under FOISA is full disclosure, to the world at large. It cannot be restricted to a particular group or purpose. That being the case, the Commissioner accepts that there is a likely and realistic chance that third parties (individuals or organisations running “essay mills”) will use the content of the exams to create and then sell “stock answers” to students. He considers that the research of the QAA and the concerns expressed by the UK and Scottish Governments indicate that the existence of “essay mills” threatens the academic integrity of the Higher Education sector in the UK. The Commissioner also acknowledges the University’s own experience of finding its teaching materials and exam papers hosted by third party websites.

31. The Commissioner is also satisfied that students who purchased the “stock answers” to past exam papers would have an advantage over those students who only had access to the past exam papers themselves, as they could draw on their knowledge of these answers to respond to new questions. The Commissioner considers that, if students who were taking these modules were able to “cheat” in exams, it would undermine the University’s ability to carry out its core functions (teaching and learning) and this would, or would be likely to, prejudice substantially the effective conduct of public affairs.

#### *Public interest test*

32. As mentioned above, the exemption in section 30(c) is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.
33. The public interest is not defined in FOISA, but has been described in previous decisions as "something which is of serious concern and benefit to the public", not merely something of individual interest. It has also been held that the public interest does not mean "of interest to the public" but "in the interests of the public", i.e. disclosure must serve the interests of the public.

#### *Applicant’s comments on the public interest*

34. In his submissions to the Commissioner, the Applicant referred to [research](#)<sup>6</sup> which found that since 2010 the percentage of first class degrees awarded to students has increased from 15.7% to 29.5%, and that the Higher Education sector had been unable to identify any reasons for this increase.
35. The Applicant argued that there is increasing concern amongst the public, employers and politicians in this unexplained increase in first class degrees. He submitted that every UK Minister for State for Universities, from 2017 onwards, has expressed concern over the increase in the number of first class degrees awarded. The Applicant provided the Commissioner with a letter that the Scottish Minister for Higher Education and Further Education, Youth Employment and Training sent in September 2021, which acknowledged this increase in upper awards.
36. The Applicant argued that this case had similarities with a [previous appeal](#)<sup>7</sup> heard by the Information Tribunal, in which the University of Central Lancashire argued many of the points raised by the University but the tribunal found:

*There was a general interest in the opening up of educational processes to a broad public ... a need for accountability where very large public funds were involved. The public should have the means to see how its money was spent ... By what methods and to what standard? There was a powerful interest in opening up the content of courses to other institutions in the interests of improved teaching techniques and learning. There was no evidence that innovation was blunted by exposure. On the contrary, it could well galvanise the whole sector.*

---

<sup>6</sup> <https://www.officeforstudents.org.uk/media/55b365fd-2d77-46c0-a8ad-45304047a0be/analysis-of-degree-outcomes-over-time-2020.pdf>

<sup>7</sup> [https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i357/UCLAN\\_v\\_IC\\_&Colquhoun\\_\(EA-2009-0034\)\\_Decision\\_08-12-09\\_\(w\).pdf](https://informationrights.decisions.tribunals.gov.uk/DBFiles/Decision/i357/UCLAN_v_IC_&Colquhoun_(EA-2009-0034)_Decision_08-12-09_(w).pdf) (pg. 13)



37. The Applicant noted that [the Scottish Government provides over £1.9bn funding annually](#)<sup>8</sup> to Higher Education, [representing 4.27% of Government funding](#)<sup>9</sup>, in addition to the [£6.5bn loaned to students from the rest of the United Kingdom](#)<sup>10</sup>. He also argued that there are currently no empirical studies on the cognitive difficulty of examinations, something which he is attempting to do with the information he has requested, which may lead to a better understanding as to the unexplained increase in the number of first degrees awarded.

*University's comments on the public interest*

38. The University acknowledged that there is a public interest in ensuring academic standards are maintained, but it submitted that it does not require disclosure of the exam papers into the public domain for this to happen.
39. The University contended that there are already robust arrangements in place to ensure the integrity of academic standards. It noted that its review outcome explained the ways in which academic standards are continuously assessed, not just by the “internal systems”, “HE academics” and “External Examiners” mentioned by the applicant in his application to the Commissioner, but also by independent and external bodies.
40. It submitted that there are a range of measures and mechanisms that are employed throughout the University to ensure that quality and standards relating to assessment and awards are monitored and maintained, including the use of independent external examiners for each degree programme, Faculty and University level Quality Assurance Committees, and a Department/School level Internal-led Review process.
41. It noted that the University’s internal processes are governed by [academic policies](#)<sup>11</sup> such as the Assessment & Feedback Policy, and Policy and Procedure on Programme and Module Approval and the [Quality Assurance Committee](#)<sup>12</sup>.
42. The University explained that exam papers used in formal summative assessments are produced by academic staff teaching on a given module and approved by the module leader, before being sent on to the independent external examiner of the degree programme (a qualified subject specialist from another higher education institution) for final approval. For some programmes, an external body such as a Professional, Statutory, or Regulatory Body (PSRB) may also scrutinise and/or approve assessment questions and formats as part of this process.
43. The University argued that it meets the standards and expectations set out in the UK Quality Code for Higher Education and maintained through the Quality Enhancement Framework. It noted that QAA Scotland, in its most recent review of the University, stated that:

---

<sup>8</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2021/12/scottish-budget-2022-23/documents/scottish-budget-2022-23/scottish-budget-2022-23/govscot%3Adocument/scottish-budget-2022-23.pdf?forceDownload=true> (pg. 10)

<sup>9</sup> <https://www.gov.scot/binaries/content/documents/govscot/publications/corporate-report/2021/12/scottish-budget-2022-23/documents/scottish-budget-2022-23/scottish-budget-2022-23/govscot%3Adocument/scottish-budget-2022-23.pdf?forceDownload=true> (pg. 14)

<sup>10</sup>

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/992344/sl\\_csp042021.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/992344/sl_csp042021.pdf)

<sup>11</sup> <https://www.strath.ac.uk/staff/policies/academic/>

<sup>12</sup>

<https://www.strath.ac.uk/whystrathclyde/universitygovernance/committees/compliancecommittees/qualityassurancecommittee/>

*The University of Strathclyde has effective arrangements for managing academic standards and the student learning experience. This is a positive judgement, which means that the University meets sector expectations in securing the academic standards of its awards and enhancing the quality of the student learning experience it provides currently and into the future. This judgement confirms there can be public confidence in the University's awards and in the quality of the learning experience it provides for its students.*<sup>13</sup> ([Enhancement-Led Institutional Review \(ELIR\), University of Strathclyde: Outcome Report, March 2019](#)).

44. The University submitted that it continues to monitor academic standards in line with Scottish Funding Council expectations, evidenced through the delivery of Annual Reports and the internal processes which underpin the ELIR report. It explained that the University maps all activity, including all aspects of teaching and assessment, to the UK Quality Code as part of its annual discussions with QAA Scotland, which follow on from and help the University prepare for ELIR events.
45. In addition, the University submitted that its Department of Accounting & Finance is accredited by ICAS (Institute of Chartered Accountants of Scotland), ICAEW (Institute of Chartered Accountants of England and Wales), ACCA (Association of Chartered Certified Accountants) and CIMA (Chartered Institute of Management Accountants), all of which review and inspect its materials.
46. The University contended that there is sufficient evidence of robust internal and external processes already in place to ensure the quality of examination papers (as well as accrediting professional bodies checks on modules, programmes and exams) to mean that the disclosure of exam papers is not required in order for the public interest to be served.
47. The University referred to the Applicant's statement in his application to the Commissioner, questioning the ability of "the majority of HE academics" to deal with assessment, while at the same time claiming that it is because he is an "experienced HE academic" that he is best placed to consider this. The University disagreed strongly with this point and argued that it does not lend any weight to the Applicant's case for disclosure in the public interest, for the following reasons:
  - (i) Within the Department of Accounting & Finance, members of staff either currently are, or have acted as, external examiners to other Universities; as examiners, markers, and moderators to professional bodies; and as advisors to an overseas professional body on a UK Government backed scheme to promote good standards in professional education.
  - (ii) Accounting & Finance at the University acts as a standard in high quality assessment and is looked to from many other parties to provide guidance and support on this. The University is monitored by the main accounting professional bodies, who provide critical review of its accredited papers. In addition, there is a strong quality assurance process over that required by the University itself.
  - (iii) The University argued that this strong level of staff experience and knowledge is one of the reasons why the Accounting & Finance Department at the University is ranked number 1 in the UK in the Sunday Times Good University Guide 2021 (and therefore why its exams would be so valuable to other parties).

---

<sup>13</sup> <https://www.qaa.ac.uk/reviewing-higher-education/quality-assurance-reports/University-of-Strathclyde>



- (iv) Furthermore, the University submitted that it offers development to members of staff via the [Strathclyde Teaching Excellence Programme \(STEP\)](#)<sup>14</sup> which is designed to support development in teaching leadership areas. STEP officers a number of courses and events relating to academic assessment.
48. The University also referred to the statement in the Applicant's application to the Commissioner where the Applicant argued that disclosure meant that he would be able to:
- ...add to the debate, and present a new analysis to assist the government and employers in monitoring and apprising the quality of Scottish Higher Education in a way that the initiatives stated in the letter from the Minister has not considered previously.*
49. The University noted that, as far as it was aware, the Scottish Ministers had not commissioned a study, nor had the Applicant approached the University to participate or collaborate in any research project. It submitted that either of these approaches could have potentially resulted in the sharing of information, in a controlled manner, outwith the FOI process. Instead, the Applicant was requesting disclosure of information under FOI and therefore into the public domain, so it was obliged to consider the merits of the request under FOISA.
50. The University submitted that it continues to participate in sector-wide discussions around degree algorithms and standards, working with Scottish and UK sector agencies to better understand and address questions and concerns in this area. The University supports this collaborative approach to addressing any issues in this area. It reiterated its view that it did not consider public disclosure of the documents necessary for the public interest to be served in this respect.
51. The University also noted the Applicant's argument that there was public interest in "*the increase in good degrees*" and the difficulty of exam papers, presumably on the basis that disclosure would help allow an insight into comparative exam practices at different universities. However, it referred to its review outcome, which explained that neither of the specific modules (whose exam papers were requested by the Applicant) lead into the final degree mark, and so disclosing exam papers for these modules would not provide any assistance in relation to this particular concern.
52. The University submitted that exams are only one part of a wide range of assessments undertaken by students on a given programme and, in all cases, these assessments are subject to robust internal and external scrutiny, including mapping to accrediting body expectations and sector standards such as the UK Quality Code and QAA Subject Benchmark Statements.
53. The University reiterated its view that it does acknowledge a public interest in ensuring academic standards are maintained. However, it did not agree that disclosure of the exam papers into the public domain was required to support academic standards. It contended that the public interest in disclosure was outweighed by the public interest in allowing the University to protect the integrity of the academic assessment process in terms of section 30(c) of FOISA.

---

<sup>14</sup> <https://www.strath.ac.uk/professionalservices/hr/learninganddevelopment/step/>

### *Commissioner's conclusions on the public interest*

54. The Commissioner accepts there is a general public interest in ensuring that information is accessible, and in understanding how the University assesses whether students have obtained the requisite level of knowledge in each subject area. The disclosure of past exam papers may enable the Applicant, and the general public, to compare exam questions across multiple years and reach a view as to whether the questions in each consecutive exam were of a similar high standard.
55. However, the public interest in the disclosure of the information must be balanced against the public interest in withholding it and maintaining the exemption. The Commissioner has accepted that disclosure would, or would be likely to, cause substantial prejudice to the effective conduct of public affairs, because the information could lead to third parties using the past exam papers to create "stock answers" that could be sold to students, thus undermining the teaching and learning activities of the University.
56. Whilst there is inevitably public interest in knowing that the academic standards underpinning exams in a particular subject area are consistent from year to year, the Commissioner is satisfied that there is already extensive and sufficient scrutiny in place, without the need for public disclosure of the exam past papers. It is the Commissioner's view that disclosure of the information would add little to the ongoing scrutiny that University modules and exams are already subject to, and would simply increase the likelihood of "cheating", which would not be in the public interest.
57. In all the circumstances, the Commissioner considers disclosure would be likely to substantially prejudice the University's ability to deliver its functions as a teaching and learning institution. If the University's exam papers were publicly available, it is inevitable (given the scale of essay mills) that third parties would exploit this information for profit and, if this occurred, it would severely harm the University's ability to ensure that, year on year, students who obtain the same qualifications have reached the same standard.
58. Although there is some public interest in the disclosure of the information, the Commissioner does not consider it strong enough to outweigh the public interest in maintaining the exemption. On balance, therefore, the Commissioner is satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosing the information.
59. The Commissioner therefore finds that the University was entitled to withhold the information under section 30(c) of FOISA.
60. As the Commissioner has found the information to be exempt from disclosure (and properly withheld) under section 30(c) of FOISA, he will not go on to consider the University's application of section 33(1)(b) of FOISA.

## **Decision**

---

The Commissioner finds that the University of Strathclyde complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by the Applicant.

## **Appeal**

---

Should either the Applicant or the University wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

**Margaret Keyse**  
**Head of Enforcement**

**6 October 2022**

## Appendix 1: Relevant statutory provisions

---

### Freedom of Information (Scotland) Act 2002

#### 1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

#### 2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

#### 30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

**Scottish Information Commissioner**

Kinburn Castle  
Doubledykes Road  
St Andrews, Fife  
KY16 9DS

t 01334 464610

f 01334 464611

[enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)

**[www.itspublicknowledge.info](http://www.itspublicknowledge.info)**