

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 21 August 2014

Public Authority: Brunel University London

Address: Brunel University
Kingston Lane
Uxbridge
Middlesex
UB8 3PH

Decision (including any steps ordered)

1. The complainant requested from Brunel University ("the University") a copy of its drafts and its final version of its Research Excellence Framework ("REF") submission for 2014 for the Mathematics and Economics department. The University refused to provide the information under section 22 (information intended for future publication) of FOIA.
2. The Commissioner's decision is that the University has correctly applied section 22 to the requested information and he therefore does not require the University to take any further steps to ensure compliance with the legislation.

Request and response

3. On 20 January 2014 the complainant requested the following information under FOIA:
 - "1. REF 2014 submission for Maths and Economics department – all drafts and the final version; and*
 - 2. REF 2008 submission for Maths and Economics department – all drafts and the final version."*
4. The University responded on 17 February 2014. It withheld the information sought in part 1 of the request (REF 2014 submission) under section 22 of FOIA. In relation to part 2 of the request (REF 2008 submission), it provided copies of the drafts and applied section 21 to the final version of the submission on the basis that this information was publicly available.
5. The University provided the outcome of its internal review in relation to the application of section 22 to the REF 2014 submission on 27 February 2014. It maintained its original position.

Scope of the case

6. The complainant contacted the Commissioner on 5 March 2014 to complain about the way his request for information had been handled. Specifically, he complained about the University's reliance on section 22 as a basis for refusing to provide the information that he requested in relation to the REF 2014 submission.
7. During the course of the Commissioner's investigation, the University informed him that it was relying on section 40(2) to withhold a small amount of personal data contained in the withheld information. The complainant subsequently confirmed that he did not wish to challenge the University's application of section 40(2) and so the Commissioner did not consider its application as part of his decision.
8. The Commissioner considered whether the University was entitled to rely on section 22 as a basis for withholding the information requested in relation to the REF 2014 submission.

Reasons for decision

Background

9. The Commissioner notes that the REF is the new system for assessing the quality of research in UK higher education institutions, replacing the Research Assessment Exercise. It has been undertaken by the four UK higher education funding bodies. The exercise is managed by the REF team based at the Higher Education Funding Council for England ("HEFCE") and overseen by the REF Steering Group, consisting of representatives of the four funding bodies.
10. The Commissioner understands from the REF website that the primary purpose of the REF is to produce assessment outcomes for each submission made by institutions and that:
 - The funding bodies intend to use the assessment outcomes to inform the selective allocation of their research funding to higher education institutions with effect from 2015-16.
 - The assessment provides accountability for public investment in research and produces evidence of the benefits of this investment.
 - The assessment outcomes provide benchmarking information and establish reputational yardsticks.
11. The Commissioner further understands that higher education institutions made submissions in 36 units of assessment at the end of 2013. Submissions are assessed by an expert sub-panel for each unit of assessment, working under the guidance of four main panels. Sub-panels apply a set of generic assessment criteria and level definitions to produce an overall quality profile for each submission. The panels are currently in the process of assessing the submissions.

Section 22 – Information intended for future publication

12. The University argued that the requested information was exempt from disclosure under section 22 of FOIA.
13. Section 22 provides that:

"Information is exempt information if-

(a) the information is held by the public authority with a view to its publication, by the authority or any other person, at some future date (whether determined or not),

(b) the information was already held with a view to such publication at the time when the request for information was made, and

(c) it is reasonable in all the circumstances that the information should be withheld from disclosure until the date referred to in paragraph (a)."

14. The Commissioner considered each of the requirements of section 22 in turn to determine if the section was engaged.

(a) Was the information held with a view to its publication at some future date?

15. Section 22 applies only when the requested information is held by a public authority with a view to publication, by that public authority or another body, at the time the request was received.
16. The information the complainant requested is submissions made by the University as part of the REF 2014 exercise. The University provided the Commissioner with copies of the final submission, as well the draft submissions. He notes that the information contained in the final submissions is largely the same as that contained in the draft copies.
17. The University informed the Commissioner that it consulted HEFCE about the request and provided him with a copy of HEFCE's response. In its letter, HEFCE confirmed that it intended to publish the individual REF submissions on its website in early 2015, after the REF results had been published.
18. The Commissioner also notes that the REF website states that it is intended that the REF outcomes will be published on 18 December 2014 and the higher education institutions' submissions published in Spring 2015.
19. The Commissioner is satisfied that the submissions were held by the University with the intention that they will be publish at some future date by HEFCE.

(b) Was the information already held with a view to publication at the time that the request was made?

20. The University informed the Commissioner that the timetable for the REF is available on the REF's website and that this is the timetable that existed at the time of the request. The timetable on the REF

website confirms that publication of the submissions is intended to take place in Spring 2014. The Commissioner is therefore satisfied that the submissions were already held with a view to publication at the time of the request.

(c) Was it reasonable that the information be withheld from disclosure?

21. The University explained that in 2010 HEFCE published the timetable for all stages of the REF 2014, including the publication date for the final submissions. It did not feel that it would be appropriate for it to pre-empt that publication schedule by disclosing its submissions at an earlier point in time. It pointed out that the REF process is crucial to any University seeking to obtain research funding and it believed that it was reasonable for the complainant to wait for the completion of the assessment process and the publication of all submissions.
22. The Commissioner notes that the letter that the University received from HEFCE, following the consultation about this request, sets out the background to the REF process and HEFCE's concerns about the harm that might be caused by the early release of the requested submissions.
23. In its letter, HEFCE explained that it had already published extensive information about the REF which could be accessed on the REF website. It confirmed that in early 2015, after the REF results had been published, it would publish the submissions on its website. At that time, it would also publish panel overview reports which would detail how the assessment was carried out by the panels, provide an overview of the panels' observations about the state of research in the areas falling within their remit, general reflections on the submissions and their assessment and minutes of the sub-panel and main panel meetings for the assessment phase of the REF.
24. HEFCE went on to explain that it took its commitment to be as open and transparent as possible extremely seriously. It stated that, between 2007 and 2009, it ran two open consultations exercises on the assessment arrangements, and since then it had published detailed information at each stage of the implementation of the REF (having carefully evaluated the earliest point at which it could place information in the public domain without jeopardising the REF process itself).
25. HEFCE's letter stated that at this stage in the REF exercise its overriding concern was to enable the assessment panels and the small

HEFCE REF team to undertake their work without any distractions, speculation, lobbying or interruption. This is why it was carefully managing the availability of the information by planning and controlling its publication, including ensuring that a competitive advantage could not be gained by any higher education institution through the early release of this information.

26. HEFCE explained that the timetable to complete the REF was extremely tight if it was to inform funding for the entire higher education research sector in 2015-16 and it did not have the resources to respond to intense media speculation while trying at the same time to maintain the integrity of the REF assessment process itself. Its aim was to place as much information in the public domain as it could in the most helpful format as soon as possible.
27. As regards the potential harm that HEFCE believed might be caused if individual universities released their submissions early, it identified the following potential consequences:
 - Speculation about the relative merits of submissions and about the results.
 - Public commentary on universities' submission strategies and on any instances of perceived 'gaming' by universities.
 - Lobbying or requests made to the panels to take account of such commentary, or attempts to supply the panels with supplementary information.
 - Further requests to disclose submissions, so that individuals not involved in the panels can produce their own analyses, pre-empting the REF results.
 - Disruption to the panels' abilities to exercise their professional judgements freely, without such pressures.
 - Perceptions that the outcomes may have been influenced by such pressures, which would reduce confidence in the process and the funding bodies' ability to distribute public funding.
28. In conclusion, HEFCE stated that, setting aside resource considerations, it had reconsidered whether the public interest would warrant earlier publication, however it remained its view that there was a greater public interest in allowing the public access to all of the REF submissions at the same time, once the results had been published.

29. In light of the above, the Commissioner has determined that it was reasonable for the University, taking account of HEFCE's concerns, to withhold the requested information under section 22.
30. Section 22 is a qualified exemption and therefore subject to the public interest test under section 2 of the Act. This requires the Commissioner to consider whether, in all the circumstances of the case, the public interest in maintaining the exemption outweighed the public interest in disclosure.

Public interest arguments in favour of disclosure

31. The Commissioner acknowledges that there is a general public interest in transparency and accountability in relation to public bodies. The release of the requested submissions would provide the public with some information about the University research activities in relation to the two relevant subject areas.
32. However, the Commissioner does note that, at the time that the request was made, as the REF panels had still to consider the submissions, there would have been no objective assessment in the public domain as to the quality of the University's research in these two subject areas for the period covered by the REF 2014 compared with other higher education institutions. The release of the submissions, at that stage, would consequently have provided the public with limited information, in addition that which was already in the public domain, about how well the University was performing in those subjects as compared with other higher education institutions.
33. The complainant, who formally worked at the University, argued that the submissions should be disclosed so as to allow him to assess how his particular research group's research had been presented in the REF. The Commissioner notes that in assessing the public interest, he has to consider the public interest arguments in terms of whether disclosure is in the interests of the wider public rather than the specific personal interests of a particular requester. However, in this case, he acknowledges that there may be a limited public interest in the disclosure of the requested information to assess how effectively the University has presented the relevant research in its REF submissions
34. In addition, in response to the University's arguments regarding its concerns about the information he requested being disclosed to the public, the complainant indicated that he was not planning on placing any of the requested information in the public domain. The

Commissioner would emphasise that any disclosure by a public authority under FOIA is a disclosure to the world at large, not to specific individuals. Public authorities, when disclosing information under the Act, cannot place restrictions on who can have access to that information.

Public interest arguments in favour of maintaining the exemption

35. The Commissioner notes the importance of the REF exercise to higher education institutions in terms of its impact on their reputations, their funding and their accountability for public investment in their research. Consequently, he accepts that there will be widespread media interest in the exercise and its outcomes.
36. Given the very large scale of the project and the potential significance of its outcomes, the Commissioner appreciates that it will have required extensive, detailed planning for it to be managed effectively. He notes that the timetable for REF 2014 was originally published in 2010. This included details of when it was intended that the individual submissions would be made available on HEFCE's website.
37. The Commissioner notes that HEFCE made clear in its letter to the University its concerns that the assessment panels and its small REF team should be able to undertake their work without any distractions, speculation, lobbying or interruption. In order to achieve this, it believed that it was important for it to carefully manage the availability of information by planning and controlling its publication, including ensuring that a competitive advantage could not be gained by any higher education institution through the early release of information.
38. HEFCE went on to explain that, given the relatively short time frame in which the REF needed to be completed if it was to be used to inform research funding for 2015-16, it did not have the resources to respond to intense media speculation while trying at the same time to maintain the integrity of the REF assessment process itself. It confirmed its intention to place as much information in the public domain as it could as soon as possible. However, it believed that the public interest lay in allowing the public access to all of the REF submissions at the same time, once the results had been published.
39. The Commissioner accepts that there is a very significant public interest in HEFCE being able to publish information in line with its publication guidelines so that it can effectively manage the REF process, given its importance to the higher education sector.

Balance of the public interest arguments

40. In assessing the balance of the public interest, the Commissioner has focused on whether, in the circumstances of this case, it would be in the public interest for HEFCE to be allowed to keep to its original timetable for the publication of the submissions or whether the public interest would warrant an earlier disclosure by the University.
41. With regard to managing a large scale project of the nature of the REF, the Commissioner believes that there is a significant public interest in allowing the relevant organisations some degree of control over the way that information is made publically available so that they are permitted to release information in a planned and managed way. This is particularly the case where, as with the REF, it involves a project which is likely to attract significant media attention.
42. After carefully weighing the public interest arguments set out above, the Commissioner has not identified a sufficiently weighty public interest in the early disclosure of the two requested submissions which he believes would justify their release in advance of publication by HEFCE. He believes that the public interest is best served by HEFCE being allowed to manage the REF process in the way that it had originally planned and maintain its timetable for publication.
43. The Commissioner is therefore satisfied that the public interest in maintaining the exemption outweighs the public interest in disclosure. Consequently, he has determined that the University correctly applied section 22 to the requested information and he does not require it to take any further steps to ensure compliance with the Act.

Right of appeal

44. 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: GRC@hmcts.gsi.gov.uk

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

45. 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.
46. 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

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