

Freedom of Information Request 178/17-18

Response Date: 10th April 2018

Please provide a copy of your University's response to the 2017 and 2014 UUK USS valuation consultations.

RESPONSE

In relation to your request for Swansea University's response to the 2017 and 2014 UUK USS valuation consultation, your request has now been considered and the University is not obliged to provide you with the requested information.

Section 17 of the Freedom of Information Act 2000 requires Swansea University, when refusing to provide such information (because the information is exempt), to provide the applicant with a notice which:

- (a) states the fact,
- (b) specifies the exemption in question and
- (c) states (if it would not otherwise be apparent) why the exemption applies.

In relation to your particular request, the following exemption applies:

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Section 43(2) – Commercial Interests

Section 36 (b) (i) (ii) – Prejudice to effective conduct of public affairs

Section 43(2) - Commercial Interests

Section 43(2) refers to information being exempt from disclosure if its disclosure would, or would be likely to; prejudice the commercial interests of any person (including the public authority holding it).

Section 43(2) is a qualified and prejudice based exemption therefore the legislators accept that there may be harm if released. The authority has to consider and describe the harm that would occur if the information were released and carry out a public interest test.

The 'public interest' is not however, what the public may find interesting, there must be some tangible benefit to the community in such disclosure. Ultimately it must be something which serves the interests of the public. It is a requirement to identify all the factors which serve these interests and also those which do not, only then can a decision be made.

Overall Harm

Disclosing the University's response to the UUK valuation consultations would make available to the world Swansea University's concerns in respect of the USS options as well as sensitive commercial, business and procedural details (including negotiation) belonging to the University which could be used by other members, sector institutions, UCU and other interested parties' advantage in an extremely competitive market. The education sector is fiercely competitive, particularly since the introduction of tuition fees, and evidence of commercial concern can severely impact the reputation of the University. In the context of ongoing industrial action and with USS being such a significant and divisive issue amongst staff and the sector in general, the likelihood of prejudice from disclosure is demonstrably high.

Public Interest Considerations

Factors favouring disclosure

One of the underlying principles of the Act is the need for openness and transparency, accountability for decision making, as well as in providing information to allow those affected by decisions to understand them and, where relevant, to challenge them.

Factors favouring non-disclosure

Swansea University recognises the fact that negotiations and bargaining in relation to benefit reform are still ongoing. Disclosing the information requested could delay or otherwise adversely affect the progress of the discussion and such delays may cause harm to the financial interests of the University. Disclosures may also affect employer-employee relations and prolong strike action or frustrate any worthwhile negotiations between parties.

Balance Test

In this case, there is a public interest in transparency and the use of public funds which needs to be weighed against the damage that would occur to the ongoing negotiations in relation to benefit reform and to the subsequent commercial interests of the University. If the University was to release the requested information, the commercial interests of the University may be compromised as the progress of discussions may be adversely affected and other Universities would be furnished with commercially sensitive information that would put them at a commercial advantage in a fiercely competitive market. Therefore, on balance, the factors favouring non-disclosure outweigh the factors favouring disclosure.

As such, the public interest favours non-disclosure of the information at this time. Therefore in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

This letter represents a refusal notice for this part of your request.

Section 36(2)(b) (i)(ii) – Prejudice to effective conduct of public affairs

Section 36 relates to information that if disclosed would adversely affect the delivery of effective central government and other public services.

Section 36 is a qualified and prejudice based exemption therefore the legislators accept that there may be harm if released. The authority has to consider and describe the harm that would occur if the information were released and carry out a public interest test.

The 'public interest' is not however, what the public may find interesting, there must be some tangible benefit to the community in such disclosure. Ultimately it must be something which serves the interests of the public. It is a requirement to identify all the factors which serve these interests and also those which do not, only then can a decision be made.

Overall Harm

Swansea University has a duty to protect the information it holds if disclosure of the requested information may have an inhibiting effect. The disclosure of Swansea University's response to the 2017 and 2014 UUK valuation consultations could prejudice future exchange of views and opinions for the purposes of deliberation, including future decision making, opinion forming and evaluation and inhibit free and frank provision of advice. We consider the consultation responses to be "Live" documents relating to an ongoing process. The consultation responses from Universities are used by UUK to inform its decision making process and negotiations on USS reform options. Disclosure of this information, when such information is still being considered, deliberated and evaluated could set a precedent for disclosure of similar information in the future. The disclosure of the requested information may result in responses to future consultations being materially different because of the possibility of disclosure. It is important that the sector wide body is aware of the candid views of Swansea University so that it can best represent the sector view. The impact on the sector body not having access to reliable, honest information from its members would result in poorer decision making.

Public Interest Considerations

Factors favouring disclosure

One of the underlying principles of the Act is the need for openness and transparency. There is a public interest in providing information to allow those affected by the wider UUK consultations to understand Swansea University's position on USS reform and, where relevant, to challenge them.

Factors favouring non-disclosure

The successful management of Swansea University depends on good decision-making. This needs to be based on the best advice available taking into consideration all the options without fear of premature disclosure. Disclosure of the requested valuation consultations may delay or adversely affect the progress of the ongoing discussions regarding USS. Disclosure of such information risks

turning the focus from a national issue to a local issue when the University has limited ability to determine the outcome. This could result in local industrial action and disruption to teaching and learning activities which could in turn affect the University's reputation and polarise staff and students, thus creating an impediment to the efficient and effective running of the University.

Balance Test

In this case, there is a public interest in the need for openness and transparency which needs to be weighed against the damage that would occur to University decision making processes and to the process of deliberation. If we released the requested information, the effective conduct of the University and the ongoing USS negotiations may be prejudiced.

Therefore, on balance, the factors favouring non-disclosure outweigh the factors favouring disclosure.

As such, the public interest favours non-disclosure of the information at this time. Therefore in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

This letter represents a refusal notice for this part of your request.

END OF RESPONSE