

William Turner,
request-297080-4016c730@whatdotheyknow.com

9th November 2015

Our Ref: FOI/553

Dear William,

Re: Freedom of Information request - Council Minutes

Thank you for your email which was received by the University on 15th October 2015, the University's response is set out below.

Information Requested

Dear Aston University,

Please provide minutes of the University Council 2012-2015

Yours faithfully,

William Turner

University's Response

Please find attached the minutes of the main business section of the University Council meetings for the period 2012-2015 from which some information has been redacted. Aston University is required to respond to a request made under the Freedom of Information Act 2000 ("the Act") if it holds the information being requested, unless one or more of the limited exemptions permitted under the Act apply. Please see the Refusal Notice below which explains why the University is not providing some of the information in response to your request.

Refusal Notice

I can confirm that the University holds the information that you have asked for, but in this case we will not be providing some of it to you as it is exempt from disclosure.

The reserved business section of the minutes of the University Council refer to items of business that relate to the commercial interests of the University and organisations associated with the University, and/or contain references to personal and sometimes sensitive information about individual members of staff, students and other members of the University community who have not given their permission

to disclose their information.

Section 36(2) of FOIA states that information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under the FOIA:

(b) would, or would be likely to, inhibit –

(i) the free and frank provision of advice, or

(ii) the free and frank exchange of views for the purposes of deliberation, or

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

The qualified person for the University is the Vice Chancellor and Chief Executive, Professor Dame Julia King. Acting in her capacity as the qualified person for the University, Professor King confirms that in her reasonable opinion section 36(2)(b)(i) and (ii) and 36(2) (c) apply in this case.

The University considers that the release of the minutes of the reserved business section of the Council minutes would cause significant harm to the University and its operations. The University's consideration of confidential matters of importance need to take place in an environment in which members and attendees of Council must not be inhibited from giving and receiving free and frank views and advice, in relation to any issues in the University's operations. The fact some of the Council's business is considered under a "reserved business section" demonstrates that Council members and other participants expect the minutes of this part of meetings to be held confidentially. Council members would be much less likely to hold open and frank discussions if they thought that the notes of these discussions could be disclosed into the public domain. The University therefore considers that the "harm test", as required by section 30(c) of the FOIA, is met.

Notwithstanding the result of the "harm test", section 30(c) of the FOIA does not provide an absolute exemption to the general entitlement to information. The University has therefore considered whether, despite the exemption, it is in the public interest to release the information. The University has considered the public interest by applying the "public interest test". That is, the University has balanced whether the release of the information is in the public interest against whether disclosure would substantially prejudice the provision of free and frank advice both to and by the University Council. The University accepts there is a public interest in there being openness and transparency over the Council's decision-making, hence the University's willingness to disclose major parts of the unreserved business section of the minutes of Council meetings in which formal resolutions are made. However, it considers there is also a public interest in ensuring effective decision-making and policy development, and ensuring the process is one in which deliberation can occur in a free and frank way (ie within the reserved business section of meetings), with a view to securing optimum decisions. Accordingly, in the University's opinion, the public interest is in ensuring the continuing success of the University which critically includes the ability to prepare for, seek free and frank views on, provide free and frank advice on, monitor and guide deliberations about, the operations of the University in areas that are under consideration. The disclosure of the requested information would be likely to be detrimental to the public interest by publicly identifying issues relating to the operation of the University that it is resolving, or about which further consideration and advice and action by the Council and the senior management is required prior to resolution. The University therefore considers that the "public interest test", as required by section 36(2), is in maintaining the exemption to release of the information.

Section 43(2) of the Freedom of Information Act (FOIA) sets out an exemption from the right to know if release of the information would be likely to, prejudice the commercial interests of any person (a person may be an individual, a company or the University) who holds it. The University believes that

release of parts of the University Council minutes would prejudice the commercial interests of the University and organisations associated with the University.

In line with the terms of this FOIA exemption, we have also considered whether it would be in the public interest for us to provide you with the information, despite the exemption being applicable. In this case, we have concluded that the public interest favours withholding the information.

The University has concluded that disclosure of commercially sensitive information would be likely to prejudice Aston's ability to participate competitively in commercial activities in the future. Higher Education in the UK and globally is an extremely competitive environment. Universities are seeking to recruit from a limited pool of prospective students, as well as competing to attract high quality staff, research funding, partnerships with high quality organisations and accreditation, and to engage in entrepreneurial activity (eg business start-ups, commercialisation of intellectual property, consultancy and continuing professional education). This competition has been heightened by the current austere economic climate and in England by the recent removal of the cap on the recruitment of undergraduate Home-EU students. In such an environment, certain information about the University is regarded as commercially sensitive. The University's ability to develop and deliver comprehensive and effective strategies in key areas of business provides Aston with a possible advantage compared to those competitors who undertake these areas of business less effectively. The University does not share details of strategies in key business areas with competitors as this would provide them with the insight to match and potentially exceed Aston's performance in these areas and possibly take market share to the detriment of Aston.

The University also believes that disclosure of commercially sensitive information about the details of contracts for services and of confidential negotiations would be prejudicial to the interests of the University. The University's relationship with its suppliers and other organisations could be damaged by the disclosure of confidential information to the detriment of their commercial interests. The loss of such competitiveness would harm the financial position of the University.

The University acknowledges that there is a legitimate public interest in knowing about how decisions are made in Universities in the interests of transparency and accountability. However, there is also a public interest in protecting the ability of universities to compete on a level playing field and to ensure that there is fair competition between them. To disclose commercially sensitive information about the University's strategy in relation to key business activities would prejudice Aston's competitive and commercial position, and it is difficult to see how this could be in the public interest.

The University therefore considers that the "harm test" is met. The public interest is in ensuring both the continuing success and competitiveness of the University including its ability to review and address any issues.

Section 40(2) and section 40(3)(a)(1) of the FOI Act provide an exemption for information which is the personal data of any third party, where disclosure would breach any of the data protection principles contained in the Data Protection Act 1998 (DPA). In order to rely on the exemption provided by section 40, the information being requested must, therefore, constitute personal data as defined by the DPA. The DPA defines personal information as:

"...data which relate to a living individual who can be identified

a) from those data, or

b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any

indication of the intentions of the data controller or any persons in respect of the individual”

The University is not prepared to release personal data and sensitive information about students, staff or other members of the University community discussed under the reserved business section of the University Council meetings. The relevant sections of the DPA include the first data protection principle which requires that the processing of personal data should be fair and lawful and that personal data should not be processed unless at least one of the conditions in Schedule 2 of the DPA is met. The University believes that disclosure of the personal data and sensitive information would breach the first data protection principle because disclosure would be both unfair and unlawful. The individuals have not given their consent to the release of their personal and sensitive information, and they have an expectation that their confidential information would be respected and maintained by the University.

You can also find more information by reading the full text of the Act, available at <http://www.legislation.gov.uk/ukpga/2000/36/section/43> and further guidance <http://www.justice.gov.uk/guidance/foi-exemptions-guidance.htm>.

Your right to seek a review

Should you be dissatisfied with the way in which the University has dealt with your request, you have the right to require us to review our actions and decisions. If you wish to request a review, please contact the Chief Financial Officer, Aston University, Birmingham, B4 7ET or e-mail: foi_requests@aston.ac.uk within 40 working days. Your request must be in a recordable format (letter, email, audio tape, etc). You will receive a full response to your request for review within 20 working days of its receipt.

If you are dissatisfied with the way in which we have handled your request for review you may ask the Information Commissioner to review our decision. You must submit your complaint in writing to the Commissioner within 6 months of receiving the response to review letter. The Commissioner may be contacted as follows:

Information Commissioner's Office

Wycliffe House

Water Lane

Wilmslow

Cheshire SK9 5AF

Tel: 0303 123 1113 (or 01625 545745 if you would prefer not to call an '03' number, or +44 1625 545745 if calling from overseas)

Fax: 01625 524510

Website <http://www.ico.gov.uk/>

E-mail: notification@ico.gsi.gov.uk

Yours sincerely,



Martin Johnson,
Freedom of Information Office,
Governance Support Team