

Mr Neil Davies
By email only to request-704093-d749a250@whatdotheyknow.com

26 November 2020

Dear Mr Davies,

Our ref: FOI-20-0273

Thank you for your correspondence of 5 November 2020, in which you requested the following information from the University of Sussex.

Request

Please send a copy of your response to the USS consultation on the 2020 valuation.

Response

Your request has been dealt with under the Freedom of Information Act 2000 (“the Act”).

Although the University holds the requested information, it is being withheld under Section 36 of the Act: prejudice to the effective conduct of public affairs. The University’s qualified person, the Vice-Chancellor, has given a reasonable opinion that if the requested information were disclosed, it would be likely to inhibit the University’s ability to conduct a free and frank exchange of views for the purposes of deliberation and that disclosure would be likely to prejudice the effective conduct of public affairs. The information, therefore, is therefore exempt under s.36(2)(b)(ii) and s.36(2)(c) of the Act.

There have been a number of consultations in relation to the USS pension and individual aspects of the scheme, including its valuation. Those consultations are important to establish the views of universities in their role as USS sponsoring employers and there has to be the opportunity for free and frank discussion.

There needs to be a safe space to allow open and honest contributions, in order to inform ongoing national discussions and negotiations, particularly in circumstances where the USS pension has been the subject of industrial action. The guidance published by the Information Commissioner’s Office recognises the importance of a ‘safe space’ where an issue is still live.

The University’s ability to conduct a free and frank exchange of views with USS for the purposes of deliberation would likely be inhibited if there were the disclosure of consultation responses whilst the USS dispute remains live. That would also be likely to prejudice the effective conduct of public affairs as it could undermine the ability of the University to effectively and fully respond as a USS sponsoring employer. Loss of frankness in the consultation could lead to less well formulated decisions and outcomes.

The University acknowledges that the public interest test applies to exemptions under section 36(2). Accordingly, the public interest has been considered in respect of disclosure or withholding the requested information.

There is a public interest in transparency and openness relating to the University’s position in relation to the USS pension and its valuation. However, that interest is met in part through the publication of official updates by the USS, the Joint Negotiating Committee and Universities UK and it is noted that the USS Trustee has published a summary of the responses received from employers in relation to this consultation.

Further, the requested information relates to the ongoing issue of the methodology for the valuation of the USS pension scheme, and there is a strong public interest that such discussions are properly conducted based on a full and frank exchange of views, given the importance of the issue to the University, its staff and the higher education sector more broadly. Therefore, the University considers that maintaining the exemption is necessary to meet the public interest in facilitating such discussions and in the effective conduct of public affairs, and so outweighs the public interest in disclosing the information.

Accordingly, the University considers that the information which you have requested is exempt from disclosure under s.36(2)(b)(ii) and s.36(2)(c) of the Act.

You can find out more about the relevant section of the Act, and some guidance points which the University has considered when applying the Act in this response, in the form of a Guidance Note attached to this letter.

If you are not satisfied with this response you may request a review but this must be within 40 days of receiving this response. In the first instance please write to Alexandra Elliott, the Head of Information Management and Compliance, at the address below. Full details of our Freedom of Information internal review procedure are at:

<http://www.sussex.ac.uk/ogs/policies/information/foi/procedure>.

If you need to contact us about your request please quote your reference number FOI-20-0273.

Yours sincerely,

Lucy Pattenden
Information Officer
Information Management and Compliance

GUIDANCE NOTE - EXPLANATION OF THE ACT – SECTION 36

You will find additional information about Section 36 of the Act below. An extract from the legislation, as well as some of the guidance used when applying it is included.

Section 36: Prejudice to effective conduct of public affairs

(1) This section applies to—

(a) information which is held by a government department or by the Welsh Assembly Government and is not exempt information by virtue of section 35, and

(b) information which is held by any other public authority

(2) Information to which this section applies is exempt information if, in the reasonable opinion of a qualified person, disclosure of the information under this Act—

(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

(3) The duty to confirm or deny does not arise in relation to information to which this section applies (or would apply if held by the public authority) if, or to the extent that, in the reasonable opinion of a qualified person, compliance with section 1(1)(a) would, or would be likely to, have any of the effects mentioned in subsection (2)

(4) In relation to statistical information, subsections (2) and (3) shall have effect with the omission of the words “in the reasonable opinion of a qualified person”

Guidance

The Information Commissioner has issued guidance on the ability to refuse a request on this basis, which is available at https://ico.org.uk/media/for-organisations/documents/1175/section_36_prejudice_to_effective_conduct_of_public_affairs.pdf

One point to note in particular is that the wording of section 36 (c) - '*would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs*' - refers to prejudice other than that referred to earlier in section 36(2).