

Mr Neil Davies

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

18 December 2020

Dear Mr Davies,

Our ref: FOI-20-0273

Request for an internal review

I write further to your email of 26 November 2020 in relation to the University's response to your request under the Freedom of Information Act 2000 ('the Act'). Having considered the University's response, you have asked for an internal review.

I have had the opportunity to review the University's response to your FOI request and details of my review are set out below.

Request

On 5 November 2020, you made a request for the following information:

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

Response

The University responded to your request on 26 November 2020, confirming that although the University holds the requested information, it was being withheld under Section 36 of the Act: prejudice to the effective conduct of public affairs.

We explained that the University's qualified person, the Vice-Chancellor, had 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. We considered, therefore, that the information was exempt under s.36(2)(b)(ii) and s.36(2)(c) of the Act.

Request for review

Following receipt of the University's response, you emailed on 26 November 2020 stating you wished to request an internal review of your submitted request. You said that *"if this is refused I will forward this to the ICO who have decided in my favour for every request for other Universities' responses to UUK consultations on the USS"*. You also stated that previous responses had raised the exemptions referred to in the University's response but that the ICO had agreed that they did not meet the public interest test for withholding, given the public interest in the USS.

You said that the exemptions used were not tenable and referred to responses to other institutions on www.whatdotheyknow.com. You also mentioned that other institutions such as Oxford and Bristol had published their responses on a public website.

Internal review

I have reviewed the University's response to your FOI request and your email of 26 November 2020. I have also considered the guidance published by the Information Commissioner in relation to the s.36 exemption and their Decision Notice under reference FS50718980 in relation to the FOI request to the University of Nottingham regarding pension valuation consultations.

In reviewing the University's response, I have considered whether the Vice-Chancellor, as a qualified person, reasonably came to the opinion that:

- i) Disclosure would be likely to inhibit the free and frank exchange of views for the purposes of deliberation, and
- ii) Disclosure would be likely to prejudice the effective conduct of public affairs.

I have also considered whether the public interest test was correctly applied. Having done so, I am satisfied that the exemption was appropriately applied.

The s.36 exemption applies where disclosure of the information would prejudice or would be likely to prejudice the effective conduct of public affairs and includes situations where disclosure would inhibit free and frank discussions. In the Vice-Chancellor's opinion, disclosure would be likely to inhibit such discussions and the exchange of views, and would be likely to prejudice the effective conduct of public affairs.

Prejudice, for the purpose of the Act, means causing harm in some way. As the Vice-Chancellor's opinion was that there '*would be likely*' to be prejudice, this means that the change of prejudice must be more than hypothetical or remote, but it does not have to be more likely than not that it would occur.

Having reviewed all of the information, I am satisfied that there is a real possibility of a negative consequence as a result of disclosure and that the consequence is more than trivial.

I note that 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 considered important in order to establish the views of universities in their role as USS sponsoring employers and are an opportunity for free and frank discussion.

In the response to your FOI, I note that it was felt that there needed 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. I am aware that such industrial action has taken place at the University of Sussex.

In reviewing the application of s.36(2)(b)(ii) and s.36(2)(c), I have considered whether disclosure would inhibit the ability of the University to openly and completely express its views and opinions in its response to the consultation. I consider that the Vice-Chancellor's opinion that the University's ability to give its' views in a free and frank manner would likely be inhibited, is a reasonable one. I also agree that disclosure would 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. I have noted the 'chilling effect argument' in the ICO guidance; that the loss of frankness and candour can damage the quality of deliberation.

As you are aware, the exemption is subject to the public interest test and in your request for a review you have highlighted the public interest in relation to the USS pension scheme, and presumably its valuation.

I have carefully considered the arguments in favour of disclosing the information and those in favour of maintaining the exemption by reference to the circumstances as at the time of this internal review. I agree that there is a public interest in transparency and openness relating to the University's position regarding the USS pension and its valuation. However, I consider that the public interest is met in part through the publication of official updates such as the USS Trustee's publication of a summary of consultation responses from employers. In addition, the University provides information to staff about the USS pension scheme and its valuation, and the information is publically available on our website.

I also agree that there is a strong public interest in ensuring that discussions relating to the ongoing issue of the methodology for the valuation of the USS pension scheme 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, I agree with the decision that the public interest in maintaining the exemption (in order to meet the public interest in facilitating such discussions and in the effective conduct of public affairs) outweighs the public interest in disclosing the information.

On the basis of the above, I am satisfied that the opinion of the Vice-Chancellor, as a qualified person, was reasonable and the exemption was correctly applied.

However, if you remain dissatisfied, you have the right of appeal to the Information Commissioner's Office. Details can be found here: <https://ico.org.uk/make-a-complaint/>.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Alex Elliott', with a large, sweeping flourish at the end.

Alexandra Elliott
Head of Information Management and Compliance