

## **Public Interest Test –Section 43. Commercial Interests**

As it has been indicated that the requested information cannot be released under FOI, we need to conduct a Public Interest Test, or PIT. Evidence of this being undertaken needs to be retained in order to uphold the University's position and will be used if the requestor challenges the decision we have made. The full excerpt of the FOI Act can be located here: <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

When applying the public interest test in respect of commercially sensitive information the following factors need to be considered:

### P.I. Factors (**Against Disclosure**)

- Consider all relevant exceptions
- Prejudice or detrimental effect of disclosure
- Specific circumstances of the case
- Effect of disclosure on the wider world/public

### P.I. Factors (**For Disclosure**)

- Accountability of public money being spent
- Protection of the public from unsafe practices or rogue traders
- Circumstances in which the information was received
- Competition issues

Further consideration also needs to be given to:

- Whose interests will be prejudiced?
- How will those interests be prejudiced?
  - Usefulness of information/detail
  - Degree of similarity
  - Effect on competition
  - Effect on the market
  - Timing
- Can sensitive information be redacted?
- Where is the public interest?
- Is the information commercial in nature? (For this element the information needs to relate to a commercial activity, either of the University of Nottingham or the Contractor.)
- Is the information subject to confidentiality provided by law?
- Is the confidentiality provided to protect a legitimate economic interest? (This condition is satisfied if disclosure would adversely affect a legitimate economic interest of either the University of Nottingham or the Contractor the confidentiality is

designed to protect and harm would be caused to a legitimate economic interest, not just a potential risk that harm might occur.)

Please explain based on the guidance above how you believe this information is not to be disclosed:

(1) Information is exempt information if it constitutes a trade secret.

(2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

The public interest in disclosing this information and has determined that the prejudice arising from disclosure outweighs the benefit to the public, indeed we believe there is no legitimate wider public interest in the content of our examination papers.

In releasing these papers, we will prejudice the University of Nottingham's ability to reuse the past questions in any future examinations. This would incur a significant direct cost in staff time for preparing and checking new questions.

Releasing this information into the public domain means it could be used by our competitors in setting their examinations, as you must appreciate the University is working in a highly competitive environment against other higher education providers.

Decision:

(To be completed by reviewing IC Team member)

If the requestor studies here then they will receive 3 past papers to use for revision purposes. If studying at another institution it is likely they will have a similar practice in place. Agree with the School's logic here, in releasing this they will have to re-write examination materials which has both financial implications as well as time consuming. Decision upheld.

C.Allin 12.10.2020