



Scottish Information
Commissioner
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Decision Notice 004/2026

Students that had not matriculated on a specific course

Authority: University of Strathclyde

Case Ref: 202301389

Summary

The Applicant asked the Authority for information about the number of students that had received offers and not matriculated on a specific course. The Authority withheld the information because it considered it to be commercially sensitive. The Commissioner did not accept that the Authority was entitled to withhold the information and required the information to be disclosed to the Applicant.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 33(1)(b) (Commercial interests and the economy); 47(1) and (2) (Application for decision by Commissioner).

Background

1. On 13 September 2023, the Applicant made a request to the Authority. He asked the Authority to advise him how many students had received conditional and unconditional offers and had not matriculated.
2. Later that same day, the Authority sought clarification of the Applicant's request. The Applicant confirmed, again on the same day, that he was seeking information covering the academic year 2023-24 and in relation to BA Humanities and Social Science.
3. The Authority responded on 11 October 2023. It informed the Applicant that it could not disclose the information requested as the recruitment cycle for the academic year 2023-24 was ongoing.

4. Later that same day, the Applicant wrote to the Authority requesting a review of its decision. He stated that he was dissatisfied with the decision because the Authority had not provided the information requested.
5. The Authority notified the Applicant of the outcome of its review on 6 November 2023. It withheld the information requested under the exemption in section 33(1)(b) of FOISA. It informed the Applicant that it considered the exemption applied to the information requested while the current recruitment cycle was ongoing, but that it would consider any new request for that information after the cycle had ended (on 1 December 2023).
6. On 6 November 2023, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. He stated that he was dissatisfied with the outcome of the Authority's review because he did not agree that the Authority was entitled to withhold the information requested under the exemption in section 33(1)(b) of FOISA.

Investigation

7. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
8. On 19 January 2024, and in line with section 49(3)(a) of FOISA, the Authority was notified in writing that the Applicant had made a valid application and invited its comments. The Authority was also asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and its comments.
9. The case was subsequently allocated to an investigating officer.
10. During the investigation, further comments were sought and obtained from the Authority.

Commissioner's analysis and findings

11. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority.
12. As stated in previous decisions, in Scottish Ministers v Scottish Information Commissioner [2006] CSIH 8¹, at paragraph [18], the Court of Session recognised that:

"… in giving reasons for his decision, [the Commissioner] is necessarily restrained by the need to avoid, deliberately or accidentally, disclosing information which ought not to be disclosed."
13. In this decision notice, the Commissioner has endeavoured to give as full account of his reasoning as he can, but, by necessity, in this case the comments of the Court of Session are applicable to some aspects.

¹ https://www.bailii.org/scot/cases/ScotCS/2008/CSIH_08.html

Section 33(1)(b) – commercial interests and the economy

14. Section 33(1)(b) of FOISA provides that information is exempt information if its disclosure would, or would be likely to, prejudice substantially the commercial interests of any person (including, without prejudice to that generality, a Scottish public authority). This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
15. There are several elements a Scottish public authority needs to demonstrate are present when relying on this exemption. It needs to establish:
 - (i) whose commercial interests would (or would be likely to) be harmed by disclosure
 - (ii) the nature of those commercial interests, and
 - (iii) how those interests would (or would be likely to) be prejudiced substantially by disclosure.
16. The prejudice must be substantial, in other words of real and demonstrable significance.

The Applicant's comments on the exemption

17. The Applicant argued that the Authority had not adequately explained why it considered the exemption in section 33(1)(b) of FOISA applied, which was not in keeping with the spirit of accountability and transparency that FOISA seeks to safeguard. He also said that the Authority asserted this exemption frequently, which he said was a “pattern of behaviour.
18. In particular, the Applicant submitted that the Authority’s position that that the admissions cycle was ongoing was “ridiculous”, given students entering their first year of study in 2023-2024 would have applied in 2022-2023.

The Authority's submissions on the exemption

19. The Authority submitted that disclosure of the information requested, which related to a (then) current recruitment cycle while the cycle was still current and before the date on which all Scottish institutions were required to report similar data, would harm the Authority’s own commercial interests.
20. The Authority explained that its case for withholding the information requested relied on 1 December 2023 being a key date:
 - up to this point, the recruitment cycle for 2023 entry was live as numbers of students were subject to change. Before this date, there were difficulties in providing accurate information about the numbers of students who had matriculated – which meant that competitor universities might be able to change their behaviour in response to perceived strengths or weaknesses in the Authority’s data
 - the 2023 entry calendar provided by UCAS showed key dates of 25 October 2023 for “2023 cycle closes” and 30 November 2023 for “final reject by default deadline”, which informed the Authority’s choice of 1 December 2023 as a “cut-off date” after which the recruitment cycle for 2023 entry would no longer be current
 - 1 December 2023 was a “census date” as defined by the Scottish Funding Council (SFC), which required statistics regarding student numbers for 2023 entry to be provided to SFC by all universities in Scotland. As all other universities in Scotland were required to report figures for 2023 entry based on the number of students as of 1 December 2023,

it considered that the data could be disclosed from this date without causing harm to the Authority's commercial interests.

21. The Authority explained that even at the time of the review outcome, the information requested was subject to change. This was for a variety of reasons, e.g. students matriculate late; accept offers but do not attend; transfer in or out of the Authority; or withdraw.
22. The Authority submitted that disclosure of the information requested (i.e. its "conversion rates") could be used by competitors to adjust their own offer-making strategies to their advantage.
23. The Authority explained that universities must invest and work hard in a competitive environment to convert applications into actual enrolments. If a competitor were aware, for example, that the Authority had made a high number of offers to applicants, but students had not yet enrolled, they could decide to target incentives to their own offer holders, such as offering different levels of attainment required for an offer, or provision of scholarships. This would make their own offer more attractive to the applicant than the offer made by the Authority and influence the applicant's decision to enrol.
24. The Authority said that should another institution learn about the Authority's live recruitment cycle, and change their own offer-making patterns, this would have a direct impact on the Authority, as this would be likely to result in a change in the number of applicants accepting "firm" choices or deciding to enrol, within that same live recruitment cycle.
25. The Authority argued that this did not just impact the ability of the Authority to attract numbers of students. Even where programmes were highly competitive (with many more applicants than places available), the offer-making strategies of competitor organisations could impact negatively on the ability of the Authority to attract the best applicants.
26. In addition to adjusting behaviour towards individual applicants, the Authority said that competitor institutions could adjust their marketing activities to appeal more generally to applicants where they considered the Authority's live recruitment data demonstrated an opportunity for them. This could include running targeted marketing and advertising campaigns, setting up recruitment events and activities, taster events and access programmes. If an organisation were able to obtain data about a competitor's live recruitment progress, it would be able to take such actions within the same live recruitment cycle, in a way that other organisations could not.
27. The Authority considered that these activities would lead to an increased chance of it failing to meet targets for recruitment, particularly where competitors were institutions that were geographically close and competing for applicants who wished to study in the same area. It submitted that information about student recruitment was therefore of great value to competitor organisations.
28. In response to the Applicant's concerns about whether the recruitment cycle was ongoing, the Authority explained that the student recruitment cycle encompasses the journey of an individual from the point at which they make enquiries or find out information about studying at the Authority, through to submitting an application, receiving an offer (which could be conditional or unconditional), deciding to accept an offer, fulfilling the conditions of any offer, and ultimately deciding to enrol at the institution.

29. More specifically, the Authority explained that a student for 2023-2024 entry would not necessarily have applied in 2022-2023 academic year. The key dates for application for 2023 entry would have been: 17 May 2022 (applications open), 15 October 2022 (deadline for applications to certain undergraduate courses at certain Universities), 25 January 2023 (deadline for applications for most undergraduate courses), 4 July 2023 (deadline for applicants to add “extra” choices”), and 17 October 2023 (deadline for applicants to add a clearing choice).

The Commissioner’s view

30. The Commissioner has carefully considered all the arguments put forward, along with the withheld information.

31. Any issue of alleged failure by a public authority in terms of its compliance with Part 1 of FOISA in responding to an information request fall to be determined as the date of the authority’s review outcome. In other words, it is the circumstances at the date of the review outcome that the Commissioner must consider.

32. In this case, the Authority’s review outcome was issued on 6 November 2023, and it submitted that 30 November 2023 was the “final reject by default deadline”. The Commissioner considers it reasonable to presume that this deadline was broadly shared by other universities, given the shared requirement to report figures to the Scottish Funding Council by 1 December 2023.

33. The Commissioner recognises that universities have significant commercial incentives to attract as many students as possible, with the result that universities compete vigorously to secure and retain applicants. He accepts the Authority’s position that competitors would seek to act on actionable data to, for example, make new offers or to adapt existing offers to prospective applicants. He is satisfied that such activity in response to actionable data would, or would be likely to be, detrimental to the commercial interests of the Authority.

34. However, in this case, the withheld information relates to a single course and the review outcome was issued at a late stage in the recruitment cycle. In general terms, disclosure of matriculation information at this stage (rather than at an earlier stage during the admissions process) would require competitors to act with a different level of agility to identify and take advantage of any opportunity. It does not appear likely to the Commissioner that at the date of the review outcome there would have been much (if any) scope for other universities to either have made new offers to prospective applicants or to have adapted existing offers at a point at which applicants might reasonably still have been deciding between competing offers.

35. As stated above, the Commissioner must be careful not to reveal the specific content of the withheld information. Having reviewed the withheld information, he is not persuaded, based on the submissions provided by the Authority, that it is likely that other universities could meaningfully act on this information to act in a way that would, or would be likely to be, detrimental to the commercial interests of the Authority. For the withheld information to be actionable by other universities, the Commissioner considers that it would need to be either different in nature or disclosed at an earlier stage in the admissions process.

36. For the exemption in section 33(1)(b) of FOISA to apply, the prejudice must be substantial and the likelihood of that harm arising from disclosure must be more than simply a remote or hypothetical possibility. Taking account of the submissions received from the Authority in relation to the actual information being withheld in this case, the Commissioner does not

believe that the Authority has evidenced the required substantial prejudice for section 33(1)(b) of FOISA to be engaged.

37. Consequently, in this case, the Commissioner is not satisfied that the information requested was properly withheld under this exemption. Having reached that conclusion, the Commissioner is not required to consider the public interest test in section 2(1)(b) of FOISA.
38. The Commissioner therefore requires the Authority to disclose the withheld information to the Applicant, by the date stated below.
39. However, the Commissioner would like to stress that it is important for public authorities to treat each request for information on a case-by-case basis. That information should be disclosed in one case should not be taken to imply that information of a particular type will be routinely disclosed in future. The circumstances of each case, including the content of the specific information under consideration, must be taken into consideration and (where required) the public interest in each case assessed on its own merits.

Decision

The Commissioner finds that the Authority failed to comply with Part 1 of the Freedom of Information (Scotland) Act 2002 (FOISA) in responding to the information request made by the Applicant.

The Commissioner finds that the Authority was not entitled to rely on the exemption in section 33(1)(b) of FOISA to withhold information from the Applicant.

The Commissioner therefore requires the Authority to disclose the withheld information to the Applicant, by **27 February 2026**.

Appeal

Should either the Applicant or the Authority wish to appeal against this decision, they have the right to appeal to the Court of Session on a point of law only. Any such appeal must be made within 42 days after the date of intimation of this decision.

Enforcement

If the Authority fails to comply with this decision, the Commissioner has the right to certify to the Court of Session that the Authority has failed to comply. The Court has the right to inquire into the matter and may deal with the Authority as if it had committed a contempt of court.

Euan McCulloch
Head of Enforcement

13 January 2026