

Will Rob  
By email: request-861505-e69a1d4f@whatdotheyknow.com

26 May 2022

Dear Will Rob,

**G00996: Freedom of Information Review**

We refer to your request for information dated 12/05/2022 under the Freedom of Information Act 2000 (the "Act").

Please find below your question, with the University's corresponding response.

**Question**

Dear University of Southampton,

Could I request the admissions statistics for graduate applicants to your A100 MBCHB from the last 3 application cycles: 18/19, 19/20, 20/21. Specifically...

1. The number of graduate applications
2. The number of graduates given interviews
3. The number of final offers made to graduate applicants
4. Minimum UCAT score for a graduate with a 1:1 Honours degree that was subsequently invited to interview
5. Minimum UCAT score for a graduate with a 1:1 Honours degree that was subsequently given an offer

Additionally:

6. Do graduates compete for the same places as school leavers or are a set number of places reserved for graduates?
7. The number of places reserved on A100 for graduates (if any)
8. How does a graduates degree/A levels compare to a school leavers GCSE/ A levels during the application process?

## Answer

In accordance with [Section 1\(1\)\(a\)](#) of the Act, we confirm that the University holds the information of the description specified in your request, in part, as some of the requested information pertaining to the scope of your request is not held/collected by the University and therefore, does not exist.

We can confirm that of the information held by the University, it is being withheld from disclosure, in part, in accordance with Section 21 and Section 43(2) of the Act.

### Questions 1 and 3

Section 21 of the Act provides that:

#### **21. Information accessible to applicant by other means**

*21(1) Information which is reasonably accessible to the applicant otherwise than under section 1 is exempt information.*

*(2). For the purposes of subsection (1)-*

*(a) Information may be reasonably accessible to the applicant even though it is accessible only on payment; and*

*(b) Information is to be taken to be reasonably accessible to the applicant if it is information which the public authority or any other person is obliged by or under any enactment to communicate (otherwise than by making the information available for inspection) to members of the public on request, whether free of charge or on payment.*

The Act gives rights of public access to information held by public authorities. The purpose of Section 21 of the Act is to ensure that there is no right of access to information via the Act/FOI process, if it already available to the applicant via another route.

This exemption applies if the requested information is already accessible to you as the Applicant/Requester. This exemption is applied where it is either know that, you already hold the information or it is available to you (with the information already being in the public domain).

When the University is applying this exemption it has a duty to confirm or deny whether it holds the information and where possible inform you of how you can access the information.

Given that the information is available in the public domain, it is entirely reasonable and appropriate to withhold disclosure of the requested information pertaining to Questions 1 and 3, in accordance with Section 21 of the Act. The requested information can be found at:

The information you have requested is publicly available which may be subject to a purchase here: <https://www.ucas.com/data-and-analysis/data-products-and-services/exact>

In accordance with Section 21(2)(a) of the Act, it states that information may be regarded as reasonably accessible to the applicant, 'even though it is accessible only on payment'.

### Question 2

Section 43 of the Act provides that:

#### **43. Commercial Interests**

*43. (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 Act gives rights of public access to information held by public authorities. Section 43(1) of the Act provides an exemption for information which is a trade secret. Section 43(2) exempts information whose disclosure would, or would likely to, prejudice the commercial interests of any person/legal entity. This is often referred to as commercial sensitivity.

A public authority may refuse to disclose information where such confirmation or denial of information would or would be likely to prejudice its commercial interests.

The Section 43 exemptions are qualified exemptions, subject to the public interest test.

#### **Section 43(1) - Trade secrets**

The term "trade secret" is not defined in Act. The concept of a trade secret has developed through common law and has a fairly wide meaning. It is information which is not simply confidential but confers a competitive advantage to the owner and therefore requires more protection.

A trade secret is information which has not been widely disseminated and is not generally known. It is information which a rival could not easily recreate or discover themselves. In this context, disclosure of the information should also be liable to cause real (or significant) harm to the owner or be advantageous to any rivals. It is information which therefore should be accorded a high level of secrecy.

A trade secret can be thought of as the property of an organisation and clauses in employment contracts will often prevent an ex-employee from disclosing a trade secret.

A trade secret may be a technical secret or a business secret.

A technical secret might be:

- an invention;
- a manufacturing process;
- engineering and design drawings; or
- a craft/recipe (common in food, pharmaceutical and cosmetic industries);

A business secret might be:

- costs information, such as how much money an organisation spends
- pricing information, such as how much a company plans to charge for a product it sells;
- supplier lists and contact details; or
- plans for the development of new products / the discontinuance of old products.

The First-tier Tribunal discussed the definition of a trade secret in the case of the Department for Work and Pensions v IC EA/2010/0073, (20 September 2010). It quoted from previous court and Tribunal decisions which had reviewed the nature of a trade secret. The Tribunal therefore noted that a trade secret was information, which, if disclosed to a competitor, would be liable to cause real (or significant) harm to the owner of the secret assumed that the information was used in a trade or business and that the owner had either limited the dissemination of the information or at least not encouraged or permitted widespread publication. The Tribunal also noted that the concept of a 'trade secret' was one that related to a particular kind and quality of information.

#### **Section 43(2)- Prejudice to commercial interests**

In order for such information, that is likely to prejudice the commercial interests, the University must show that because the information is considered to be commercially sensitive, disclosure would be, or would be likely to be, prejudicial to the commercial interests of the University.

In order to apply section 43(2), the public authority must satisfy itself that disclosure of the information would, or would be likely to, prejudice or harm the commercial interests of any person (this can include the public authority holding it). This is known as the prejudice test.

The term "would...prejudice" means that prejudice is more probable than not to occur (ie a more than a 50% chance of the disclosure causing the prejudice, even though it is not absolutely certain that it would do so).

"Would be likely to prejudice" is a lower threshold. This means that there must be more than a hypothetical or remote possibility of prejudice occurring. There must be a real and significant risk of prejudice, even though the probability of prejudice occurring is less than 50%.

The University must decide the likelihood of prejudice arising on the facts of each case. In relation to your request for information it is held that information pertaining to Question 2 falls under Section 43(2) of the Act.

Establishing the appropriate level of likelihood is important as it has an effect on the balance of the public interest test.

#### A Commercial Interest

This relates to the University's ability to participate competitively in a commercial activity/environment

In the case of University of Central Lancashire (UCLAN) v IC and Professor Colquhoun EA/2009/0034, (8 December 2009), the Tribunal found that the selling of courses by UCLAN was a commercial activity which enabled it to remain solvent. The Tribunal considered that a body which depends on student fees to remain solvent has a commercial interest in maintaining the assets upon which the recruitment of students depends. These assets were the teaching materials UCLAN had produced for its degree courses. The Tribunal accepted that UCLAN was operating within a competitive environment where other institutions of higher education were also seeking to sell similar products (undergraduate degree courses) to potential students. The Tribunal therefore concluded that UCLAN's interests in its teaching materials produced for its degree courses were commercial interests.

#### Arguments in favour of disclosure

It can be argued that in the interests of openness and transparency, which a public authority, like this University, should bear in mind the case for these principles when balancing any public interest argument.

Also, the accountability for spending of public money, where the disclosure of commercial information can make a public authority (like this University) more accountable for how they spend their public money.

Both of these/this argument(s) is outweighed by arguments in favour of maintaining the exemption under Section 43 of the Act.

#### Arguments in favour of maintaining the exemption

There is a public interest in allowing a public authority (such as this University) to withhold information which if disclosed (as is the case here), would reduce its ability to negotiate or compete in a commercial environment.

In the case of Willem Visser v Information Commissioner EA/2011/0188, (1 March 2012) the complainant requested a copy of the approved business plan of the London Borough of Southwark Council with a third party company which delivered leisure services on its behalf. Part of the plan was withheld under section 43(2). The Commissioner's decision was that the Council was correct to apply section 43(2) and that the public interest supported maintaining the exemption in this instance. The Tribunal agreed. It found that even though the company in question was not-for-profit it operated in a competitive market. It noted that prejudicing the commercial interests of one player in the market would distort competition in that market, which in itself would not be in the public interest. As the Tribunal pointed out, in terms of the public interest test, there is therefore a public interest in protecting the commercial interests of individual companies and ensuring they are able to compete fairly: "If the commercial secrets of one of the players in the

market were revealed then its competitive position would be eroded and the whole market would be less competitive with the result that the public benefit of having an efficient competitive market would be to some extent eroded”.

As provided the referenced requested information falls under Section 43(2) of the Act, when applying the public interest test, Factors favouring non-disclosure of the information sought outweigh those of disclosure. Further points are:

It is not in the public interest to disclose information that would reduce the operational of the University. The operational decisions made from admissions data is a key factor in the University’s sustainability and guides our strategic decision-making at key points in the student life cycle.

It is not in the public interest to disclose information that would undermine the University’s capacity to effectively compete with other higher education providers. Sharing the requested information would harm the University’s ability to compete for students as the information could be freely exploited by the University’s competitors to modify their own commercial strategy.

Sustainability and competition amongst higher education providers are a benefit to the public as it ensures student choice is not undermined and that public funding of our activities is maximised for public benefit whilst our transparency objectives are met with frequent public reporting and our accountability to the Office for Students as our prime regulator.

Accordingly, the release of such information is prejudicial to the commercial interests of the University and for the reasons set out above, the University concludes that it is in the greater public interest not to disclose the information.

Therefore, it is entirely reasonable and appropriate to withhold disclosure of information pertaining to the referenced requested information (Question 2) in accordance with Section 43(2) of the Act.

#### Questions 6, 7 and 8

Question 6, graduates do not compete against school leavers. We have 24 interview spaces for BM5 graduates.

Question 7, the University does not have a set number of places – there are around 10 -15 offers made each year for graduate applicants who have specifically applied for BM5.

Question 8, graduates have to meet the minimum graduate entry requirement, just like a school leaver has to meet the minimum school leaver entry requirements.

#### Questions 4 and 5

Information pertaining to Questions 4 and 5 cannot be disclosed as the requested information pertaining to these questions is not held by the University. The University does not collect this information. In relation to Question 4, applicants need only hold a 2.1 or above, that is all that is considered when assessing an application, the University does not record if they have a first. In relation to Question 5, applicants just have to offer a 2.1 or above, that is all the University checks when assessing an application, we do not record if they have a first. Offers are made based on interview performance. Academic performance has not impact at this stage

If you do not feel that we have dealt with your request in accordance with the requirements of [Part 1](#) of the Act, you may request a review. Your request for a review **must** specify in what respect you

consider that the requirements of [Part I](#) of the Act have not been met; mere dissatisfaction with our response is insufficient. Please address your request for a review by completing the [form](#) and selecting Fol Review.

In accordance with section 5.3 of the [Code of Practice](#), a request for a review must be sent within 40 working days of the date of this letter. The University is not obliged to accept any requests for a review beyond 40 working days. We will acknowledge your request for a review and endeavour to respond within 20 working days of its receipt but please note that a deadline for a review response is not prescribed by the Act.

The Information Commissioner is responsible for enforcing rights of access to information and the operation of the publication scheme. You may apply to the Information Commissioner in writing (FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF) or [electronically](#) for a decision whether, in any specified respect, your request for information has been dealt with by the University in accordance with the requirements of [Part I](#) of the Act. The Information Commissioner will not normally act unless they are satisfied that the University's review procedure has been exhausted.

Yours sincerely,

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Freedom of Information Act 2000  
Response to Information provided by the University of Southampton  
[http://www.whatdotheyknow.com/body/university\\_of\\_southampton](http://www.whatdotheyknow.com/body/university_of_southampton)