



Scottish Information
Commissioner
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Decision Notice 295/2024

University scoring mechanism

Authority: University of Edinburgh
Case Ref: 202400816

Summary

The Applicant asked the Authority for the criteria used to determine the offer of a place for non-contextual students. The Authority provided some information and originally withheld other information on the grounds that it was commercially sensitive. During the investigation the Authority also argued that disclosure of the information would be likely to otherwise prejudice substantially the effective conduct of public affairs. The Commissioner investigated and found that the Authority was correct to withhold the information.

Relevant statutory provisions

Freedom of Information (Scotland) Act 2002 (FOISA) sections 1(1), (2) and (6) (General entitlement); 2(1)(b) (Effect of exemptions); 30(c) (Prejudice to effective conduct of public affairs) 47(1) and (2) (Application for decision by Commissioner)

Background

1. On 22 April 2024, the Applicant made a request for information to the Authority. He asked for:
 - (i) The number of Scotland Fee Rate Students who applied to study undergraduate Law at Edinburgh University commencing academic year [2024/25]?
 - (ii) The number of Scotland Fee Rate Students who applied to study Law at Edinburgh University commencing academic year 2024/25 who were non-contextual?

- (iii) If any non-contextual applicants were offered a place, what were the criteria used determined the offer and how many were offered a place for Law at Edinburgh University commencing academic year 2024/25?
2. The Authority responded on 3 May 2024. It explained that “contextual admissions” were those where factors other than academic qualifications could be taken into account when considering an application for a place on a study course. It provided the Applicant with some information and withheld other information under section 33(1)(b) of FOISA.
 3. On 5 May 2024, the Applicant wrote to the Authority requesting a review of its response. The Applicant stated that he was dissatisfied with the response because he believed the Authority had misunderstood part (iii) of his request. He clarified that he was requesting the written criteria used to differentiate between Scottish students who met the full criteria for entry to study undergraduate law but who were not contextualised.
 4. The Authority notified the Applicant of the outcome of its review on 23 May 2024. It informed him that the criteria used to differentiate between such students was based exclusively on qualifications and provided some information about the entry requirements. It withheld some information on the qualifications scoring system under section 33(1)(b) of FOISA.
 5. On 11 June 2024, the Applicant wrote to the Commissioner, applying for a decision in terms of section 47(1) of FOISA. The Applicant stated he was dissatisfied with the outcome of the Authority’s review because he believed it was in the public interest for the information to be released. He stated that he believed there was a right to know why an applicant had not been selected for a place on the Authority’s undergraduate law course. He suspected that certain applicants may be positively discriminated against and stated that revealing the criteria would dispel this belief. He believed disclosing the criteria would allow a specific group of potential applicants (especially from independent schools) not to expose themselves to the stress of applying to study law with the Authority.

Investigation

6. The Commissioner determined that the application complied with section 47(2) of FOISA and that he had the power to carry out an investigation.
7. On 4 July 2024, the Authority was notified in writing that the Applicant had made a valid application. The Authority was asked to send the Commissioner the information withheld from the Applicant. The Authority provided the information and the case was allocated to an investigating officer.
8. Section 49(3)(a) of FOISA requires the Commissioner to give public authorities an opportunity to provide comments on an application. The Authority was invited to comment on this application and to answer specific questions. These related to the withheld information provided and to the reasons for the Authority applying section 33(1)(b) of the withheld information.
9. During the investigation, the Authority also applied section 30(c) of FOISA to the withheld information.

Commissioner's analysis and findings

10. The Commissioner has considered all of the submissions made to him by the Applicant and the Authority. He is satisfied that no matter of relevance has been overlooked.

Background – explanation of the term “non-contextual”

11. The Authority explained that it was committed to widening access to higher education for people from disadvantaged backgrounds. In general terms, that meant prospective students who met certain criteria were allocated a “flag” or a “plus flag”, whereby factors other than academic qualifications could also be considered in relation to their application. It explained that “non-contextual” students were those who did not fall within that group, i.e. those who were not from disadvantaged backgrounds. It was the criteria for those non-contextual students which was the subject of the Applicant's request.

Information within the scope of the request

12. In its submissions, the Authority stated that it believed that the information it had identified as falling within the scope of the request did not provide the Applicant with the information he was seeking. The Authority submitted that the criteria used to differentiate between non-contextual students was based exclusively on qualifications (i.e. no additional non-qualification factors were taken into account).
13. It noted that it had already told the Applicant that offers were made to the highest-qualified applicants and that the withheld information did not provide any further insight on the issue.
14. The Commissioner has carefully considered the Applicant's request and the withheld information in relation to this issue. In his view, while the Authority may have considered that the Applicant was concerned with non-qualification criteria, that was not the focus of the third part of the request, which simply asked for the criteria relating to non-contextual students. While the Applicant may have given examples of other factors relating to their wider life and non-academic achievements, the substance of that part of his request was the criteria used to determine who received an offer to study in the Law School (which includes information about academic criteria).
15. In the Commissioner's view, the withheld information relates to how the Authority filters evenly qualified applicants in terms of particular qualifications and therefore it does fall within scope of the Applicant's request.

Section 30(c)– prejudice to the effective conduct of public affairs

16. Section 30(c) of FOISA provides that information is exempt information if its disclosure would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs. This exemption is subject to the public interest test in section 2(1)(b) of FOISA.
17. The word "otherwise" distinguishes the harm required from that envisaged by the exemptions in section 30(a) and (b). This is a broad exemption and the Commissioner expects any public authority applying it to show what specific harm would (or would be likely to) be caused to the conduct of public affairs by disclosure of the information, and how that harm would be expected to follow from disclosure.
18. There is no definition of "substantial prejudice" in FOISA, but the Commissioner considers the harm in question would require to be of real and demonstrable significance.

The authority must also be able to satisfy the Commissioner that the harm would, or would be likely to, occur. The authority therefore needs to establish a real risk or likelihood of actual harm occurring as a consequence of disclosure at some time in the near (certainly the foreseeable) future, not simply that the harm is a remote possibility.

The Authority's submissions on section 30(c)

19. The Authority argued that if it disclosed detailed admissions information (such as the criteria used to differentiate between candidates) that information could be used by other institutions to alter their recruitment behaviour in ways which would influence the outcome of admissions cycles.
20. The Authority stated that universities were in competition with each other for the most qualified and suitable candidates. To meet their obligations under competition law, the Authority submitted that universities could not collude with each other about how they selected students; this was to ensure that all applicants had a fair chance of being offered a place.
21. The Authority stated that if universities knew each other's detailed selection criteria, they could adjust their own selection criteria in a way which would benefit themselves but be to the detriment of their competitors and applicants.
22. The Authority explained that its Law School was one of just 10 law schools in Scotland (which are the only ones to teach Scottish law) and that competition for students was particularly high. It noted that the same applicants were often applying to the same schools and that applicants for its law school were also likely to apply to the University of Glasgow. It explained that prospective students could make up to five applications through the Universities and Colleges Admissions Service (UCAS).
23. The Authority argued that if other Scottish universities with law schools knew the detailed selection criteria used by its law school, those universities could work out which students would receive offers from the Authority (and who would not) and use that knowledge to alter their own selection criteria (i.e. to try to gain a competitive edge in attracting the students they most wanted). The Authority argued that this would be detrimental to both itself and to applicants. It explained, in relation to applicants, that if other universities decided to use the same selection criteria as the Authority, the same applicants would be offered a place (or not offered a place) regardless of which law school they had applied to. The Authority argued that this would disadvantage many applicants during the selection process as some prospective students would receive multiple offers from numerous law schools and other applicants may not receive any offers at all.
24. The Authority also submitted that when making offers, it divided applicants into three fee pools: those who lived in Scotland, those from the rest of the UK and Ireland, and those from the rest of the world. The Authority had a specific number of places in each pool for each programme of study, which was arrived at using a variety of factors. It explained that universities could be penalised financially for breaching agreed limits and that the process of ensuring the correct number of offers was made to fill the available places each year was complex.

25. The Authority argued that if other universities used the detailed selection criteria to change their behaviour (as set out above) it would undermine the Authority's ability to make the correct number of offers to accurately fill the number of places for each of the three groups. That would have significant consequences for its ability to effectively manage its admissions processes.
26. The Authority also submitted that because the first withheld document was used for all degree programmes within the College of Arts, Humanities and Social Sciences (CAHSS) not just the Law School, disclosure would substantially prejudice its admissions process for its entire undergraduate offering across CAHSS. It noted that this document contained its own determinations in regard to equivalences across different qualifications and it submitted that other institutions may make different determinations. The Authority reiterated its position that disclosure of this document would enable other universities to change their admissions behaviour, which would be to the detriment of their competitors and applicants.
27. The Authority made further comments about the second and third documents it was withholding from the Applicant. It explained that these documents detailed the filtering process to distinguish between applicants who received the same score. The Authority submitted that this was a complex process undertaken by trained and experienced staff, and that the admissions situation varied annually, meaning the processes described in the documents were not necessarily used in the same way every year.
28. It argued that prospective applicants already found the large amount of information available about admissions processes confusing, and that consequently the Authority responded to tens of thousands of enquiries relating to admissions every year. It expressed concerns that disclosing the information would simply cause further confusion and misunderstanding, to the detriment of the Authority and applicants. The Authority submitted that more confusion would mean more enquiries from applicants which in turn risked overwhelming admissions and enquiries staff and affecting the Authority's ability to make timely admissions decisions.
29. The Authority also argued that there was a further risk that prospective students who saw the information (were it to be disclosed) might decide not to apply to study with the Authority, either because they were confused by the information or because they misinterpreted it, with the result that they mistakenly believed there was no point in applying because they would not receive an offer.
30. It argued that if the admissions team became overwhelmed or students were deterred from applying to the Authority, that would undermine the quality of service to prospective applicants and substantially prejudice the Authority's ability to effectively manage its admissions process.

The Applicant's submissions about section 30(c)

31. The Applicant argued that there was a right to know why an applicant had not been selected for a place on the Authority's undergraduate law course. He suspected certain applicants may have been positively discriminated against and that revealing the selection criteria could dispel this belief.
32. The Applicant added that he had evidence that a significant number of applicants with five A-grades at Higher and who were also predicted to achieve at least three As at Advanced Higher (who also had high-level personal statements and had undertaken super-curricular activities) did not receive an offer to study law with the Authority.

He stated that each applicant did receive unconditional offers to study law from their other four UCAS choices and he believed the Authority's admissions process discriminated against applicants from independent schools who had outstanding academic qualifications.

33. The Applicant referred to a particular student he supported who was not accepted into the Authority's law course. He commented that, while this student did receive unconditional offers to study law from four other Scottish universities, the rejection from the Authority came at the last minute, by which time the more desirable accommodation at the other universities was significantly limited. He submitted that this compounded the stress and exacerbated the mental health issues experienced by this particular student.
34. The Applicant argued that disclosure of the admissions process would make it clear to applicants from the outset that they have no chance of being offered a place to study at the Authority's law school and that this would avoid unnecessary stress and a significant impact on their mental health.

The Commissioner's view about section 30(c)

35. The Commissioner acknowledges that applying for admission to university can be stressful and that there is an impact on individuals who are not accepted to institutions where they may have hoped or expected to receive an offer.
36. However, he accepts that a large number of prospective applicants may also be affected in the ways outlined by the Authority, if the information was disclosed. In particular, he finds the Authority's detailed description of how other universities could alter their admissions criteria, resulting in the same groups of students receiving an offer to study at more than one university (and another group correspondingly not receiving such offers) persuasive. If this occurred, and prospective students were disadvantaged by law schools all applying the same admissions criteria, he is satisfied that this would negatively impact on the Authority's admissions procedures and would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.
37. While he acknowledges the Applicant's account of the impact on an individual of a late rejection, he also considers that this experience could, potentially, become more widespread and affect more prospective students in the event of an admissions system put under significant pressure by a greater number of queries prompted by confusion over the system. In the Commissioner's view, those affected would include (but would not be restricted to) the pupil cohort with whom the Applicant is concerned in this particular appeal.
38. Moreover, having considered the withheld information and how it sets out the qualifications criteria, he accepts that it would be more likely to prompt additional queries to university admissions staff, rather than cut down on them, and that this poses a significant risk in terms of staffing and running the Authority's admissions service. He also accepts that this would apply not just to queries about studying law but about any subject within CAHSS, meaning the level of potential enquiries could be significant. If this occurred, and the Authority was deluged by enquiries regarding its admissions processes, he is satisfied that this would negatively impact on the Authority's ability to carry out its public functions and would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.
39. The Commissioner also recognises the difficulties described in matching offers with the number of places available and the potential impact on both applicants and the Authority.

40. In all the circumstances, the Commissioner is satisfied that the Authority was entitled to apply the exemption in section 30(c) of FOISA to this information.

Public interest test - section 30(c)

41. As mentioned above, the exemption in section 30(c) of FOISA is subject to the public interest test in section 2(1)(b) of FOISA. The Commissioner must therefore go on to consider whether, in all the circumstances of the case, the public interest in disclosing the information is outweighed by that in maintaining the exemption.

The Authority's comments on the public interest

42. The Authority acknowledged the importance of openness and transparency in relation to its admissions decision-making process and stated that this was why it published a large amount of such information on its website, employed a team of trained admissions staff to respond to enquiries and had a policy covering admissions feedback, appeals and complaints. It provided relevant links to its website.
43. However, the Authority argued that the public interest was best served by applicants having a fair chance of receiving an offer to study law (or any other subject). It argued that if all law schools used the same selection criteria, the same applicants would either be offered a place or not offered a place (i.e. because the same criteria were being applied by different institutions). That would mean that many applicants missed out on an offer to study at their preferred university. Furthermore, the Authority argued that if other institutions altered their admissions processes to mirror those of the Authority, this would not only impact law but all programmes in CAHSS and, as the scoring system was broadly similar each year, it would impact future admissions cycles. The Authority submitted that this would not be in the public interest.
44. The Authority also argued that it was in the public interest for it to be able to manage its admissions process effectively. It submitted that disclosure of the requested information would destabilise its ability to calculate how many offers to make, resulting in either under or over recruitment, both of which had financial implications. In addition, over recruitment would also put additional pressure on the Authority's facilities and staff, as well as on training places in law firms, which would mean law graduates without places could not pursue a law career.
45. The Authority stated that the public interest was served by available information being clear rather than causing confusion, with the resulting impact on staff (already detailed above) and its ability to properly manage its admissions process. The Authority submitted that the information was hard to interpret out of context and by those without experience of admissions and that there was a risk of potential applicants mistakenly concluding that they should not apply.
46. The Authority concluded that, on balance, the public interest favoured maintaining the exemption.

The Applicant's comments on the public interest

47. The Applicant argued that disclosure would clearly be in the public interest because if prospective students knew they did not fulfil the criteria, they would not expose themselves to the stress and risk of mental health issues by applying to the Authority's law school. He submitted that disclosure of the admission criteria would make it clear to applicants from the outset that they had no chance of being offered a place to study law with the Authority.

48. The Applicant stated that because applicants could only apply to five establishments on a UCAS application, those from independent schools who applied to the Authority to study law were disadvantaged as in reality they only had a realistic chance of four offers.
49. He commented that if applicants knew the specific criteria that would exclude them from being offered a place, they could avoid unnecessary distress and potential triggering of mental health issues. The Applicant added that the Authority published minimum entrance requirements, and he therefore saw no reason why it could not also publish any exclusions.

The Commissioner's view on the public interest

50. The Commissioner agrees that there is always a general public interest in openness and accountability. Openness and accountability allow effective scrutiny and reassure the public, where appropriate.
51. On the other hand, the Commissioner has already acknowledged the risk of substantial prejudice to the effective conduct of public affairs in this case, with particular reference to the impact on the admissions process and especially on prospective students.
52. In relation to the Applicant's point at paragraph 47, the Commissioner notes that any prospective student applying to university will have to weigh up where they want to apply, while being aware that they may not be offered a place at all of the institutions. This is not, in his view, a consideration restricted to any particular cohort of students. He considers that by its very nature, the current university application system will always contain a measure of uncertainty as to the outcome, regardless of the qualifications obtained by prospective students.
53. In all the circumstances, the Commissioner is satisfied that the public interest in disclosure is outweighed in this case by that in maintaining the exemption and allowing the information to be withheld under section 30(c) of FOISA. The Commissioner therefore finds that the Authority was entitled to withhold the information under this exemption.
54. As the Commissioner is satisfied that the Authority was entitled to withhold all of the information under section 30(c) of FOISA, he will not go on to consider whether the authority was also entitled to withhold that information under section 33(1)(b).

Decision

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

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.

Euan McCulloch
Head of Enforcement

11 December 2024