

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 29 April 2013

Public Authority: The Governing Body of University of London
Address: Senate House, Malet Street, London, WC1E 7HU

Decision (including any steps ordered)

1. The complainant has requested information relating to marking guidelines provided to examiners of University of London International Programmes LLB examinations.
2. The Commissioner's decision is that the University of London (the University) has correctly applied section 36(2)(c) to the requested information.
3. The Commissioner does not require the University to take any steps as a result of this decision notice.

Background

4. The complainant has explained that the LLB degree awarded by the University is a Qualifying Law Degree (QLD) for the purposes of the Solicitors Regulation Authority and the Bar Standards Board – graduates may progress directly to the vocational stage of legal training for England and Wales. There was a global total of around 12000 LLB examination candidates in 2012, around 1000 of whom were UK students.
5. The University provides some study materials for students but leaves the teaching of the LLB course to private course provider institutions in the UK and abroad. A minority of LLB students study independently without attending an institution.

Request and response

6. On 11 July 2012, the complainant wrote to the University and requested information in the following terms:

For each of the following subjects on the University of London International Programmes - Undergraduate Laws LLB:

Common law reasoning and institutions, Public law, Elements of the law of contract, Criminal law, Law of tort, Land law, Law of trusts, EU law, Jurisprudence, Commercial Law, Company Law, Evidence, Family Law, Intellectual Property, Conflict of Laws, Laws Skills Portfolio Examination (Laws Skills Pathway 1), Laws Skills Portfolio Examination (Laws Skills Pathway 2)

(1) the zone A and zone B examination papers for the exams held in May and June 2012

(2) the marking guidelines provided to examiners in respect of each of the exams held in May and June 2012

7. The University responded on 7 August 2012. It advised where the information in part 1 could be accessed. However, it refused to provide the information requested in part 2. It cited section 36(2)(c) as its basis for doing so.
8. Following an internal review the University wrote to the complainant on 31 October 2012. It upheld its original position.
9. On 5 September 2012 the complainant made a further request for information detailed in Appendix 1 of this Notice and referred to as Request 2.
10. The University responded on 3 October 2012 and provided the information requested in relation to the 5 September request.
11. On 18 October 2012, a further request was made in the following terms:
- I would like to make a further request for LLB marking guidelines for the LLB examinations – on this occasion in respect of those relating to the September resit exams.*
12. On 15 November 2012 the University responded. It refused to provide the requested information, again citing section 36(2)(c) as its basis for doing so.

13. The University declined to carry out an internal review as it was of the view that there was no difference in principle between this request and the first request.

Scope of the case

14. The complainant contacted the Commissioner on 4 December 2012 to complain about the way his request for information had been handled.
15. The Commissioner considers the scope of this case to be to determine if the University has correctly applied section 36(2)(c) to the request.

Reasons for decision

16. Section 36(2)(c) of the FOIA states that information is exempt if, in the reasonable opinion of a qualified person, disclosure of the information would, or would be likely to, prejudice the effective conduct of public affairs. This is a qualified exemption so is subject to a public interest test. However, before considering the public interest, the Commissioner must first consider whether the exemption is engaged.
17. For section 36(2)(c) to apply the qualified person for the public authority must give their reasonable opinion that the exemption is engaged. The qualified person for the University is the Vice-Chancellor, Professor Crossick.
18. The University has provided the Commissioner with evidence to demonstrate that the opinion was sought on 20 July 2012 and provided on 23 July 2012. The Commissioner has had sight of the submissions made to the Qualified Person and notes that the Qualified Person was informed which specific limb of section 36 his opinion was being sought upon, was provided with details of the information falling within the scope of the request and provided with the reasons for this exemption being engaged. The Commissioner accepts therefore that the opinion of an appropriate Qualified Person was properly sought in relation to the application of the exemption. The Commissioner has next gone on to consider whether the opinion of the Qualified Person was a reasonable one.

Was the opinion reasonable?

19. In order to engage section 36(2) the qualified person must give an opinion that the prejudice or harm stated in 36(2)(c) would or would be likely to occur. However, that in itself is not enough, and the opinion

must also be reasonable. In deciding whether an opinion is reasonable the Commissioner will consider the plain meaning of the word. The Commissioner has issued guidance on section 36 of the FOIA. It states the following:

"The most relevant definition of 'reasonable' in the Shorter Oxford English Dictionary is 'In accordance with reason; not irrational or absurd'. If the opinion is in accordance with reason and not irrational or absurd – in sort, if it is an opinion that a reasonable person could hold – then it is reasonable.

This is not the same as saying that it is the only reasonable opinion that could be held on the subject. The qualified person's opinion is not rendered unreasonable simply because other people may have come to a different (and equally reasonable) conclusion. It is only unreasonable if it is an opinion that no reasonable person in the qualified person's position could hold. The qualified person's opinion does not even have to be the most reasonable opinion that could be held; it only has to be a reasonable opinion.

20. The University has provided the Commissioner with sufficient evidence to establish that the Vice- Chancellor had prior knowledge of the issues to which the information relates before offering his opinion and was also provided with a summary of the information and the arguments for maintaining and disclosing the information. The qualified person gave an opinion that disclosing marking guidelines would fundamentally affect one of the University's core functions, that of robust exam assessment.
21. The University has explained that the effective marking and assessment of examinations, and the awarding of degree qualifications, is fundamental to the working of the University, as demonstrated in its Statutes¹.

University Statute 2.1

The objects of the University, carried out through the Colleges primarily, and also through the Central Academic Bodies and Central Activities, are, for the public benefit, to promote education of a university standard

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http://www.london.ac.uk/fileadmin/documents/about/governance/New/Statutes_1_August_2008_i.pdf

and the advancement of knowledge and learning by teaching and research; and to encourage the achievement and maintenance of the highest academic standards.

University Statute 3

The University has the power to grant degrees or other awards and to do all things permitted by law which are necessary or desirable to promote its objects.

22. The University believes that the disclosure of the marking guidelines would be likely to prejudice the effective operation of the University's examiners in preparing the most robust and effective guidelines for marking exam papers.
23. Furthermore, the University considers that it would also prejudice the actions and efforts of students, who may try and adapt their essay answers to marking guidelines developed at examiner level for examiners, resulting in mistakes in comprehension and lower attainment scores.
24. Finally, the University considered where there was a requirement to establish a process to publish marking guidelines this would transform them from a useful internal assessment tool to just another external facing study aid, of which a wide range of provision already exists.
25. The complainant has stated that the principal ground relied on by the University that publication would prejudice '*the effective operation of the University's examiners in preparing the most robust and effective guidelines for marking exam papers*' is based on the premise that the current system is 'robust and effective'.
26. The complainant argues that it is difficult to accept that this is a reasonable opinion, given that marking guidelines are not prepared in all subjects, including a number of foundational subjects which must be passed for students to be awarded a QLD. In response to a request for information about the September resit examinations sent on 18 October 2012 the University disclosed in its response that out of 13 examinations set, marking guidelines were provided only in respect of five.
27. The complainant considered that whilst the examination papers are subject to scrutiny by a committee of the International Programmes the fact that marking guidelines were not provided in all subjects indicates that they are not.
28. The Commissioner has considered the comments provided by the complainant and the information on which the qualified person made his

opinion and has also inspected the withheld information. In the circumstances the Commissioner accepts that the opinion was reasonable and therefore the exemption is engaged.

29. Section 36(2)(c) is however subject to the public interest test. As such the Commissioner has gone on to consider whether the public interest in maintaining the exemption outweighs the public interest in disclosure.
30. Having accepted the reasonableness of the qualified person's opinion that disclosure of the information would be likely to have, the stated detrimental effect, the Commissioner must give weight to that opinion as an important piece of evidence in his assessment of the balance of the public interest test to be disclosed and therefore that section 36(2)(c) is engaged in relation to the withheld information.
31. However, in order to form the balancing judgment required by section 2(2)(b) of FOIA, the Commissioner is entitled, and will need, to form his own view as to the severity of, and the extent and frequency with which, any such detrimental effect might occur.

Public interest arguments in favour of maintaining the exemption

32. The Commissioner has considered the public interest arguments both for and against maintaining the exemption in this case. When attributing weight to the arguments in favour of maintaining s36(2)(c) he has considered the frequency, severity and extent of the harm identified by the University.
33. The University has argued that it makes past papers and Examiners reports available to its students in order to help them prepare effectively for exams. Examiner reports can provide an indication of common skills deficits observed as well as common errors or conceptual misunderstandings. The marking guidelines would not be a significant addition to this and could work against the interest of students by assuming an importance unrelated to their original purpose (to help examiners mark papers).
34. It further argued that it was necessary for the University to maintain the most robust and effective guidelines for marking exam papers in order to maintain a level of excellence in academic assessment and awards; disclosing the marking guidelines could adversely affect examiners and students.
35. Students are provided with detailed study guides for their courses. Course handbooks advise students on preparation for their examinations. In addition all students are provided with a book in the

Palgrave Study Skills series called 'studying law' (co-written by the Deputy Director of the undergraduate Laws Programme), which includes guidance on 'how to', including chapters on answering essay questions, including some worked answers. The Programme Specification and Regulations, produced annually, provide a section on assessment criteria which give a description of characteristics of performance within the grade bands between 50 and 59, 60 and 69 and so on.

http://www.londoninternational.ac.uk/sites/default/files/regulations/pdfs/llb_revised_psr_12-13.pdf (pp. 89-92)

http://www.londoninternational.ac.uk/sites/default/files/regulations/pdfs/llb_psr_old_12-13.pdf (pp. 83-85)

http://www.londoninternational.ac.uk/sites/default/files/regulations/pdfs/llb_schemef_psr_12-13.pdf (pp. 51-52)

36. The International Programmes publishes detailed information around the quality of standards of the University's degree programmes on its website and national quality assurance bodies publish their independent assessments of the University

<http://www.qaa.ac.uk/InstitutionReports/Pages/London-International-Programmes.aspx>; disclosing the marking guidelines will not add significantly to the public understanding of the standards of the education the University provides.

37. The University went on to explain that the Undergraduate Laws Programme is committed to helping students to achieve the best results they can and is developing further study aids to help its students in 2013. This will include:

- a service to allow students to submit essays to the University for formative assessment marking by its academics, so that they can get a better sense of their progress
- the University of London has been trialling a 'virtual classroom' for law students allowing 'real time' teaching where students can ask questions live via a chatroom and lecturers in London provide answers
- re-developing its range of audio lectures from University of London academics and supporting slides with additional linked resources
- an online 'skills bridging' course

Public interest arguments in favour of disclosure

38. The University acknowledges that disclosure of the requested information would aid transparency around how the exam papers of the University are marked. It also acknowledged that students of the University could be able to prepare more effectively for examinations,

though this does not constitute a wider 'public' interest in the strictest sense.

39. The Commissioner does however consider that the public has a legitimate interest in monitoring the academic quality of a course. He has noted the Information Tribunal's comments in the case of *University of Central Lancashire v Information Commissioner and David Colquhoun EA/2009/0034* that :

'..it is no answer to say this function is performed by the process of validation or continuing monitoring of standards with external input. Whether or not these processes are conducted with critical rigour, it must be open to those outside the academic community to question what is being taught and to what level in our universities''

Complainant's arguments in favour of disclosure

40. The complainant provided significant arguments in favour of disclosure of the requested information. The Commissioner acknowledges these although he does not feel it necessary to detail them all in this Decision Notice.
41. The complainant argued that there is a clear public interest in ensuring that the particularly strong claims made by the University in respect of the LLB can be evaluated and publicly debated. Disclosure of the marking guidelines would enhance the quality of public debate about the standard of the degree.
42. The public interest extends beyond the immediate interests of students on the course. The interests of prospective students, their families and other stakeholders, including prospective employers, are largely ignored by the University. There is a public interest that the degree achieves the standards claimed and that public debate about the standards is well informed.
43. The internal review states that the public are provided with '*a large amount of information about how the courses are run*'. However, although the website makes a number of claims as to the standards of the LLB degree, there is little evidence that those standards are actually applied.
44. The internal review also makes reference to a number of innovations designed to help students to achieve the best results they can. However, these measures do not directly relate to the standards expected and applied in the examinations. In addition they are prospective and provide no assurance that the marking guidelines used this year and in past years were 'robust and effective'.

45. The complainant has further argued that in light of the fact that the guidelines are not scrutinised and are not provided in all subjects does not support the University's view that the current guidelines are 'robust and effective' and 'maintain a level of excellence in academic assessment'. In addition, the complainant points out that it is difficult to see how publication, **after** the exams have been taken, might adversely affect examiners.
46. The complainant then goes on to refute the University's argument that it makes past papers and Examiners reports available to its students in order to help them prepare effectively for exams. The complainant counters this and states the Chief Examiners write reports in respect only of the May/June exams and not in respect of the resits. They are written after the examination has been sat and the papers marked. They do not make reference to the marking guidelines.
47. The complainant further argued that the Examiners reports are not made available to students in time to 'help them prepare effectively for exams'. By way of example he explained that in December 2012, reports had still not been published in respect of three of the 2011 examinations and none had been published in respect of the 2012 examinations. Consequently there was no opportunity for students or their teachers to incorporate information from the reports into their learning or teaching as the course progresses.
48. The complainant states that the Examiners reports are published too late to assist resit students. The prompt publication of the marking guidelines after the May/June examination boards would go some way to filling this gap by giving students (and their teachers) some indication of what was expected and from this, work out where they might have gone wrong.
49. The complainant noted the argument from the University: "*International Programmes publishes detailed information around the quality and standards of our degree programme on its website...and national quality assurance bodies publish their independent assessments of the University; disclosing the marking guidelines will not add significantly to the public understanding of the standards of the education we provide*". In response the complainant advised that all universities are monitored by the QAA. If this argument were to prevail it would mean that all requests for information related to university standards could be rejected on the grounds that the university publishes its quality and standards assurances and is monitored by national bodies.
50. The complainant further stated that the QAA does not validate that the International Programmes degree is a 'gold standard' degree of the same standard as an internal University of London award. The role of

the QAA is merely to ensure that the awards and qualifications in higher education achieve the threshold academic standard consistent with those referred to in *'The framework for higher education qualifications in England Wales and Northern Ireland'*.

Balancing of the public interest

51. The public interest can cover a wide range of values and principles relating to the public good, or what is in the best interests of society. For example, there is a public interest in transparency and accountability, to promote public understanding and to safeguard democratic processes. There is a public interest in good decision-making by public bodies, in upholding standards of integrity, in ensuring justice and fair treatment for all and in securing the best use of public resources.
52. As well as the general public interest in transparency, which is always an argument for disclosure, there may also be a legitimate public interest in the subject the information relates to. In the Commissioner's opinion however that is not a relevant consideration in this case.
53. Section 2(2) of the FOIA refers to the public interest; furthermore, disclosures of information under FOIA are in effect to the world at large and not merely to the individual requester. So the requester's private interests are not in themselves the same as the public interest and what may serve those private interests does not necessarily serve a wider public interest.
54. The Commissioner has considered the likely impact of disclosure on the University's ability to assess competence via its examination process and the consequent prejudice to the effective conduct of public affairs.
55. By accepting the exemption is engaged, there is an acknowledgement that the disclosure of this information would prejudice the effective conduct of public affairs. In this case, the University is required to ensure that its examinations adequately test students' knowledge and understanding of the subjects and the Commissioner accepts that disclosure of the marking guidelines would prejudice its ability to do this by making it disclose more detailed information on the marking process than the University considers appropriate to do so in order to maintain its robust examination process.
56. The University stated that disclosing the marking guidelines will not add significantly to the public understanding of the standards of the education the University provides. The Commissioner is minded to accept this argument has some merit bearing in mind the nature of the

information itself and the extent of information it currently provides to students and the wider public audience.

57. In this case it could however be said that disclosure of the marking guidelines would enable the public, including students and stakeholders, to gain a wider understanding of what is required to achieve a degree from the University which holds itself up to providing a 'gold standard degree' as well as assist students in preparation for their exams.
58. The Commissioner notes that the University considers that it needs to maintain a 'robust and effective' marking regime however it does not explain how this is scrutinised. If there is no such scrutiny then it creates doubt as to the quality of the degree obtained by the University's students.
59. The Commissioner also notes the University's reference to his previous decision notices. In the case of FS50155365, this request was for marking schemes in relation to an entrance exam in a highly competitive environment. The Commissioner does not consider that the same circumstances can be applied here.
60. In addition, the Commissioner's decision in relation to case FS50451690 took account of the fact that the question banks for that specific exam are much smaller than for other subject areas. However, in this case the University has stated that past papers are already provided to students and the request is for the marking guidelines rather than the questions themselves.
61. However whilst recognising the validity of these points the Commissioner has carefully considered the 'adverse effect on students and examiners' as argued by the University. He considers that some weight can be afforded to this argument with regard to the chilling effect on examiners in particular. There is a need for examiners to know that papers can be marked without the risk of outside interference or questioning of their adherence to the guidelines in the marking process. There is also a strong public interest in protecting the integrity of the process itself and ensuring that the standards of law graduates are maintained and their full knowledge is tested in a manner the University considers appropriate.
62. The Commissioner considers it is for the University to determine the level of understanding it wishes to provide to its students and there is the potential for these marking guidelines giving too much detail and potentially undermining the established examination process. Whilst acknowledging the complainant's own needs for wanting this information, disclosure under FOI raises that the possibility that the

information could also potentially be used to undermine the process in future.

63. The Commissioner does not consider the arguments in favour of disclosure to be particularly strong and is not convinced that disclosure of the marking guidelines will further the public interests identified to any great extent given the breadth of information and support the University already provides to students.
64. Fundamentally, as a validated degree which requires the University to adhere to established and recognised standards, policies and procedures and criteria, he considers that this in itself demonstrates that the University recognises the necessity and importance of meeting those obligations. Therefore unless there is any evidence to show that it is not adhering to those policies, standards and procedures, then there is no strong public interest in the information being disclosed. No such evidence has been submitted in this case.
65. Taking all of the above into account the Commissioner has concluded that in this case the strong public interest in maintaining the integrity of the examination process for the University outweighs the public interest arguments in favour of disclosure.
66. Therefore after due consideration of his comments above he finds that the University was correct to apply section 36(2)(c) to the requested information.

Right of appeal

67. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0116 249 4253

Email: informationtribunal@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/guidance/courts-and-tribunals/tribunals/information-rights/index.htm

68. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.

69. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Pamela Clements
Group Manager, Complaints Resolution
Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF

Appendix 1

Request 2

On 5 September you requested further information:

Would you be kind enough to provide me with the following information in respect of:

University of London International Programmes - Undergraduate Laws LLB and Diploma in Law:

Common law reasoning and institutions

Public law

Elements of the law of contract

Criminal law

Law of tort

Land law

Law of trusts

EU law

Laws Skills Portfolio Examination (Laws Skills Pathway 1)

Laws Skills Portfolio Examination (Laws Skills Pathway 2)

- 1. For each of the subjects above, according to the most recent records held by the University, the names of the university and/or colleges at which the Chief Examiner and Deputy Chief Examiner are currently employed.*
- 2. For each of the subjects above the number of examiners, except external examiners, who marked (or second marked) examination scripts for the 2012 May / June examination.*
- 3. For each of the subjects above, according to the most recent records held by the University, the number of examiners, except external examiners, who marked (or second marked) examination papers for the 2012 May / June examination and were employed by either Kings College London, University College London, LSE, Birkbeck College London, SOAS or Queen Mary London ("the 6 colleges")*
- 4. According to the most recent records held by the University, other than the 6 colleges, the names of all the universities and/or colleges at which the examiners, except external examiners, who marked examination papers for the 2012 May / June examination in the subjects above are currently employed. In respect of this particular request, a list of the names of all the universities and / or colleges of*

the examination markers is all that is requested. It is not necessary to identify by reference to each of the individual subjects the university or college at which the marker(s) were employed.

5. *The total number of examiners, except external examiners, who attended at least one of the University of London International Programmes LLB and/or Diploma in Law examination boards for the 2012 May / June exams.*
6. *The date on which the Examiner's reports for the 2011 May / June and 2011 Autumn resit Zone A and Zone B exams were published by the University for each of the subjects above and also the following subjects: Jurisprudence, Commercial Law, Company Law, Evidence, Family Law, Intellectual Property, Conflict of Laws, Labour Law and Public International Law?*