

## Freedom of Information Act 2000 (FOIA)

### Decision notice

**Date:** 2 November 2023

**Public Authority:** The Council of the University of York  
**Address:** Heslington  
York  
YO10 5DD

#### Decision (including any steps ordered)

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1. The complainant has requested information on skills bootcamps run by HyperionDev and accredited by the University of York (the University). The University disclosed or answered the majority of the parts of the request but withheld information relating to the financials of the arrangement under section 43(2) of FOIA.
2. The Commissioner's decision is that the University has correctly engaged the exemption in relation to part (3) of the request and the public interest favours maintaining the exemption and withholding the information.
3. The Commissioner does find that the public authority breached section 10(1) of FOIA by failing to provide a response to the request within the statutory time frame of 20 working days. No steps are required.

#### Request and response

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4. On 3 May 2023, the complainant wrote to the University and requested information relating to any bootcamp or course provided by HyperionDev in partnership with or accredited by the University. The request was in the following terms:

"(1) How much money has the university been paid by HyperionDev to accredit or partner the courses, provided by HyperionDev?"

- (2). How much money has the university been paid by the UK government to accredit or partner the courses, provided by HyperionDev?
- (3). How much money in total has been agreed to be paid to the university by HyperionDev to accredit or partner the courses, provided by HyperionDev? (whether with/without certain conditions being fulfilled - please state)
- (4). How much money in total has been agreed to be paid to the university by the UK government to accredit or partner the courses provided by HyperionDev? (whether with/without certain conditions being fulfilled - please state)
- (5). How much money has HyperionDev been paid by the university to provide the courses, in partnership or accreditation?
- (6). How much money has the UK government been paid by the university to provide the courses, in partnership or accreditation?
- (7). How much money has HyperionDev been allocated, by the university to provide the courses, in partnership or accreditation? (whether with/without certain conditions being fulfilled - please state)
- (8). How much money has the UK government been allocated, by the university to provide the courses, in partnership or accreditation? (whether with/without certain conditions being fulfilled - please state)
- (9). How many students have received a university partnership or accredited certificate from HyperionDev?
- (10). How many certificates, accredited or in partnership from the university have been allocated, in total, by the university?
- (11). How many complaints has the university received regarding HyperionDev? (even if they were then subsequently signposted to the UK government or HyperionDev)
- (12). Please outline the exact relationship between HyperionDev and the university to provide these bootcamps.
- (13). Please state whether the course certificates are "partnered" or "accredited" by the university, and exactly what that means.
- (14). Please describe the full reasons as to why the university entered the partnership with HyperionDev, to partner or accredit these bootcamps? (from the person or team who agreed to it)
- (15). Please outline what oversight or involvement the university has had in HyperionDev's curriculum for these bootcamps.

- (16). Please outline whether any requirements for a student receiving a university (partnered or accredited) certificate changed, stating what the change of requirements was and the date of that change.
- (17). Please outline whether there is a finite date that the partnership or accreditation agreement ends.”
5. The University responded on 27 June 2023 answering all parts of the request with the exception of part (3) which was refused under section 41 and 43 of FOIA.
  6. Following an internal review the University wrote to the complainant on 26 July 2023 upholding its position in relation to part (3).

### **Scope of the case**

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7. The complainant contacted the Commissioner on 27 August 2023 to complain about the way their request for information had been handled.
8. The Commissioner considers that the scope of his investigation is to determine if the information at part (3) of the request has been correctly refused under section 43(2) or 41 of FOIA.

### **Reasons for decision**

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9. By way of background to this request; Skills Bootcamps are free, flexible courses of up to 16 weeks that give people the opportunity to build up sector-specific skills, with an offer of a job interview on completion. Training is designed and delivered in partnership with employers. There are more than 1000 Skills Bootcamps available across the country.
10. HyperionDev is a technology education provider based in southern Africa that provides online coding learning. The Department of Education and HyperionDev, in partnership, offer enrolments on a government-funded online coding bootcamp. The end result is a non-degree certificate from HyperionDev and some limited certifications issued in partnership with Universities.
11. Section 43(2) of FOIA states that:  
  
“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).”
12. The exemption can be engaged on the basis that disclosing the information either “would” prejudice commercial interests, or the lower

threshold that disclosure only “would be likely” to prejudice those interests.

13. In order for a prejudice based exemption, such as section 43, to be engaged the Commissioner believes that three criteria must be met:
  - Firstly, the actual harm which the public authority alleges would, or would be likely to, occur if the withheld information was disclosed has to relate to the applicable interests within the relevant exemption;
  - Secondly, the public authority must be able to demonstrate that some causal relationship exists between the potential disclosure of the information being withheld and the prejudice which the exemption is designed to protect. Furthermore, the resultant prejudice which is alleged should be real, actual or of substance; and
  - Thirdly, it is necessary to establish whether the level of likelihood of prejudice being relied upon by the public authority is met, ie disclosure ‘would be likely’ to result in prejudice or disclosure or ‘would’ result in prejudice.
14. In relation to the lower threshold, the Commissioner considers that the chance of prejudice occurring must be a real and significant risk. With regard to the higher threshold, in the Commissioner’s view this places a stronger evidential burden on the public authority. The anticipated prejudice must be more likely than not.
15. The term ‘commercial interests’ is not defined in FOIA. However, the Commissioner has considered his guidance on the application of section 43, which clarifies that: “A commercial interest relates to a legal person’s ability to participate competitively in a commercial activity. The underlying aim will usually be to make a profit. However, it could also be to cover costs or to simply remain solvent.”
16. The Commissioner has considered this issue in another decision notice IC-252656-J2P1 which related to an identical request made to the University of Nottingham. In that case the Commissioner considered whether part (3) of the request engaged section 43(2) of FOIA and concluded that it did and that the balance of the public interest favoured maintaining the exemption and withholding the information.
17. As the requests in these cases are identical and the arguments were presented by HyperionDev in each case the Commissioner does not consider it necessary to repeat these again but relies on these arguments to support the decision that, as in the previous case, the section 43(2) exemption is engaged and the information should be withheld after considering the balance of the public interest test.

## **Procedural matters**

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18. Section 10(1) of FOIA states that a public authority must respond to a request promptly and “not later than the twentieth working day following the date of receipt”.
19. From the evidence provided in this case, the Commissioner finds that the public authority has breached section 10(1) by failing to respond to the request within 20 working days.

## Right of appeal

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20. 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: 0203 936 8963

Fax: 0870 739 5836

Email: [grc@justice.gov.uk](mailto:grc@justice.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

21. 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.
22. 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 .....**

**Jill Hulley**  
**Senior Case Officer**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**