



University of East Anglia

Information Services Directorate

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17 December 2015

Dear

Freedom of Information Act 2000 – Information Request (Our file: FOI_15-259)

Your request for information received on 1 December 2015 for:

“...a full breakdown of how your marketing budget was used in 2014, particularly focusing on digital marketing and the avenues you used. Please provide the amount spent and the company spent with, for example linkedin £xxx, Facebook £xxx, Hotcourses £xxx, UCAS £xxx etc”

has now been considered. We regret that on this occasion it is not possible to provide the requested information.

In line with section 17 of the Act, this letter acts as a Refusal Notice. The Act contains a number of exemptions that allow public authorities to withhold certain information from release. We have applied the following exemption to your request.

Exemption	Reason
s.43(2), Commercial interests	Disclosure of information will be likely to prejudice the commercial interests of a person as defined by the Act

Exemption explanation

In regards the application of section 43(2), it is our belief that the release of specific details of the expenditure on promotional activities at the level that you have requested would, or would be likely to, prejudice the commercial interests of the University.

The Information Commissioner’s Office has established a multi-criteria test for assessing whether a section 43(2) exemption applies.¹ The first criterion is whether the information relates to, or could impact on a commercial activity. The First Tier Tribunal (Information Rights) has also conclusively stated that universities, despite their charitable status, do engage in commercial activities. The ICO guidance clearly indicates that a ‘commercial activity’ relates to the activity of buying or selling goods and services. The commercial

¹http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailled_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.ashx

activities here are the tactical activities that the University undertakes to sell itself to prospective students and researchers as a research, learning and teaching institution. The successful recruitment of students and staff is very much a vital element of this commercial activity for the University and is critical to maintaining our ability to compete within the Higher Education sector.

The second criterion is whether the commercial activity is conducted in a competitive environment. Universities operate in a global marketplace competing for research funding, students and accreditation. The UK HE sector is highly competitive as universities are seeking to recruit from a limited pool of prospective UK and International students. We therefore believe the market is commercial as our relationship with potential students is a commercial transaction and highly competitive.

The next criterion is whether the information is commercially sensitive. Significant resources are devoted to recruitment activities, advertising, brand development, delivery of open days and the creation of marketing collateral which is developed and delivered throughout an annual recruitment cycle with different activities being presented to the market at various points in the prospective students' decision making process.

Our ability to deliver a comprehensive and engaging marketing strategy to the aforementioned limited pool of students provides us with a possible advantage compared to our competitors who undertake this activity less effectively. The nature and balance of our tactical marketing and recruitment activities is not shared with competitors as this would provide them with the insight to match and exceed our activities, which, in turn could jeopardise our ability to secure marketing resources, provide competitive activities and deliver unique and engaging activities at appropriate times.

The commercial sensitivity of the apportionment of our marketing budget lies in our assessment of the market and the emphasis we place on certain activities at certain times of the year and the combination of marketing collateral and marketing channels we use to communicate with our audience. Our brand development enables us to communicate our uniqueness to our audience and is something that many universities are looking to develop and enhance as the market becomes increasingly competitive.

Our position is therefore extremely sensitive and sharing details of our marketing budget would be damaging as our competitors could use this to challenge our position. The allocation of budget is the first step in the marketing offer of UEA and if our competitors understood our budget allocations they would be able to compete through the procurement of greater and/or more targeted amounts of certain types of resource.

The next criterion goes to the prejudice itself; would there be damage to the University's reputation, business confidence or ability to compete? Under the Act, release to one requester can be considered as release to the world. It is our position that release of our marketing budget would, in effect, provide our competitors with information that we consider integral to our marketing and recruitment activities. It is our ability to compete that would be prejudiced in this case as our competitors could use this information to guide their own marketing plans and tactics. This would enable them to begin to enhance their activities by devoting more resources to particular areas – for example the ability to allocate budget to specific marketing channels enables a competitor to have a greater profile to the target audience.

We also have to determine the likelihood of prejudice being caused by release of this information. As noted above, our position is that the choice, composition and tactics employed within our marketing activities as represented by the marketing budget give us an advantage in engaging with our target audiences. Release would allow our competitors to 'close the gap', target their activities to those that we undertake, and as a consequence, reduce our ability to compete within this market.

We believe that there is a plausible causal link between the disclosure of the information in question and the argued prejudice. We would note that the third party agencies, media

providers and marketing channels we use all regard this information as commercial and maintain confidentiality for each of their clients. To paraphrase ICO guidance, we assert that there is a real possibility that the circumstances giving rise to prejudice would occur, that it is not purely hypothetical.

Public Interest test

A public interest test² must be applied to the exemption for prejudice to commercial interests. There is no doubt that there is a legitimate public interest in knowing the amount and way in which public time and effort are spent in this respect, both to further the transparency and accountability of public authority activities.

We would counter that there is also a public interest in protecting the ability of institutions to compete on a level playing field and to ensure that there is fair competition for prospective students. To disclose this information would prejudice an institution's competitive and commercial position, and it is difficult to see how this could be in the public interest. Given the importance of such activities to the recruitment of students to an institution, any distortion of the process would inhibit the ability of students to make a properly informed decision regarding their education.

Please note that any material over which UEA has copyright is released on the understanding that you will comply with all relevant copyright rules regarding reproduction and/or transmission of the information provided.

You have the right of appeal against this response. If you wish to appeal, please set out in writing your reasons for appealing and send to the above address. You must appeal within 60 calendar days of the date of this letter. Any appeal received after that date will not be considered nor acknowledged. This policy has been reviewed and approved by the Information Commissioner's Office.

You also have a subsequent right of appeal to the Information Commissioner's Office. Further information is available on their website: https://ico.org.uk/Global/contact_us, or by telephone on 0303 123 1113.

Please quote our reference given at the head of this letter in all correspondence.

Yours sincerely

David Palmer
Information Policy and Compliance Manager
University of East Anglia

²http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_public_interest_test.ashx