1. Introduction

1.1 The Freedom of Information Act 2000 creates a broad right of access to information held by the University. However, there are certain exemptions from disclosure under the provisions of the Act. These exemptions are classified as Absolute Exemptions and Qualified Exemptions.

2. Exemptions and the Public Interest Test

2.1 Within the Act the exemptions from disclosure are either absolute or qualified as defined below:

2.2 Absolute Exemptions

2.2.1 Where these exemptions apply the right of access (right to know) is completely negated. In some instances there is no legal right of access at all, for instance, information supplied by bodies dealing with security matters, or information covered by parliamentary privilege. In other cases the information may be available to the applicant by other means, for example, if the applicant is making a request for access to data about him/herself there is an absolute exemption of access to the data under the Act, as the data is available to the applicant under the provisions of the Data Protection Act 1998.

2.2.2 Absolute exemptions are not subject to the Public Interest Test (see 2.5).

2.2.3 The complete list of absolute exemptions is:

- Section 21 - information accessible by other means;
- Section 23 - information supplied by, or relating to, bodies dealing with security matters;
- Section 32 - court records;
- Section 34 - parliamentary privilege [N/A];
- Section 36 - prejudice to effective conduct of public affairs (data held by Houses of Parliament)[N/A];
- Section 40 - some personal information;
- Section 41 - information provided in confidence;
- Section 44 - information whose disclosure is prohibited by law.

[N/A] not applicable to the University

2.3 Qualified Exemptions

2.3.1 Where these exemptions apply the University must consider whether there is a greater public interest in confirming or denying the existence of the requested
information and providing the information to the applicant, or in maintaining the exemption - this is known as the “Public Interest Test” (see 2.5).

2.3.2 The complete list of qualified exemptions is:

- Section 22 - information intended for future publication;
- Section 24 - national security;
- Section 26 - defence;
- Section 27 - international relations;
- Section 28 - relations within the UK (i.e. between the devolved governments of the UK)*;
- Section 29 - the economy*;
- Section 30 - investigations and proceedings conducted by public authorities [N/A];
- Section 31 - law enforcement;
- Section 33 - audit functions*;
- Section 35 - Formulation of government policy [N/A];
- Section 36 - prejudice to effective conduct of public affairs (except data held by Houses of Parliament)
- Section 37 - communications with her Majesty;
- Section 38 - health and safety;
- Section 39 - environmental information (accessed through Environmental Information Regulations);
- Section 40 - some personal information;
- Section 42 - legal professional privilege;
- Section 43 - commercial interests.

[N/A] not applicable to the University,

"Unlikely to affect the University

2.4 The Appropriate Limit

2.4.1 Though not strictly speaking an exemption, the Act does give the University the potential to refuse a request where the cost of responding to it is considered excessive.

2.4.2 Section 12 of the Act details this provision. Further information can be found in the document ‘Costs and Fees’ FOI-I5

2.5 Public Interest Test

2.5.1 Guidance from the Information Commissioner’s Office states that a matter “in the public interest” is one that serves the interest of the public. When applying the test, the University is simply deciding whether in any particular case, it serves the interest of the public to withhold or disclose the information i.e. it is a balancing exercise. There is a presumption that information should be disclosed unless the harm or unfairness likely to arise from the disclosure would outweigh the public interest in making the information available. It should be noted that there is a distinction between what is in the public interest and what is merely of interest to the public.

2.5.2 Factors to be considered when applying the public interest test include:

- would disclosure assist the administration of justice or enforcement of law?
- would disclosure inform the public of any danger to public health or safety?
- would disclosure contribute to a debate of importance?
- would disclosure compromise a person's privacy rights?

2.5.3 Factors that should NOT be taken into consideration include:

- the possible embarrassment caused to the University or its officers;
- the seniority of staff involved;
- the risk that information may be misinterpreted.

2.5.4 The Information Commissioner has emphasised that he is likely to scrutinise carefully any claimed exemption under a qualified exemption, i.e. where the University has applied the public interest test and subsequently refused to release the requested information. Practically, if the University is seeking to rely on a qualified exemption it must genuinely and reasonably perform the public interest test, and equally importantly, maintain a record (an audit) of that process.

3. Application of Exemptions and Public Interest Test

The application of the exemptions and in some circumstances the public interest test in order to decide, in a fair and informed way, how much information may legally be disclosed (if any), is likely be a complex process, requiring detailed knowledge of the Freedom of Information Act, possibly the Data Protection Act and other legislation. Consequently, members of staff should never attempt to process requests for information made under the Freedom of Information Act, such requests should always be referred to Information Assurance Services.

| Failure to comply with University Policy may lead to disciplinary action. |
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