

Decision Notice

Decision 007/2019: Mr J and Edinburgh Napier University

2018 University Staff Engagement Survey

Reference No: 201800916

Decision Date: 29 January 2019



Scottish Information
Commissioner

Summary

The University was asked for information relating to the 2018 University Staff Engagement Survey. The University withheld the information, on the basis that disclosure would substantially prejudice the effective conduct of public affairs.

Following an investigation the Commissioner found that the University had been entitled to withhold the information.

Relevant statutory provisions

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

The full text of each of the statutory provisions cited above is reproduced in Appendix 1 to this decision. The Appendix forms part of this decision.

Background

1. On 13 April 2018, Mr J made a request for information to the Edinburgh Napier University (the University). The information requested was a list of all the survey questions used in the University's 2018 Staff Engagement Survey (designed by the University in conjunction with Capita Surveys & Research) and the answers to all these questions (specifically, but not limited to, the number ratings and comments). Mr J requested the unedited comments, anonymised to comply with relevant legislation.
2. The University responded on 3 May 2018. It provided all the survey questions and a copy of the draft report of findings (including the ratings). It withheld the comments made by the participants under section 38(1)(b) of FOISA, submitting that, even without their names, the employees who commented would still be identifiable.
3. On 4 May 2018, Mr J wrote to the University, requesting a review of its decision as he believed disclosure was in the public interest.
4. The University notified Mr J of the outcome of its review on 30 May 2018. The University upheld the application of 38(1)(b) to the withheld information.
5. On 30 May 2018, Mr J wrote to the Commissioner. He applied to the Commissioner for a decision in terms of section 47(1) of FOISA. Mr J stated he was dissatisfied with the outcome of the University's review because he did not believe the responses from the staff members would make them individually identifiable. He also considered disclosure to be in the public interest.

Investigation

6. The application was accepted as valid. The Commissioner confirmed that Mr J made a request for information to a Scottish public authority and asked the authority to review its response to that request before applying to him for a decision.

7. On 3 August 2018, the University was notified in writing that Mr J had made a valid application. The University was asked to send the Commissioner the information withheld from Mr J. The University provided samples of 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 University was invited to comment on this application, and in particular to justify its reliance on any provisions of FOISA it considered applicable to the information requested.
9. On 25 September 2018, the University advised the investigating officer that it now also wished to claim the exemptions in sections 30(c) and 36(2) of FOISA. It provided submissions on these exemptions.
10. The investigating officer sought, and obtained, further comments from the University on the exemptions applied. Comments on these were also obtained from Mr J.

Commissioner's analysis and findings

11. In coming to a decision on this matter, the Commissioner considered all of the withheld information and the relevant submissions, or parts of submissions, made to him by both Mr J and the University. He is satisfied that no matter of relevance has been overlooked.
12. The University provided the Commissioner with samples of the comments made in response to the survey questions.
13. The Commissioner will firstly consider the University's application of section 30(c) of FOISA.

Section 30(c) of FOISA - Prejudice to effective conduct of public affairs

14. Section 30(c) of FOISA exempts information if its disclosure "would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs". 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.
15. The prejudice requires to be substantial and the exemption, if engaged, is subject to the public interest test in section 2(1)(b) of FOISA.

Submissions from the University

16. In addition to providing samples of the survey responses, the University also provided background information on the survey including a copy of the questionnaire, a draft copy of the survey report, with the ratings, and a copy of the "frequently asked questions", including anonymity assurances, provided to the survey participants.
17. The University submitted that, if the information (the comments made in the responses) was disclosed, University employees would lose confidence in its ability to maintain confidentiality and this would be likely to cause serious damage to the University's ability to conduct its affairs effectively. Full and meaningful engagement with any future survey of staff opinion would then be likely to be seriously diminished, and the University would lose the ability to gauge staff opinions and make the necessary management decisions and changes (which these surveys initiate) to ensure the continued successful operation of the organisation. A

general loss of trust in the organisation's ability to maintain confidentiality would be likely to have a negative impact on its ability to retain staff and, potentially, on its ability to attract new talent.

18. Furthermore, the University submitted that the damage to working relationships if employees perceived comments made by colleagues to be about them might be significant and cause considerable difficulty with employee management and creating a working environment conducive to both a harmonious working life for employees and an excellent student experience. It highlighted examples.
19. The University explained that the information had already been redacted by Capita, who conducted the survey, to remove obvious identifiers. However, it had transpired that staff were still identifiable to colleagues and the University submitted that it would be impossible to guarantee that further identification would not be possible if the information were made available to the public.
20. The University stated that assurances of confidentiality were given to participants, to ensure that it was possible to collect free and frank opinions in order to inform plans, improvements and decisions about the institution's future direction and improvements to the "staff experience".

The Commissioner's findings on Section 30(c)

21. Having considered the nature and content of the withheld information, together with the University's submissions, the Commissioner accepts that disclosure of the withheld information would be likely to cause substantial prejudice to the effective conduct of public affairs, both to staff relationships and trust, and (in consequence) to the integrity and value of future surveys carried out.
22. In reaching this conclusion, the Commissioner has noted the assurances given to survey participants and the frankness of the comments. He accepts that comments of such frankness would be unlikely if public disclosure were anticipated, and that the resulting impact on perceived freedom to contribute would be detrimental to any subsequent survey and the value of its outcomes.
23. In all the circumstances, the Commissioner accepts that the University was entitled to apply the exemption in section 30(c) of FOISA to this information.
24. As mentioned above, the exemption in section 30(c) 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 public interest test

Submissions from the University

25. The University considered that there was a public interest in disclosing the information to demonstrate openness and accountability. On the other hand, it believed this was outweighed by the public interest in maintaining the exemption, to ensure that the University was able to conduct its affairs effectively. It considered the anonymous survey results data and analysis it had disclosed already provided comprehensive data about staff opinion, which on its own provided a mechanism to ensure openness and accountability in this area. The University was of the view that there were no mitigating factors to justify the potentially

adverse effect on its ability to engage with staff and foster a working environment conducive to effective working relationships.

Submissions from Mr J

26. Mr J submitted that the public had the right to scrutinise the performance of any publicly funded body in an open and transparent manner. He stated that the University's Strategy 2020 made the following claims, amongst others:

We want to be recognised as a University that acts with respect and integrity and creates an environment where everyone involved feels proud, confident, challenged and supported

Our purpose is to deliver high quality education and research to add value to the social, cultural and economic capital of the communities we serve

In order to monitor its progress in achieving the aims of Strategy 2020, and thereby meeting its obligations to the public purse, the following Key Performance Indicators for achievement by 2019;

Improve overall staff engagement to 80% by addressing the key engagement drivers and acting upon staff feedback through regular staff pulse surveys.

27. Mr J submitted that the University's Staff Satisfaction Survey, taken with the National Student Survey (which measures student satisfaction with educational provision), contributed to a picture of falling satisfaction among the University's staff and students. However, he believed statistics did not give a complete picture and submitted that the survey comments were essential for understanding the reasons for the fall and how these might be addressed in the interests of staff, students and public funding bodies.
28. Mr J stated that verbatim comments, anonymised where appropriate, were provided for the student survey and argued that this indicated double standards.

The Commissioner's findings on the public interest

29. While noting Mr J's arguments with regard to the student survey, the Commissioner must firstly make it clear that he is only able to reach a decision on the information requested, based on the circumstances of this particular information request. He is unable to draw parallels with the student survey.
30. The Commissioner agrees that there is always a general public interest in transparency and accountability, particularly in areas involving spending from the public purse and services provided to the public by bodies such as higher education institutions. Transparency and accountability allow effective scrutiny and reassure the public where appropriate.
31. 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 effect of disclosure on the relationships of trust and confidence the University must maintain in order to carry out such surveys, and act on them, in the future. He accepts that such harm would not be in the public interest, given the importance of such tools to the University in gauging staff opinion and addressing areas of concern. Openness has a role in this, but the University must also be able to discharge its own functions effectively – and the Commissioner has already acknowledged that wider openness would be likely to lead to less openness from those engaged in the process directly. The Commissioner recognises that the information in the survey report provided to Mr J contains summary information, contributing to meeting the public interest in openness and transparency.

32. In all the circumstances, the Commissioner is satisfied that the public interest in disclosure is outweighed by that in maintaining the exemption and allowing the information to be withheld under section 30(c) of FOISA. The University was therefore entitled to withhold the information under this exemption.
33. As the Commissioner has determined that the University was correct to withhold the information under section 30(c) of FOISA, he is not required to consider the application of sections 38(1)(b) and 36(2) of FOISA (which were also applied to this information by the University).

Decision

The Commissioner finds that Edinburgh Napier University complied with Part 1 of the Freedom of Information (Scotland) Act 2002 in responding to the information request made by Mr J.

Appeal

Should either Mr J or the University 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.

Margaret Keyse
Head of Enforcement

29 January 2019

Freedom of Information (Scotland) Act 2002

1 General entitlement

- (1) A person who requests information from a Scottish public authority which holds it is entitled to be given it by the authority.

...

- (6) This section is subject to sections 2, 9, 12 and 14.

2 Effect of exemptions

- (1) To information which is exempt information by virtue of any provision of Part 2, section 1 applies only to the extent that –

...

- (b) in all the circumstances of the case, the public interest in disclosing the information is not outweighed by that in maintaining the exemption.

...

30 Prejudice to effective conduct of public affairs

Information is exempt information if its disclosure under this Act-

...

- (c) would otherwise prejudice substantially, or be likely to prejudice substantially, the effective conduct of public affairs.

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