

Release of Visit Reports into the Public Domain

Detailed below are the FOI and Data Protection exemptions that need to be considered in relation to the release of the visit reports.

Section 41(1) (b) Information provided in confidence – The disclosure of the information to the public (otherwise than under the Act) by the public authority holding it would constitute a breach of confidence actionable by that and any other person. (A duty of confidence arises when one person is provided with information by another in the expectation that the information will only be used or disclosed in accordance with the wishes of the confider).

This is an absolute class-based exemption, although there is no requirement to carry out the Public Interest Test (PIT), in terms of this exemption there is a requirement to conduct a PIT on whether the common law duty of confidentiality can be overcome.

It is worth noting that in terms of information relating to misconduct, illegality or gross immorality; the courts have required disclosure as in this case there would be an overriding public interest to do so.

The Information Commissioner's Office states the below example in the awareness guidance:

“A financial regulator might decline to confirm or deny that it has been provided with a confidential report on a company since to confirm that it even held the report would indicate that it harboured suspicions about the activities of that company. However, if it was already public knowledge that a report had been sent to it, there would be no breach of confidence in confirming receipt. In both cases the regulator might not wish to disclose the content of the report”.

Section 43(2) (Commercial Interests) – 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).

This is a qualified exemption under the Freedom of Information Act 2000 and this means I am legally obliged to complete a Public Interest Test and consider the potential harm. This test explores whether the release of the information may benefit the community as a whole, not whether the public may find it interesting.

Harm

Looking at the content of the visit reports it is clear that some of the information could have a detrimental effect on the training institutions and in some cases could damage the reputation of a particular institute and may damage the confidence of the students and possibly the institutes suppliers and investors.

Another factor to be considered is whether institutes would challenge the GOC more frequently and not accept the content of the visit reports if they are likely to be released into the public domain and also institutes may hold back information knowing that it could be made public.

In terms of the financial information being released, even though the budgets of each institution are available on their websites, releasing detailed confidential information for example, if an institute is in financial difficulty could again have a significant impact on revenue or even threaten its ability to obtain supplies and secure funding. If for instance one of the visit reports disclosed the budget of a specific purchase, this could prejudice the bargaining position of the public authority and the information may impact on the commercial interests of a contractor's suppliers or investors.

Public Interest Test

Considerations Favouring Disclosure

Accountability

When information disclosed relates directly to the efficiency and effectiveness of a service or its staff it is generally of benefit to the community. In this case, the release of information will enable the public to have a better understanding of the efficiency and effectiveness of the institutions. There is also a public interest in releasing information that demonstrates the use of resources.

Public Debate

Where disclosure can assist individuals by raising awareness of issues which may be of relevance to them. This could empower them to make more effective decisions about their own activities or contribute to a more accurate debate.

Considerations favouring Non-Disclosure

Efficient and Effective Conduct of a Public Authority

The current or future role of an institute may be compromised by the release of information. In this case, release of certain information requested is likely to damage the relationship between the authority and the GOC. This information is provided in confidence from the institutes to the GOC.

1.1.1 Interests of third parties

If release were to damage a company's reputation or the confidence of customers, suppliers or investors, or where the release may impact revenue or threaten ability to obtain supplies or secure finance.

Companies compete by offering something different from their rivals. The difference will often be reflected in their price and may also relate to the quality or specification of the product or service they offer. Information identifying this unique element is likely to be commercially sensitive; it may also inadvertently reveal information about profit margins and possibly working practices.

1.1.2 Tortious Duty

Disclosure of certain financial information may cause a breach of the confidences surrounding any current contracts.

Balancing Test

When balancing the public interest test we have to consider whether the information should be released into the public domain. Arguments need to be weighed against each other.

On balance and after considering both elements of the public interest test the factors clearly weigh in favour of non-disclosure of the full version of the visit report. I feel that it is not in the public interest to release certain aspects of the information, however the release of the recommendation section of the report should be considered and the possibility of a summary report being produced for public consumption.