



[REDACTED]

28 September 2022

Dear [REDACTED],

**Freedom of Information request: FOI2022/00247**

Thank you for your Freedom of Information request received on the 27 July in which you requested the following:

**Your request:**

*Concerning the recent Research Excellent Framework (REF), will you please confirm,*

*(1) that you have provided “confidential feedback” to intuitions for each submission they made to a Unit of Assessment (UoA), and*

*(2) will you please provide me a copy of that “confidential feedback” for UoAs 5, 6, 8 and 33.*

**Our response**

I can confirm UK Research and Innovation (UKRI) does hold information relevant to your request.

Information in relation to the results of the 2021 Research Excellence Framework (REF), including submissions, quality profiles and sub-profiles is routinely published by the four funding bodies: Research England (RE), the Scottish Funding Council, the Higher Education Funding Council for Wales, and the Department for the Economy for Northern Ireland. The information published by RE is available [here](https://results2021.ref.ac.uk/)<sup>1</sup>.

In response to part (1) of your request we can confirm that feedback was provided confidentially to the heads of institutions for each submission the institution made to a Unit of Assessment (UoA).

In response to part (2), and your request for a copy of the “confidential feedback” for UoAs 5, 6, 8 and 33 we consider that this information falls under the exemptions at section 36 of the FOIA relating to the effective conduct of public affairs. This includes Section 36 (2)(b)(i) inhibit the free and frank provision of advice and section 36(2)(c) prejudice to the effective conduct of public affairs.

In addition, other exemptions are also considered to apply, comprising Section 41(1) information provided in confidence, and Section 40(2) personal data.

Information on the exemptions, and the public interest considerations required under Section 36 and Section 41 are explained below.

**Outcome of consideration of Section 36 – Prejudice to the effective conduct of public affairs**

Section 36 requires the public authority's 'Qualified Person' to consider the likelihood of prejudice or inhibition of the effective conduct of public affairs and the subsequent consideration of the balance of public interest. The appointed Qualified Person for UK Research and Innovation is Professor Dame Ottoline Leyser, our Chief Executive Officer.

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<sup>1</sup> <https://results2021.ref.ac.uk/>

Professor Leyser has considered the confidential feedback, and it is her opinion that for Section 36(2)(b)(i) and (ii) prejudice would occur, and for Section 36(2)(c) prejudice would be likely to occur from disclosure.

As Section 36 is a qualified exemption, we therefore moved on to consider whether the public interest would be better served by maintaining the exemption or by disclosing the information.

## **Public interest considerations**

Below we firstly explore the overall public interest arguments in favour of disclosure; these are common across all the exemptions considered. We then go on to consider the arguments in favour of withholding the information which are specific to each exemption. The public interest arguments for the qualified exemptions are outlined below, and information is also provided below for the exemption arguments.

### Public interest in favour of disclosure

- There is a general public interest in transparency and openness regarding the REF assessment process and its impact on the allocation of research funding to Higher Education Institutions (HEIs).
- It would promote accountability and transparency by public authorities for decisions taken with regard to REF assessments and feedback.
- There is also a public interest in understanding the relationship between UKRI and HEIs with regard to the soundness and efficacy of the advice provided in the feedback.

### Section 36 - Prejudice to the effective conduct of public affairs - Public interest in favour of withholding the information

- The REF exercise maintains the confidentiality and security of information generated, and that panels have access to, throughout the REF process. This is necessary to protect the information in the submissions and associated feedback. This in turn, enables a full and frank assessment of the detailed work of REF panels which is critical for robust and transparent funding decisions. The duty and expectation of confidence is discussed in the REF guidance which explains that feedback would be provided only to the head of the HEI concerned, and the institution and head therefore had a reasonable expectation of confidentiality. This is underpinned by panel member agreements which explain that “the maintenance of confidentiality is essential if Panel Members are not to be inhibited from expressing their opinions freely in panel discussions, *which is essential to the effective operation of the REF as an expert review exercise.*”
- REF outcomes determine the allocation of funds by UKRI to HEIs; any loss in confidence in the process could undermine the validity of outcomes and the allocation of funding to the detriment of UKRI and the UK higher education funding bodies. This in turn could create wider issues with the dispersal of funding and result in considerable reputational damage to UKRI and impact our ability to deliver on our primary goals, as well as adversely impacting the ability of the four funding bodies to operate individually and collectively.
- The feedback reports contain a frank evaluation of the HEIs under the stated criteria of output, impact and environment and sensitive judgements that directly relate to the performance of the HEIs. These HEIs will expect this feedback to remain confidential as disclosure may lead to undue scrutiny that would undermine the assessment process and the capacity for HEIs to make any relevant improvements in their programmes.
- There is the danger that releasing the detailed feedback would inhibit the future free and frank provision of advice to RE as panels may become more guarded in their feedback. This would compromise the thoroughness of future panel assessments, the quality of feedback to HEIs, RE and the other funding bodies, and decision-making. The value of future exercises may also be reduced in limiting transparency for

participating HEIs and their understanding of the process. If the quality or provision of feedback to HEIs was compromised by disclosure this may in turn negatively affect the quality of research programmes. Due to the significant investments in HEIs, this is of particular importance as withholding the information ensures that sizeable public funds are safeguarded.

- The feedback statements were written for the specific context of advising the submitting institution on the assessment of their individual submissions. Disclosure at this stage presents an operational risk to RE and the other funding bodies and potentially the integrity of the current REF outcomes, on which funding allocations are based. This risk arises from the potential for micro-analysis of the feedback out of the context for which it was produced. The individual nature of the feedback for each submission means it is not comparable across submissions. For instance, it provides advice on key strengths and weaknesses observed, drawing on the full range of assessment information that was available to panels, but does not include feedback on all points reviewed against the assessment criteria and therefore, different points are highlighted for different submissions. Micro-analysis across submissions out of this context could lead to uninformed conclusions which may be used as a basis for challenging the REF outcomes for a given submission.
- Quality profiles for all UoAs and HEIs are published following the completion of the assessment exercise. Each overall quality profile shows the proportion of research activity judged, by the panels, to have met each of the four starred quality levels. In addition, the main panel reports are published, and these provide further non-identifying information about overall observations on submissions and provide the public with insight into the process and findings of the panels. Publication of panel meeting minutes (to follow later this year) will further give public information on decision-making processes and assessment procedures. We consider that this provides an appropriate level of detail on the REF outcomes without compromising sensitive detailed confidential feedback and meets UKRI's openness and accountability commitments to the public.
- The REF exercise informs the selective allocation of funding for research. Releasing confidential feedback could jeopardize UKRI strategic relationships and undermine our function to secure the continuation of a world-class, dynamic, and responsive research base.
- Disclosure would also likely impact the other unaffected HEIs, who did not make submissions under the requested UoAs as they may also be concerned that their own feedback could be made public during the current allocation period.

#### Section 41(1) information provided in confidence

The confidential feedback also falls under the exemption at section 41(1) of the FOI Act, information provided in confidence.

- The feedback would contain or refer to confidential information which was provided by the HEI, in their submission, in confidence. This duty and expectation of confidence is evidenced by RE's management of the information, and by only making it available to those who need to see it for the purposes of the assessments.
- The duty and expectation of confidence is discussed in the REF guidance which explains that feedback would be provided only to the head of the HEI concerned; the institution and head therefore had a reasonable expectation of confidentiality. This is underpinned by panel member agreements which outline our expectations around how information is managed, which enables members to express their opinions freely. Institutions and reviewers therefore took part in the exercise on the clear basis and understanding that these expectations of confidentiality would be maintained during and after the completion of the assessment.
- UKRI may be seen as a 'confidentiality' risk if we routinely release information relating to REF feedback into the public domain, particularly where it affects third parties.

We have therefore concluded that where the confidential feedback draws directly on the confidential information contained in the submissions this would fall under section 41. If released, we believe it would result in an actionable breach of confidence.

As this exemption is absolute there is no requirement to conduct a public interest test.

#### Section 40(2) personal data

The feedback has also been withheld under section 40(2) personal data of the FOI Act because information in the some of the feedback reports would identify individuals, either directly or in combination with information accessible elsewhere. Section 40(2) exempts personal information from disclosure if that information relates to someone other than the applicant, and if disclosure of that information would, amongst other things, contravene one of the data protection principles in Article 5(1) of the UK General Data Protection Regulation (UK GDPR) and Section 34(1) of the Data Protection Act 2018. In this case, we believe disclosure would contravene the first data protection principle, which provides that processing of personal data is lawful and fair.

Section 40(2) is an absolute exemption and UKRI is not obliged to consider whether the public interest favours disclosing the information.

If you have any queries regarding our response or you are unhappy with the outcome of your request and wish to seek an internal review of the decision, please contact:

Head of Information Governance

Email: [foi@ukri.org](mailto:foi@ukri.org) or [infogovernance@ukri.org](mailto:infogovernance@ukri.org)

Please quote the reference number above in any future communications.

If you are still not content with the outcome of the internal review, you may apply to refer the matter to the Information Commissioner for a decision. Generally, the ICO cannot make a decision unless you have exhausted the review procedure provided by UKRI. The Information Commissioner can be contacted at: [www.ico.org.uk](http://www.ico.org.uk).

If you wish to raise a complaint regarding the service you have received or the conduct of any UKRI staff in relation to your request, please see UKRI's complaints policy: <https://www.ukri.org/about-us/policies-and-standards/complaints-policy/>

Yours sincerely,

Information Governance  
Information Rights Team  
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