

Our Reference: FOI/2014/10/312

UNIVERSITY OF
BIRMINGHAM

James Hermes

Legal Services

(By Email)

Director
Mrs C M E Pike LLB
Solicitor

20 November 2014

Dear Mr Hermes

Re: request for information under The Freedom of Information Act.

Further to your request for information dated 20 October 2014 please find attached the University of Birmingham's response. If you have any queries with regard to this letter, please do not hesitate to contact me.

Please note our statement in respect of Copyright, which is also attached.

If you are unhappy with the manner in which your request has been dealt with, you may ask for an internal review. A copy of the Complaints and Appeals procedure is attached. If you are not content with the outcome of the internal review, you have a right to apply directly to the Information Commissioner for a decision.

Yours sincerely

Freedom of Information Team
University of Birmingham

Encs

Your request for information read:

- 1. The names and titles of all senior staff members making more than £150,000 in total emoluments for the year ended 31 July 2014. These individuals are considered "higher-paid staff" by the Higher Education Funding Council (HEFCE).*
- 2. Please identify the number of individuals identified in the first request who are (a) tenured faculty, (b) clinical staff, or (c) serve in a non-classroom capacity, such as administrative staff.*
- 3. The total emoluments for the past five (5) years for each of the senior staff identified in the first request.*

The University of Birmingham responds:

The University of Birmingham is required to respond to a request made under the Freedom of Information Act 2000 ("the Act") if it holds the information being requested, unless it is appropriate to apply one of the limited exemptions set out in the Act.

The University routinely publishes salary details of the emoluments of the Vice-Chancellor and higher-paid staff in its Annual Accounts. Remuneration of higher-paid staff is shown in bands of £10,000 and can be found at <http://www.birmingham.ac.uk/council/accounts.aspx>. In the Annual Accounts for 2012/13 the University has identified the number of staff earning more than £100,000 who are members of the University Executive Board (UEB) in each of these salary bands. Details about UEB can be found at: <http://www.birmingham.ac.uk/university/governance/ueb/index.aspx>.

Refusal Notice 1 below explains why you are being referred to the University's website for salary details that are published in the annual accounts.

Comparable salary data for 2013/14 will be published in the University's 2013/14 Annual Accounts. Refusal Notice 2 below explains why this data is not being provided.

Refusal Notice 3 explains why the University is not providing information relating to specific members of staff other than that already provided in its Annual Accounts.

Refusal Notice 1

Reasons for non-disclosure

Section 21 – Freedom of Information Act 2000 – Information reasonably accessible by other means

Under Section 21 of the Freedom of Information Act 2000 information is exempt from disclosure if it is reasonably accessible to the applicant by other means. This is an absolute exemption and the University is therefore not required to consider the public interest as the information is already available to the applicant in the public domain. In this case, the information requested is on the University's website. For convenience, the University provided a web link to where the requested information is located.

Refusal Notice 2

Reasons for non-disclosure

Section 22 – Freedom of Information Act 2000 – Information intended for future publication

Section 22 of the FOIA provides that information is exempt if, at the time the University receives a request for it:

- the University holds details of current salaries from members of staff earning more than £100,000 with a view to publishing them in the 2013/2014 annual accounts;
- the University or another person intends to publish the information at some future date, whether determined or not; and
- in all the circumstances it is reasonable to withhold the information prior to publication.

Section 22 provides a qualified exemption, so the University must consider whether the public interest in applying the exemption is greater than the public interest in providing the information.

The University holds details of the Vice-Chancellor's emoluments for 2013/14 and the numbers of staff earning more than £100,000 during 2013/14 with a view to publishing them in the University's Annual Accounts. The Annual Accounts for 2013/14 will be placed before Council in the Autumn of 2014 for approval with a view to the approved Annual Accounts being published on the University's website before the end of the year.

Therefore the information requested is held by the University with the settled expectation that it will be published.

The Public Interest Test

The University has given consideration to whether the public interest in maintaining the exemption is greater than the public interest in providing the information.

The University recognises that it may be in the public interest to place in the public domain information about higher paid members of staff. However it believes that it is appropriate and to be of greater public benefit if information in the University's Annual Accounts is released at the same time so that it may be read in its proper context.

This information will be placed into the public domain before the end of this year in accordance with an established publication schedule. The University therefore considers that it is reasonable in all the circumstances to withhold the information.

Refusal Notice 3

Reasons for non-disclosure

Section 40 (2) – Freedom of Information Act 2000 – Personal Information

Section 40(2) of the Act provides an exemption to the duty to disclose information where the information requested constitutes the personal data of a third party.

Section 40 (2) is an absolute exemption under the Act, and there is no need to apply the public interest test.

Personal data is defined as data which relate to a living individual who can be identified from that data, or from data and other information with is in the possession or likely to come into the possession of the University.

When deciding whether to disclose information the University is required to consider the Data Protection Principles.

The University of Birmingham maintains that to provide the exact salary of higher-paid post holders could identify living individuals and the information would therefore constitute Personal Data and is therefore exempt from disclosure.

However, higher-paid members of the University do have a reasonable expectation that details of the salary will be disclosed in bands, rather than as exact salaries. The University publishes this information in £10,000 bands and this data can be found in the University's Annual Accounts.

The majority of staff employed by the University who are paid more than £150,000 are either Clinical or Academic staff, therefore the number of other staff earning these sums are very low. In the event that the University's reply were to distinguish between different categories of staff, it would be easy to identify the staff who are neither Clinical nor Academic post holders shown within the figures.

Section 43 (2) – Freedom of Information Act 2000 –Commercial Interests

Information is exempt information if its disclosure under the Act would or would be likely to prejudice the commercial interests of any person including the public authority holding it.

The exemption provided by Section 43(2) is subject to the public interest test in other words even where the University is satisfied that releasing the information requested will prejudice either someone else's or the University's own commercial interests it can only refuse to provide the information if it believes the public interest in withholding the information outweighs the public interest in disclosing it.

Commercial interests relate to the University's ability to successfully participate in a commercial activity. This could be the ability to buy or sell goods or services or it could mean the ability of the University to function appropriately as a University in terms of provision of education and research.

The University has given consideration to whether the release of this information would be likely to prejudice the University's commercial interests and has taken the following factors into account when deciding that prejudice is likely:

- The University of Birmingham maintains that its ability to compete in a globally competitive market for appointing leading staff is paramount.
- To compete in the Higher Education market, with leading UK and International Universities, the University must appoint the best staff, both academic and managerial, and must ensure that staff are appointed at competitive market levels. This then enables the University to undertake leading research, provide an excellent student experience and be a well led, managed and sustainable institution. The University's position would be severely compromised if it were to release information which would benefit its competitors in the competition for the recruitment of new staff and assist them in approaching existing University staff to offer better remuneration and conditions elsewhere. Additionally, there are no national pay scales for these higher paid posts; salaries are awarded on the basis of performance.
- To compete in the Higher Education market, with leading UK and International Universities, the University must appoint the best staff, both academic and managerial, and must ensure that staff are appointed at competitive market levels. This then enables the University to undertake leading research, provide an excellent student experience and be a well led, managed and sustainable institution. The University's position would be severely compromised if it were to release information which would benefit its competitors in the competition for the recruitment of new staff and assist them in approaching existing University staff to offer better remuneration and conditions elsewhere. Additionally, there are no national pay scales for these higher paid posts; salaries are awarded on the basis of performance.

Public interest Test

In order to rely on the exemption in Section 43 (commercial interest), the University must consider whether the public interest in disclosing the information being requested outweighs the public interest in withholding it.

The University recognises that it is in the public interest to place in the public domain information about salaries and for this reason it proactively discloses some salary data about those earning more than £100,000 in its annual accounts.

However this must be weighed against reasons why it would not be in the public interest to release this information namely:

- It is of benefit to the public that universities are able to compete fairly in the recruitment of all senior staff – this is why the Government regulates markets and competition.
- The University of Birmingham is an Exempt Charity under Schedule 3 of the Charities Act 2011, and is required to obtain “best value for money”; this is done by ensuring that it negotiates and obtains the best terms available. Disclosure of the Salaries paid to identifiable staff will adversely affect the University’s ability to ensure proper competition in future negotiations when appointing to these posts.
- While the University has this concern for all higher earning staff, it is a particular worry in respect of the disclosures of information relating to staff who are neither Clinical nor Academic staff.
- The majority of staff employed by the University who are paid over £150,000 are either Clinical or Academic staff, therefore the number of other staff earning these sums are very low. In the event that the University’s reply were to distinguish between different categories of staff, it would be easy for one of the University’s competitors to identify the staff who are neither Clinical nor Academic post holders and offer higher salaries than those offered by Birmingham.
- If leading UK Universities cannot compete effectively for their staff, then they will be weakened, and this will be to the detriment of the UK economy, society, students, stakeholders and thus not in the public interest.

Having considered the public interest in disclosing this information the University of Birmingham considers that withholding this information outweighs the public interest in disclosure.

University of Birmingham

Freedom of Information

COMPLAINTS AND APPEALS PROCEDURE

Complaints and Appeals against a Refusal Notice issued in response to a request for information must be made in writing to the University's Information Compliance Manager (address given below). Complaints in respect of the University's Publication Scheme can be made in the same way.

Complaints and Appeals will be acknowledged within five (5) working days of receipt. The Information Compliance Manager will then refer the matter to the University's Director of Legal Services or nominee for consideration. If the Director of Legal Services was involved in responding to the request at the first stage, then the University's Registrar & Secretary or nominee will be asked to investigate the matter.

The Director of Legal Services or the Registrar & Secretary as appropriate may, after having sought further information from the members of staff involved in dealing with the original request, seek to resolve the issue on the basis of the documentation submitted. Where the Director of Legal Services or the Registrar & Secretary requires further clarification, he/she may decide to meet with the members of staff involved in dealing with the original request.

A full response to the complaint will normally be sent direct to the Complainant(s) within fifteen (15) working days, or in the case of a complex review, especially when the public interest test is involved, within thirty (30) working days.

If, having received this response, the Complainant(s) remains dissatisfied, s/he may make an appeal to the Information Commissioner at the address below.

Addresses for Correspondence

Information Compliance Manager
Legal Services
The University of Birmingham
Edgbaston
Birmingham
B15 2TT

Or: foi@contacts.bham.ac.uk

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK95AF

The University of Birmingham

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