

Our Reference: FOI/2014/10/312

UNIVERSITY OF
BIRMINGHAM

James Hermes

Legal Services

Director
Mrs C M E Pike LLB
Solicitor

(By Email)

23rd December 2014

Dear Mr Hermes

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

Further to your email of 3 December 2014 in regarding the University's response to your request please find attached a revised response. In your email you state that the University did not answer your questions. The University's original response was with regard to the whole of your request. As requested we have answered each question individually. If you have any queries with regard to this letter, please do not hesitate to contact me.

In your email you refer to the First-Tier Tribunal decision requiring King's College London to release the names/titles and salaries of all staff Professional Services Staff earning more than £100,000. We understand that Kings College London is currently considering its position with regard to the decision, and whether or not to appeal. We wish to await the outcome of that process before release salary information, which we consider to be personal data.

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.

Question 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)."

A general breakdown of some of this information can be seen on pages 44 and 45 of the University's published Accounts (please see <http://www.birmingham.ac.uk/Documents/finance/Annual-Accounts-13-14.pdf>)

Those earning more than £150,000 in 2013/14 includes the Vice Chancellor and 40 other members of staff. Please see refusal notice 1 below.

Question 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.”

- a) 0
- b) 36
- c) 5

Question 3

“The total emoluments for the past five (5) years for each of the senior staff identified in the first request.”

See below

3. Below are details of the total emolument received over the last 5 years by the 36 clinicians identified at 2b above. The Refusal Notice 2 below explains why the University has withheld data relating to 3 clinicians.

| Clinician | Emoluments received in the last 5 years £ | | | | | | |
|-------------|---|--------------|-----------|--------------|-----------|--------------|------------|
| Clinician 1 | 672219.82 | Clinician 10 | 789075.33 | Clinician 19 | 842844.36 | Clinician 28 | 670426.44 |
| Clinician 2 | 664691.98 | Clinician 11 | 801916.52 | Clinician 20 | 875631.99 | Clinician 29 | 944798.42 |
| Clinician 3 | 738209.79 | Clinician 12 | xxxxxxxx | Clinician 21 | 850010.26 | Clinician 30 | 994597.89 |
| Clinician 4 | 777069.18 | Clinician 13 | 788763.97 | Clinician 22 | 853906.89 | Clinician 31 | 974097.82 |
| Clinician 5 | 776121.97 | Clinician 14 | 737362.41 | Clinician 23 | xxxxxxxx | Clinician 32 | 1013849.51 |
| Clinician 6 | 772651.72 | Clinician 15 | 832674.25 | Clinician 24 | 852739.03 | Clinician 33 | 1024957.16 |
| Clinician 7 | 770964.24 | Clinician 16 | 861826.78 | Clinician 25 | 860597.58 | Clinician 34 | 1045724.71 |
| Clinician 8 | 792318.78 | Clinician 17 | 844005.32 | Clinician 26 | 847550.00 | Clinician 35 | 956823.63 |
| Clinician 9 | 717278.93 | Clinician 18 | 808046.85 | Clinician 27 | 919311.11 | Clinician 36 | 1031317.10 |

Refusal Notice 1

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 has withheld details that would assist in identifying the individuals who are subject to section 1 above, other than information in relation to the Vice Chancellor which is already disclosed in the University's statutory accounts. The University has withheld details of annual salaries that were paid to those members of staff as it would be possible to identify these individuals.

The University considers that the condition set out in Section 40(3)(a) is satisfied, namely that the information falls within the definition of personal data and its disclosure to a member of the public would contravene one of the data protection principles, namely the First Data Protection Principle – "Data must be fairly and lawfully processed". The University considers that the First Data Protection

Principle would be contravened as none of the conditions for processing set out and defined in Schedule 2 to the Data Protection Act 1998 are met. The University is aware that a recent decision in respect of King's College London has raised some doubts about this approach, particularly in respect of administrative staff, however we understand that King's College are considering whether to appeal that decision, and we wish to wait the outcome of that process. Our considered view is that this information is personal data, and that as an employer we owe a duty of care to our employees, and in accordance with the Human Rights Act members of staff have a rightful expectation of privacy.

Refusal Notice 2

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 which 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 has withheld details that would assist in identifying the individuals who are subject to section 3 above. The University has withheld details of salaries that were paid to 2 members of staff as it would be possible to identify these individuals from the total amounts they have received in the last 5 years, for instance because the individual has been appointed more recently.

The University considers that the condition set out in Section 40(3)(a) is satisfied, namely that the information falls within the definition of personal data and its disclosure to a member of the public would contravene one of the data protection principles, namely the First Data Protection Principle – “Data must be fairly and lawfully processed”. The University considers that the First Data Protection Principle would be contravened as none of the conditions for processing set out and defined in Schedule 2 to the Data Protection Act 1998 are met.

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

This documentation has been produced in response to a request made under the terms of the Freedom of Information Act 2000.

The copyright in this documentation will be held by the University of Birmingham, a wholly owned subsidiary company of the University, or a third party associated with the University. In the absence of a notice to the contrary, it should be assumed that the copyright is held by the University of Birmingham.

Except as otherwise permitted under the Copyright Designs and Patents Act 1988, and subsequent related legislation, this documentation may only be reproduced, stored or transmitted in any form or means, with the prior permission of the University of Birmingham (or other rights holders).

Enquiries concerning reproduction outside the terms of the legislation should be made to:

Legal Services, The University of Birmingham, Edgbaston, Birmingham B15 2TT

© The University of Birmingham 2014