

Our Reference: FOI/2014/10/312

UNIVERSITY OF
BIRMINGHAM

James Hermes

Legal Services

Director
Mrs C M E Pike LLB
Solicitor

(By Email)

18 March 2015

Dear Mr Hermes

Re: request for information under The Freedom of Information Act 2000 (The Act).

Please accept our apologies for the delay in responding to your email of 27th January 2015, the University has been considering the Public Interest Test in relation to Refusal Notice 2 below.

You asked for 2 additional points of clarification:

- Instead of summing the salary information over five years, could you please provide the information per member of staff, so that their annual salaries can be tracked over this five-year period?
- Additionally, could you please provide an explanation as for why the university feels as though it can disclose the salary information for nearly all of its clinicians making more than £150,000 in total emoluments, but not its four administrative staff making more than £150,000 in total emoluments? What makes these members of staff -- who are arguably the least likely to have an expectation of privacy, given their prominence in University decision-making -- granted special dispensation to hide their salary information from the public?

I have reviewed your request and have decided that the University is unable to provide any information over and above that which has already been provided. My reasons for this are set out below.

In relation to your first point, I confirm that the University cannot provide any additional breakdown, as it considers that to provide any greater level of detail (ie the specific remuneration paid on a yearly basis over a 5 year period) would place into the public domain personal data that these individuals would not expect to be released. Some of the individuals identified by your request will not have worked at the University for 5 years; and others may have changed their roles (and their salary will have changed accordingly to reflect such a change). Therefore, by disclosing a yearly breakdown of remuneration earned by those members of staff over a 5 year period, it would be possible to identify individuals.

The University considers that the release of any further granular level of detail beyond that already disclosed would be a breach of the Data Protection Act 1998 and would be exempt from disclosure under S40(2) of the Act. Please see Refusal Notice 1 below.

In relation to your second point, the University does not have control over the emoluments of its clinical staff as these are set by the NHS. There are more than 30 members of clinical staff whose emoluments exceed £150,000 per annum, and that data has previously been provided to you. Due to the number of clinicians earning more than £150,000 per annum and the way in which the data was presented to you, it would not be possible to identify individuals from this data.

In the financial year 2013/14 only 5 members of staff (other than clinical staff) received remuneration of more than £150,000. These include the Vice-Chancellor, details of whose emoluments are published in the University's annual accounts; please see <http://www.birmingham.ac.uk/Documents/finance/Annual-Accounts-13-14.pdf>.

Therefore, the University does not consider it appropriate to disclose the salary of the remaining 4 members of staff who could be identified if the data you are requesting was provided.

The University's Annual Accounts indicates the number of University Executive Board members whose remuneration excluding employer's pension contributions exceeds £100,000, and this information is set out by salary band. The Annual Accounts for 2013/14 detail the following information:

Salary Range £	Number of staff (The number in brackets indicate the number of members of UEB)
150,001-160,000	13(1)
160,001-170,000	5(1)
170,001-180,000	10(1)
180,001-190,000	5(1)

I therefore reiterate that the University is not providing any additional information for the reasons detailed in Refusal Notices 1 and 2 below.

If you are not content with the outcome of this internal review, you have a right to apply directly to the Information Commissioner for a decision.

Yours sincerely



Mrs C M Pike
Director of Legal Services

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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 individuals who are subject to your request, 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 remuneration paid to these members of staff as it would be possible to identify these individuals from that data.

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. 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 43 – 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 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.

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 competes nationally and internationally with other higher education institutions for 'talent' among academic and senior professional staff as well as for research grants, external funding, publication in major journals and students. There is a global market for such talent, and many of the University's competitors are not publicly funded. 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 costs of recruiting and retaining staff would be likely to increase by encouraging competitor universities to raise their salary offers to outbid it by making higher salary offers.
- Competitor institutions could approach existing University staff to offer better remuneration and conditions elsewhere. While the University has this concern that release of this type of data for all higher-earning staff, it is a particular concern in respect of the disclosures of information relating to staff who are not clinicians, as the number of non-clinical staff whose emoluments exceed £150,000 per annum is 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 not clinicians and offer higher salaries than those offered by Birmingham.
- Salary negotiations might be impeded by encouraging candidates of senior posts to bid for higher salaries based on posts they consider comparable.
- There are no national pay scales for these higher paid posts; salaries are awarded on the basis of performance.
- The University maintains that its ability to compete in a globally competitive market for appointing leading staff is paramount.
- The University has recently appointed 2 new Pro-Vice-Chancellors and a new Director of Finance and is about to advertise for a further 2 Pro-Vice-Chancellors and a Deputy-Pro-Vice-Chancellor and other senior officers. Placing the requested information into the public domain would be likely to affect the University's ability to appoint at an appropriate level of remuneration.

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 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.
- 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.