

PRIVATE AND CONFIDENTIAL

Mr James Hermes

By Email: jamesjhermes@gmail.com

19 December 2014

Dear Mr Hermes

Re. Freedom of Information Act 2000 Request for Information dated 20 October 2014
Internal Review of the university's Response dated 18 November 2014

I am writing to you in relation to the above request for information, which was received by King's College London on 20 October 2014.

The information below comprises an internal review of the university's response, as required by yourself by email dated 3 December 2014 and in line with our standard Freedom of Information policy, which can be read here:

<http://www.kcl.ac.uk/college/policyzone/index.php?id=209>.

The university has a clearly defined internal process by which anyone making a request can seek a review of a decision. You can find information about this process by following the above link and checking Appendix 2, or by reference to the initial response letter sent on 18 November 2014.

I have carried out this review in my capacity as the university's Head of Information Management & Compliance. In undertaking the internal review, I have considered the university's initial handling of the request and the decision reached, as communicated to you by way of letter from the university dated 18 November 2014.

In summary, I have upheld the university's decision to withhold exact information regarding staff salaries, for the reasons set out below. I have considered whether it would be appropriate for the university to provide some form of disclosure, along the lines of the sample disclosure you provided under cover of your email dated 3 December 2014. On review, I do not consider that such a disclosure would adequately protect the identities of individual staff members, and that by providing this information the university would allow the salary levels of specific individuals to be identified. I set out my detailed reasoning below.

The Request

You wrote to the university on 20 October 2014 (the "Request") requesting:

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 responded to the Request on 18 November 2014. Under cover of that letter, my office provided the information sought under part 2 of the Request, but withheld on the basis of statutory exemptions from disclosure the information requested under parts 1 and 3.

Request for internal review – 3 December 2014

In your email of 3 December 2014, in addition to seeking an internal review of the university's initial handling of the Request, you also clarified that you asked that we:

“identify all 196 senior staff members making more than £150,000 in total emoluments for the year ended 31 July 2014. Please categorise them as one of the following, as per part (2) of this request: (a) academic staff; (b) clinical staff; or (c) senior management. Then please provide the annual emoluments for the past five (5) years for each of the senior staff making more than £150,000 in total emoluments identified in the first part of this request. Please identify by name and title all members of the University's senior administrative team and management (e.g., Professional Services Staff) as directed by the First Tier Tribunal on 2 Oct 2014 in Case No. EA/2014/0054.”

You suggested in your email of 3 December 2014 that it would be appropriate for the university to provide job titles and salary information in bands of £10,000 annually for the past five years in respect of all senior staff, with the exception of the senior management team, who you suggest should be referred to more explicitly by name.

I have confirmed below my decision on whether the exemption has been correctly applied to the requested, anonymised information as well as to the specific information relating to the university's Professional Services Staff.

Refusal of parts 1 and 3 of the Request

The university's original refusal of parts 1 and 3 of the Request was based on sections 40(2) and 40(3)(a)(i) of the Freedom of Information Act 2000 (“the FOIA”).

These provisions provide absolute exemptions under the FOIA if disclosure of information requested would breach any of the data protection principles under the Data Protection Act 1998 (“the DPA”).

The university considered that release of this information would result in the disclosure of personal data (as defined in the DPA) of the staff who were within the scope of the request. Disclosure would breach the data protection principles, and in particular the first key principle, namely that disclosure would not be a fair and lawful processing of individuals' personal data.

You state in your email of 3 December 2014 that “the University has completely ignored part (3) of my original request.” I do not consider this to be the case. Parts 1 and 3 were dealt with together as they both required specific information to be disclosed relating to identifiable individuals (under the original wording of the Request, this was to be by names and job titles). The considerations were therefore the same for each of these parts and I consider that the university dealt with them appropriately under the same header. I note that in its original response of 18 November 2014, the university expressly referred to its decision regarding both parts 1 and 3 of your request.

General principles

Guidance published by the Information Commissioner’s Office (“ICO”) on the release of salary details states the following:-

“Staff pay and grading structures

This may be provided as part of the organisational structure and should include, as a minimum, the salaries for senior staff, which, for the purpose of this document, means staff earning over £100,000 per annum and on the Senior Management Team or equivalent level. The salaries should be stated in bands of £10,000. For more junior posts, levels of pay should be identified by salary range”.¹

This is reflected in the university’s Publication Scheme², which states that the university publishes details of the Principal’s expenses and number of staff paid over £100,000, in bands, in the university’s financial statements. The university does not, though, publish salary data at an individual level for post holders other than the Principal, nor is the university subject to wider regulation or guidance requiring the publication of senior salary details, unlike local and central Government bodies.

Your request was for the names of Professional Services Staff and titles of all senior staff earning more than £150,000. The request is, therefore, for an enhanced disclosure significantly greater than that required by the ICO’s guidance, or the information provided in the university’s financial statements.

The university must therefore consider extremely carefully whether the release of any additional information - such as that requested in this instance – would breach individual data subjects’ rights under the DPA.

Section 40 exemption

You have explained in your appeal that you consider that - for all staff within the scope of the request, other than those who are Professional Services Staff of the university - the removal of names (so they are identified only by generic job title and salary bands) is sufficient to anonymise the data and that disclosure would not lead to the direct identification of any individuals.

I consider that the disclosure of the requested information in that manner would not sufficiently protect the identity of individuals and would be a breach of the university’s obligations under the DPA. Individuals could still be identified (with very straightforward application of information

¹

http://ico.org.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/definition_document_for_universities_and_higher_education_institutions.ashx

² <http://www.kcl.ac.uk/aboutkings/governance/compliance/freedom/KCLGuidetoInformation.pdf>

already in the public domain) following the disclosure of job titles and salary information in that form.

Each member of staff is listed on the university's website with their job title recorded, and it would be a simple process to ascertain the identity of a particular individual – and in particular top-earning senior individuals - from both their job title and salary.

Such disclosure would be unwarranted by reason of prejudice to the rights, freedoms and legitimate interests of those individuals to whom the information relates. None of those individuals would reasonably expect that information of this nature would be disclosed about their individual salaries.

Section 43(2) exemption

Section 43 of the FOIA provides an exemption from disclosure in circumstances where information would, or would be likely to, prejudice the commercial interests of any party, including where appropriate the university.

I consider the university's initial response of 18 November 2014 to have set out in detail a clear and appropriate argument as to the application of this exemption.

In addition to that which was stated in the university's original response letter, I set out my further comments below.

The university's commercial interests

Maintaining and attracting the highest quality of academic and professional staff is essential for the university's commercial interests. The university competes for academic and professional staff with other comparable universities, not only in the UK but internationally, and its ability to attract research contracts and grants is crucially dependent on the quality of its research-active academic staff. Recruitment has a direct effect on an institution's reputation, its ability to attract grant income and its position in Research Excellence Framework (which in turn has implications for research funding).

Disclosure of the requested information would be likely to have an adverse effect on the university's commercial interests relating to the recruitment and retention of its academic staff.

For example, in a recruitment situation, the requested information would enable a competitor to gauge the likely level of the university's salary offer. Similarly, academics would be able to use the information as a benchmark in order to seek a higher salary from the university. The information would also allow other institutions to "poach" staff from the university by providing a strong indicator of the level at which to pitch.

In light of this, I am satisfied that the university has significant commercial interests to protect and I consider this exemption to be properly engaged, subject to an analysis of the requisite public interest considerations, carried out below.

Public interest test

Section 43 of the FOIA is a qualified exemption, meaning that the university is required to consider the public interest test; assessing whether the balance of the public interest favours disclosing the information or maintaining of the section 43 exemption.

The university recognises that there is a public interest in its expenditure and resourcing. However, the university does not consider that this requires disclosure of specific salaries. Rather, in the circumstances, the public interest favours keeping specific salary information private. Further, there is a strong public interest in ensuring that the university is able to effectively protect itself from its market competitors, who would use the information you have requested to specifically target and attract its employees. Disclosing the specific job salary details requested would be likely to impede the university's salary negotiations with staff in the future and is likely to result in more public money being spent on attracting and recruiting academic staff than might otherwise be the case.

Weighing up these considerations, I therefore consider that the factors supporting maintaining the exemption under section 43 of the FOIA outweighs the factors when tend to support disclosure of the information.

Case No. EA/2014/0054

I have noted your references in your email of 3 December 2014 to the above First tier Tribunal case, to which the university was party. While the university is respectful of the First tier Tribunal's position, it is not binding in other cases and the decision is the subject of an appeal.

Further review

If you feel your review has not been properly handled or you are otherwise dissatisfied with the outcome of your request, you have the right to appeal to the Head of Administration and the College Secretary, as set out in the university's Policy:

<http://www.kcl.ac.uk/college/policyzone/index.php?id=209>.

Any such appeal should be submitted via email to legal-compliance@kcl.ac.uk or by post to the address shown at the head of this letter.

Should you wish to review further information and guidance, this is available from the Information Commissioner at www.ico.gov.uk or at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
Tel: 01625 545 700

Yours sincerely



David Newman