



Ref. FOI/2014/December

19 January 2015

Reply to request for information under Freedom of Information of Act	
Your Ref:	E-mails dated 3 December 2014
Address:	jamesjhermes@gmail.com
Request	As detailed at Annex A.

Dear Dr Hermes,

I write in reply to your email of 3 December 2014, as reproduced at Annex A, modifying the scope of your request dated 20 October. I apologise for the delay. This office was closed for two weeks over the Christmas and New Year period.

1 Scope of request

- 1.1 In your email of 20 October, you asked for the names and titles of all staff earning more than £150,000 in the year ended 31 July 2014, together with their total emoluments for each of the last five years, categorised according to 'tenured faculty', 'clinical staff' and those 'serving in a non-classroom capacity'.
- 1.2 In your email of 3 December, you repeat your request for a list of those earning more than £150,000 in 2013/14 and for details of their emoluments in the last five years. However, you have modified the other two elements of your request, as described in paragraphs 1.3 and 1.4 below.
- 1.3 Rather than the categories in paragraph 1.1 above, you now accept classifying staff according to the categories in which the data is held by the University, namely, 'Academic & Research' and 'Other staff', sub-divided into 'Clinical' and 'Non-Clinical'. However, you have also asked us to use a third category: 'Senior Management'.
- 1.4 You are now asking for names and titles only in respect of those staff who are members of the University's 'senior administrative team and management'. In making this change, you have referred us to the recent decision of the First-Tier Tribunal involving King's College London (case Ref. No. EA/2014/0054), which I shall refer to as the 'King's decision'.

2 Our response

Breakdown of staff earning more than £150,000 by staff category

- 2.1 The following table shows the number of staff earning over £150,000 in 2013/14 within each category.

	<i>Clinical</i>	<i>Non-Clinical</i>
<i>Academic & research</i>	64	48
<i>Other staff</i>	8	0

- 2.2 The data on which this table is based does not have a staff category of 'senior management'.

Emoluments over the last five years of those earning more than £150,000 in 2013/14

- 2.3 The emoluments of the Vice-Chancellor, Professor Andrew Hamilton, are shown in Note 6 of the University's Financial Statements. The Financial Statements for the last five years are available online [here](#): please refer to the section headed 'Related documents' on the right hand side of the page.
- 2.4 For the rest of those earning more than £150,000, please refer to the attached spreadsheet.
- 2.5 As the number of staff in the 'Other staff' category is small, using this category (in combination with Academic & Research) to present the five-year salary history would make it possible to draw inferences about the pay of particular individuals within it, if the information were cross-referenced with other information or knowledge. In our view, therefore, the information in this form is exempt from disclosure under section 40(2) of the Freedom of Information Act (FOIA). Section 40(2) provides an exemption for the personal data of a third party, where disclosure would breach any of the data protection principles in Schedule 1 to the Data Protection Act (DPA). We believe that disclosure would breach the first data protection principle, which requires that personal data shall be processed fairly and lawfully. Disclosure would be unfair to the individuals concerned, as it would be contrary to their reasonable and legitimate expectations. They would not reasonably expect that information about their pay would be made public under the FOIA without their consent. (Please note that the disclosure of information under the FOIA is presumed to be a disclosure to the world at large.) The first data protection principle also requires that any disclosure must satisfy one of the conditions set out in Schedule 2 to the DPA. There are six conditions altogether: we do not consider that any of them would be satisfied in respect of the disclosure.
- 2.6 The exemption in section 40(2) is an absolute exemption and is not subject to the public interest test provided for in section 2(2)(b) of the FOIA. To the extent that the public interest is relevant in this case, the University has taken it into account.
- 2.7 The attached spreadsheet uses the 'Clinical' and 'Non-Clinical' categories, as these pose no difficulties in terms of data protection.

Names and titles of those earning more than £150,000 in 2013/14 who are members of the University's 'senior administrative team and management'

- 2.8 In our response of 17 November to your original request, except for the Vice-Chancellor, we did not provide the names and titles of any of the staff concerned, as we considered that this information was exempt from disclosure under sections 40(2) and 43(2) of FOIA. Notwithstanding the King's decision, we continue to believe that these exemptions apply to any member of staff, other than the Vice-Chancellor.
- 2.9 The King's decision rests on the existence of a central executive board (the 'Principal's Central Team') that meets often and that takes major policy and expenditure decisions. In the view of the tribunal, membership of this body was a significant role that required an individual to take part in strategic and operational decisions beyond their immediate area of functional responsibility. It therefore considered it to be fair in data protection terms to identify by job title those members of the Principal's Central Team earning over £100,000, although this finding applied only to those who were 'Professional Services Staff'. The tribunal ruled that it was unnecessary to identify academics with salaries above this level, whether or not they were members of the Principal's Central Team.
- 2.10 As Oxford does not have a central body equivalent to the Principal's Central Team at King's College, we do not believe that the King's decision requires us to modify our approach to the disclosure of information relating to senior salaries. For the reasons given in our letter of 17 November, to disclose the salaries of particular individuals, by identifying them by name and/or



job title, would, in our view, contravene data protection principles, and would be likely to prejudice the University's commercial interests. The exemptions in sections 40(2) and 43(2) are therefore engaged. Our view of the balance of public interest also remains as set out in our letter of 17 November. (A further copy of that letter is at Annex B for ease of reference.)

3 Internal review

- 3.1 If you are dissatisfied with this reply, you may ask the University to review it, by writing to the Registrar at the following address:

University Offices
Wellington Square
Oxford
OX1 2JD

Alternatively, you may request a review by e-mailing foi@admin.ox.ac.uk.

- 3.2 If, after the internal review, you are still dissatisfied, you have the right under FOIA to apply to the Information Commissioner for a decision as to whether your request have been dealt with in accordance with the FOIA. The Information Commissioner's address is:

Information Commissioner
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Tel: 0303 123113

- 3.3 Further information for submitting complaints to the Information Commissioner is available at <http://www.ico.gov.uk/complaints.aspx>

Yours sincerely

(Max Todd)
FOI OXFORD

ANNEX A

Dear Max,

I write to respectfully dispute your response to my 20 Oct 2014 FOI request for information about senior staff members making more than £150,000 in total emoluments for the year ended 31 July 2014. As a reminder, that request comprised three parts:

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.

I understand from your 17 Nov 2014 response that the University reserves the right to withhold public disclosure of individual staff and their salaries, which was part (1) of this request. However, the University has completely ignored part (3) of my original request, providing only information for 2013/14 that would be readily accessible in the University's Annual Report and Accounts, a public document. Additionally, I would accept categorizing staff with your suggested breakdown (Academic & Research and Other Staff broken into Clinical and Non-Clinical) to complete part (2) of my original request.

Thus, I request the University respond to this original request in full:

Please identify all senior staff members making more than £150,000 in total emoluments for the year ended 31 July 2014. Please categorize 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., staff in the Vice-Chancellor's Office such as pro-vice-chancellors, chief financial officer, chief operating officer, directors of institutes, etc.).

I have submitted this identical request to each of the 24 members of the Russell Group of universities, and a response from the University of Exeter (attached) exemplifies what I consider a complete fulfillment of my request. Note that it protects the personal data of all senior staff with the exception of the senior management team, and provides salary information in bands of £10,000 annually for the past five years. This information is not accessible from the University by any other means than a FOI request.

Moreover, a First-Tier Tribunal has ruled in a very similar case that universities must disclose the names/titles and salaries of all members of the PSS (Professional Services staff; ie, the senior management team) making more than £100,000 in total emoluments. The Information Commissioner's Office found in case FS50513117 dated 17 Feb 2014 that King's College London must release the names/titles and salaries of *all* staff making more than £100,000 in total emoluments ([http://ico.org.uk/~media/documents/decisionnotices/2014/fs_50513117.pdf](http://ico.org.uk/~/media/documents/decisionnotices/2014/fs_50513117.pdf)). However, the First-Tier Tribunal ruled on 2 Oct 2014 in Case No. EA/2014/0054, an appeal from King's College, that only the names and salaries of members of the PSS (Professional Services staff; ie, the senior management team) making more than £100,000 in total emoluments are subject to disclosure ([http://www.informationtribunal.gov.uk/DBFiles/Decision/i1390/Kings%20College%20London%20EA.2014.0054%20\(30.09.14\).pdf](http://www.informationtribunal.gov.uk/DBFiles/Decision/i1390/Kings%20College%20London%20EA.2014.0054%20(30.09.14).pdf)).



I appreciate your response in full to this request under the Freedom of Information Act of 2000. I look forward to hearing back from you regarding this request. Please do not hesitate to contact me with any follow-up questions. I would prefer all correspondence be sent digitally through this e-mail address, including the response to this request. Thank you for your time in addressing this query.

Sincerely,
JJ Hermes

jamesjhermes@gmail.com

ANNEX B

Ref. FOI/2014/October

17 November 2014

Reply to request for information under Freedom of Information of Act	
Your Ref:	E-mails dated 20 October 2014
Address:	jamesjhermes@gmail.com
Request	<p>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).</p> <p>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.</p> <p>3. The total emoluments for the past five (5) years for each of the senior staff identified in the first request.</p>

Dear Dr Hermes,

I write in reply to your email of 20 October 2014, requesting the information shown above.

Item 1– Names and job titles of all staff earning more than £150,000

The University's annual accounts (the Financial Statements) show the number of staff whose emoluments exceed £100,000, broken down into bands of £10,000. This information is published in an anonymised form, with the exception of that relating to the Vice-Chancellor. The Financial Statements for 2012/13 and previous years are on the University's [website](#). Those for 2013/14 are due to be published in December 2014.

We consider that with the exception of the Vice-Chancellor, the names and job titles of those earning more than £150,000 is exempt from disclosure under sections 40(2) and 43(2) of the FOIA, for the reasons given below.

Section 40(2) – Third party personal data

Section 40(2) provides an exemption for the personal data of a third party, where disclosure would breach any of the data protection principles in Schedule 1 to the Data Protection Act (DPA). We believe that in this case, disclosure would breach the requirement of the first data protection principle, which requires that personal data shall be processed fairly and lawfully, and in accordance with one of the conditions in Schedule 2 to the DPA. We do not consider that disclosure would be fair to the individuals concerned or meet a schedule 2 condition.

We accept that there is a public interest in knowing how public authorities spend their money, including how much they pay their senior staff. However, we need to balance this against the legitimate expectations and rights of the individuals concerned under the DPA. A person's salary is their personal data. The individuals concerned will have a reasonable and legitimate expectation that their salaries will not be disclosed without their consent, particularly where the salaries have been the subject of confidential negotiations, which will often be the case in relation to those earning more than £150,000.

Those paid £150,000 or more will not necessarily be responsible for university-wide strategic management or for the expenditure of significant sums of public money. The salary figures in the Financial Statements include some NHS payments made through the University's payroll to clinicians holding NHS posts, in addition to their University employment, although these payments do not form part of the University's income and expenditure account.

In our view, the salary data in the Financial Statements is sufficient to address the legitimate public interest in knowing the prevalence and range of senior salaries paid by the University. It is also relevant that although classed as a public authority for the purpose of the FOIA, the University is only partly funded by the taxpayer. In 2012/13, the University received 18% of its income from the Higher Education Funding Council for England. Other significant sources of income are research grants from charities, foundations, trusts and industry; and endowment income. There is a clear and significant difference between the University, which is funded from a variety of sources, including private sources, and a local council or other governmental body that relies entirely on public funds.

Section 43(2) – Prejudice to commercial interest

The information requested is also exempt from disclosure under section 43(2) of the FOIA. This section provides that information is exempt where its disclosure would, or would be likely to, prejudice the commercial interests of any person. In our view, disclosure would be likely to prejudice the commercial interests of the University.

The information requested would indicate broadly how much a particular individual was earning. The disclosure of this information could be viewed as a benchmark by other employees, or by persons that the University was seeking to employ. Disclosure would therefore weaken the University's bargaining position in negotiations over salaries, and thereby impede its ability to recruit and retain staff in the most cost-effective manner possible.

Section 43(2) is a qualified exemption that requires the University to weigh up the public interest in disclosing the information requested, which is presumed from the Act, against the public interest in withholding it. We have had regard for the general public interest in openness and transparency regarding the financial dealings of public authorities, including those relating to the salaries of its senior staff. We consider, however, that this interest is adequately met by the information about salaries published in its Financial Statements. We also consider that, in this particular instance, the interest in disclosure is outweighed by the strong public interest in ensuring that the University can continue to attract and retain staff in a cost-effective manner that achieves value for money. Since disclosure would provide opportunities for individuals to press for higher salaries, it would impair the university's ability to obtain the best possible terms in future negotiations.

Item 2 – Breakdown of number earning more than £150,000 into 'tenured faculty staff', clinical staff and 'those serving in a non-classroom capacity'

We do not classify staff in the way described and therefore do not hold the information in the form requested. If you wish, we could provide you with a breakdown in the following format, based on the actual categories used by the University to classify staff.

	Clinical	Non-Clinical
Academic & Research		
Other staff		

Item 3 – Total emoluments in the last five years of those earning more than £150,000 in 2013/14

Please see attached. We have provided the number of staff within each salary band as your email states: *'It is not necessary to disclose the exact salary of the employees earning more than £150,000, but rather to quote that amount in bands of £10,000, as directed by the HEFCE'*.

We have provided information for the five years up to and including 2012/13. We have omitted the information for 2013/14 as this will be published in the 2013/14 Financial Statements in December. Section 22 provides that information is exempt from disclosure where there is an intention on the part of the public authority or another body to publish it at a future date, and where it is reasonable in all the circumstances to maintain the publication schedule. As the information will be published next month, we consider it to be reasonable to withhold the information until then.

The exemption in section 22 is a qualified exemption that requires the University to weigh the public interest in disclosing the information requested, which is presumed from FOIA, against the public interest in maintaining the exemption.

We recognise that there is a public interest in the disclosure of information about the salaries paid by public authorities, particularly to those at senior levels. However, the question to be decided is whether the public interest will be better served by disclosing the information now, or later, in accordance with the publication schedule. Our view is that the public interest will be better served by adhering to the publication schedule, for two reasons:

- the information in the Financial Statements cannot be regarded as final and complete until the Statements have been approved by the University's governing body (Council) and signed off by the University's external auditors. These events have yet to happen; and
- adhering to the publication schedule will allow members of the public to see the information in the wider context provided by the Financial Statements. This context includes not only the University's overall financial position, but also details of the public benefits that the University delivers through its teaching and research.

INTERNAL REVIEW

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Yours sincerely

(Max Todd)
FOI OXFORD