



JJ Hermes

jamesjhermes@gmail.com

30th October 2014

Dear Mr Hermes,

FREEDOM OF INFORMATION ACT 2000 – REQUEST 120257

Further to the following request:-

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.

We are able to confirm the following:-

The University routinely publishes the following information. Further details can be found at:-

<https://www.ucl.ac.uk/finance/corporate/annual-report>

Remuneration of higher paid staff:

The following sets out the remuneration of all higher paid staff including distinction awards paid to clinical academic staff and payments relating to private consultancy work, both of which are funded from non-HEFCE funds, but excluding employers pension contributions:

	2013	2012
	No.	No.
£100,001 - £110,000	68	64
£110,001 - £120,000	61	56
£120,001 - £130,000	46	46
£130,001 - £140,000	36	27
£140,001 - £150,000	37	34
£150,001 - £160,000	30	34
£160,001 - £170,000	16	18
£170,001 - £180,000	27	17
£180,001 - £190,000	18	11
£190,001 - £200,000	13	17
£200,001 - £210,000	12	11
£210,001 - £220,000	6	1
£220,001 - £230,000	2	1
£230,001 - £240,000	2	3
£240,001 - £250,000	-	1
£260,001 - £270,000	2	2
£270,001 - £280,000	-	1
£310,001 - £320,000	1	

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www.ucl.ac.uk/efd/recordsoffice/

With regards your request above we have considered your request for information and can advise you that the information is being withheld under Section 40(2) of the Freedom of Information Act as it constitutes the personal data of employees of the University.

The Data Protection Act 1998 (the DPA) applies only to information which falls within the definition of 'personal data'. The Information Commissioner's Office, together with other European data protection authorities, has previously considered what was meant by 'personal data' in Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data (the European Data Protection Directive or the Directive).

In order to determine whether 'data' is 'personal data' for the purposes of the DPA and the Directive we have engaged a series of questions as provided by the Information Commissioner's Office.

Firstly, we have considered what constitutes identifiability.

An individual is 'identified' if you have distinguished that individual from other members of a group. In most cases an individual's name together with some other information will be sufficient to identify them.

A name is the most common means of identifying someone. However, whether any potential identifier actually identifies an individual depends on the context.

We take the view that an individual's name and job title would easily render the individual identifiable.

Secondly, we have considered the meaning of the term 'relates to.'

Data which identifies an individual, even without a name associated with it, may be personal data where it is processed to learn or record something about that individual.

Therefore, data may 'relate to' an individual in several different ways, the most common of which are considered below.

In certain circumstances data is 'obviously about' a particular individual. If this is the case it follows that the data is 'personal data' for the purposes of the DPA.

In certain circumstances the opposite is the case and the data that is not 'obviously about' a particular individual.

There are many examples of records which will clearly be personal data where the information in question is not 'obviously about' an individual but is about their activities.

Given the nature of your request we have considered whether the data could be used to learn, record or decide something about an identifiable individual or whether as an incidental consequence of the processing, either could you learn or record something about an identifiable individual or the processing might have an impact on, or affect, an identifiable individual?

Passing out information which would allow the public at large to learn of employee exact salaries and grades, falls into these criteria.

The Directive provides that "personal data shall mean any information relating to an identified or identifiable natural person ...an identifiable person is one who can be identified, directly or indirectly...".

As the definition would suggest an organisation would be disclosing personal data where it releases information which can be linked to particular individuals.

In view of this fact the information requested can be considered as a request for personal data. In reaching our conclusions in respect of the above, we would remind you we have closely followed the Information Commissioner's own extensive guidance in respect of this matter.

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Having established that the requested information constitutes personal data it is then necessary to consider whether disclosure would lead to a breach of any of the Data Protection Principles.

The requested information is being withheld under Section 40 of the Freedom of Information Act. Section 40(2) of the Act provides an exemption for information that constitutes the personal data of third parties:

'Any information to which a request for information relates is also exempt information if:-

(a) it constitutes personal data which do not fall within subsection (1), and

(b) either the first or the second condition below is satisfied.'

We take the view that the requested information constitutes the personal data of third parties and is therefore exempt under section 40(2) of the Act. Section 1 of the Data Protection Act 1998 defines personal data as information which relates to a living individual who can be identified:

- from that data, or
- from that data and other information which is in the possession of, or is likely to come into the possession of, the data controller.

We are therefore satisfied that the information you have requested is the personal data of those individuals who would be identifiable from any list provided.

Such information is exempt if either of the conditions set out in sections 40(3) or 40(4) are met. The relevant condition in this case is at section 40(3) (a) (i), where disclosure would breach any of the Data Protection Principles. The Data Protection Principles are set out in schedule 1 of the Data Protection Act 1998. We consider that disclosure of the personal data would breach the first data protection principle, which states that:

'Personal data shall be processed fairly and lawfully...'

The information is withheld under section 40(2) by virtue of section (3) (a), because disclosure would contravene the first data protection principle.

The data protection principles regulate the way in which a 'data controller' (in this case UCL), must 'process' personal data. The word 'process' has a broad meaning and includes disclosure to any third party. The first data protection principle provides that personal data shall be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 is met.

There are two conditions in Schedule 2 relevant to your request, namely (1) and (6).

Condition (1) is: 'The data subject has given his consent to the processing.'

Condition (6) provides that:

The processing is necessary for the purposes of legitimate interests pursued by the data controller or by the third party or parties to whom the data are disclosed, except where the processing is unwarranted in any particular case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject.

In deciding whether disclosure of the name would contravene the first data protection principle, the questions to be addressed, therefore, are:

1. Has the individual given his consent? In the case of Sensitive Data, Explicit Consent.

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2. Would disclosure of his name constitute fair and lawful processing of his personal data?
3. Is disclosure necessary for the purposes of a legitimate interest of the data controller or the third party or parties to whom the data are disclosed, and if so, is disclosure nevertheless unwarranted in this case by reason of prejudice to the rights and freedoms or legitimate interests of the data subject?

Has the individual given his explicit consent?

With regard to condition 1, the individuals have not provided explicit consent for this disclosure. Condition 1 is, therefore, not met.

Would disclosure constitute fair and lawful processing of the personal data?

When considering the fair processing requirements, the position of the data subjects must be taken into account, as well as their expectations as to the disclosure of their identity.

There is an expectation that the personal information of those carrying out public functions or holding elected office will be subject to greater scrutiny than would otherwise be the case, particularly where they are responsible for spending public funds. However, the individuals concerned do not hold public or elected office, nor does the issue here concern the disbursement of public funds.

Turning to the individual's expectations, there was or is no expectation of the individuals concerned that their personal details would/will be placed into the public domain.

For these reasons, disclosure would not constitute fair processing.

Is disclosure justified under Condition 6 of Schedule 2?

Condition 6 requires a balancing of the legitimate interests of the applicant for the information with the effect of disclosure on the data subjects, bearing in mind at the same time that disclosure of information under the Freedom of Information Act is also a disclosure to the world at large. Because the processing must be 'necessary' for this condition to be satisfied, the public interest arguments must be greater than the prejudice to the individual's rights and freedoms or legitimate interests.

There is no evidence of widespread or substantial public interest in disclosing the individual's identity, far less that disclosure is necessary for your legitimate interests. Therefore, it is not certain that this part of the Condition is satisfied.

The second consideration in Condition 6 is whether disclosure would be unwarranted because of prejudice to the individual's rights and freedoms or legitimate interests.

Disclosure would have a prejudicial effect on the individuals as there was no prior expectation for their personal details to be placed into the public domain. Disclosure would therefore be unwarranted because the interest in disclosure does not outweigh the prejudice to their rights, freedoms and legitimate interests.

In addition to the above we take the view that the information requested is also exempt from disclosure pursuant to Section 43 of the Freedom of Information Act.

Section 43 states:-

- (1) Information is exempt information if it constitutes a trade secret.
- (2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).

(3) The duty to confirm or deny does not arise if, or to the extent that, compliance with section 1(1)(a) would, or would be likely to, prejudice the interests mentioned in subsection (2).

For the purposes of the information requested we believe Section 43 (2) is engaged.

A commercial interest relates to an organisation's ability to participate competitively in a commercial activity. As a centre of excellence it is incumbent upon the University to continually attract and appoint suitable individuals to diverse and specialist roles throughout its Faculties, Department and Schools.

By virtue of the above the University is in direct competition, not only with UK based Universities but Universities throughout the world.

In considering whether releasing the information requested might prejudice the University's Commercial Interests, we have taken into account the following:-

- **Does the information relate to, or could it impact on a commercial activity?**

Future negotiations with prospective employees may be prejudiced if details of exact salaries of all employees and grades are placed into the public domain. In addition, the University's direct competitors would be provided with an opportunity to revise their own salaries whilst the University remains unaware of what its direct competitors' offer.

- **Is that commercial activity conducted in a competitive environment?**

As stated, the University competes directly with Universities on a national and international level.

- **Would there be damage to reputation or business confidence?**

We take the view that releasing details of its employee's exact salaries as opposed to salary banding would cause damage to its reputation. The University considers such information to be intrinsic to a confidential relationship between itself and its employers as such, a breach of this trust would cause damage to the relationship it has with its employees.

In terms of business confidence the University genuinely believes releasing such information would impact upon its ability to attract and recruit staff in the future where there is belief by the applicant that their exact salary details are to be made public.

- **Is the information commercially sensitive?**

Companies compete by offering something different from their rivals. The same applies to Universities. Should the University be placed in the position of having to disclose information that is fundamental to the employer, employee relationship the University would be unfairly disadvantaged when compared with its rivals.

- **What is the likelihood of the prejudice being caused?**

We have considered whether there is a likelihood of harm arising from release of the information requested.

Taking all matters into consideration it has concluded there is a significant risk that its commercial interests are likely to be prejudiced.

In considering the request, the University has had regard to the public interest. The University accepts there is strong public interest in openness and transparency. As such the University routinely publishes a substantial amount of information in respect of its pay scales. That said, the University is of the view the public interest will not be better served by releasing the exact salary details of each of its employees.

Finally, the University also takes the view that the information requested is exempt by virtue of Section 41 of the Act, which states:-

Section 41 States:-

(1) Information is exempt information if:-

(a) it was obtained by the public authority from any other person (including another public authority), and

(b) the disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

In addition to the above section 41 gives cause to consider the following:-

Was the information obtained by the public authority from any other person?

Is the information held subject to a duty of confidence (express or implied)?

Would the disclosure of this information to the public, otherwise than under the Freedom of Information Act, constitute an actionable breach of confidence? This will include consideration of whether there would be a defence to an action for breach of confidence.

The details you have requested were obtained by the University by other persons and disclosure of the same would constitute an express breach of confidence actionable by any other person, in this case the individuals whose information you seek.

In respect of the withheld information this letter acts as a refusal notice under Section 17(1) of the Act.

We have previously provided the link to information routinely published about employees. Were we to provide and combine further information in respect of salaries, religion, ethnicity and grades, the information as a whole could be utilised to render employees identifiable, thus disclosing personal, confidential information.

If you have any queries or concerns, please contact me, using the request reference number.

If you are unhappy with our response to your request and wish to request a review of our decision, you should write to:

Vice Provost Operations
University College London
1-19 Torrington Place
London WC1E 7HB

Please note, requests for internal reviews received more than two months after the initial decision will not be handled.

If you are not content with the outcome of the internal review, you may apply directly to the Information Commissioner at the address given below. You should do this within two months of our final decision.

If you have any queries or concerns, please contact me, using the request reference number.

Further information on the Freedom of Information Act is available from the Information Commissioner's Office:

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Yours sincerely,

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Legal Services