

Mr J J Hermes *By email - jamesjhermes@gmail.com*

17 February 2015

Dear Mr Hermes,

FREEDOM OF INFORMATION ACT 2000 – REQUEST 014-257 - Internal Review

I am writing further to your request for an internal review into your Freedom of Information request. Please accept our apologies for the fact that this request was not dealt with sooner.

You originally requested:

- 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.*

Having examined your request we remain convinced that the information requested is exempt from disclosure on the following grounds:

1. Section 40

The disclosure of information that would allow the public at large to learn of an employee's exact salary, would clearly amount to a disclosure of personal data. Having established that the requested information constitutes personal data it is then necessary to once more consider whether disclosure would lead to a breach of any of the Data Protection Principles.

Section 40(2) of the Freedom of Information Act 2000 provides an exemption from disclosure 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 based on section 1 of the Data Protection Act 1998 which 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.*

The personal data does not fall within section 40(1) because it does not constitute personal data to which you are the subject but rather that of other third party individuals. We then need to consider if the information is exempt from disclosure because 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 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) provides that: *'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 an individual's name together with salary details would contravene the first data protection principle, the questions to be addressed, therefore, are:

- (i) Would disclosure of their name constitute fair and lawful processing of his personal data?
- (ii) Has the individual given their consent such that condition 1 is met?
- (iii) 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?

In response:

- (i) When considering whether the disclosure constitutes fair and lawful processing, 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 by the relevant individuals. 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, we do not believe disclosure would constitute fair processing.

- (ii) The individuals have not provided consent for this disclosure. Condition 1 is, therefore, not met.
- (iii) When considering whether disclosure is justified under condition 6 of schedule 2 a balancing of the legitimate interests of the applicant requesting 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.

As we stated in our original response the University routinely publishes relevant information. Further details can be found at:- <https://www.ucl.ac.uk/finance/corporate/annual-report>

As you can see this 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.

There is no evidence of widespread or substantial public interest in disclosing the individual's identity together with their salary, beyond the public interest that is already served by the information already in the public domain. Furthermore we cannot see how the disclosure of an individual's name and salary is necessary for your legitimate interests. Therefore we do not believe 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 clearly have a prejudicial effect on the individuals as there was no prior expectation that this personal information would 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. We believe the anonymised information already published satisfied any public interest in salary information.

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

2. Section 43

We take the view that the information requested is 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, appoint and keep highly qualified and experienced individuals to diverse and sometimes specialist roles throughout its academic departments and professional support services.

By virtue of the above the University is in direct competition for quality employees, not only with UK based Universities but organisations and employers in all sectors Universities throughout the world.

In considering whether releasing the information requested would be likely to 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. This may also apply to future negotiations with existing employees who would become aware of the rewards paid to their peers. It would clearly put the university at a competitive disadvantage. 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 competing employers offer, particularly those not subject to freedom of information legislation.

It could also lead to tension between existing staff members and the poaching of staff by other organisations.

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

As stated, the University competes directly with Universities and other organisations and employers 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 the confidential relationship between itself and its employees as such, disclosure would be a damaging breach of trust in 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, recruit and keep 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?**

Organisations compete by offering something different from their rivals. The same applies to UCL. 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 competing employing organisations.

- **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 we have concluded there is a significant risk that its commercial interests would be likely to be prejudiced. These include:

- the creation of tension between existing employees
- the removal of any bargaining position for the university in determining future salaries (making recruitment more difficult)
- increased turnover of staff leading to higher recruitment costs and potential instability
- a potential resulting increase in overall staff salaries.

In considering the request and this internal review, 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, however, the University is of the view the public interest will not be any better or further served by releasing the exact salary details of each of its employees.

Consequently this information is again withheld under section 43 by virtue of section (2) because disclosure under would be likely to prejudice the commercial interests of UCL.

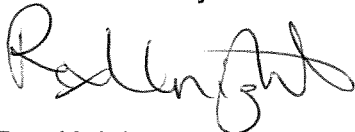
Following this review the university has concluded that it no longer wishes to rely on the exemption in section 41 of the Act.

We have now reconsidered your request under our internal review procedure therefore should you remain dissatisfied with the handling of your request you can make a complaint to the Information Commissioner:

Information Commissioner's Office:
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone 01625 545700
www.ico.gov.uk

Yours sincerely



Rex Knight
Vice-Provost (Operations)