

F14/185, 215, 219: Public Interest Test Panel report

Date: 19 November 2014

Panel members: Stephen Town, Director of Information (chair), Dr David Duncan, University Registrar, Pat Lofthouse, Director of Human Resources, Professor Tom Stoneham, Department of Philosophy, Chris Webb, Keeper of Archives and Head of Information Policy (secretary), and Dr. Charles Fonge, FoI Officer (in attendance).

The requests

F14/185

To outline my query as clearly as possible, I am requesting:

1. The total number of employees who received remuneration equal to, or in excess of £100,000 in 2013-14.
2. For those who received remuneration in excess of £150,000:
 - i. The employee's name
 - ii. The employee's job title
 - iii. The remuneration received by the employee
 - iv. An itemised list of expenses claims made by the employee. If an itemised list is not available, please provide the amount the employee claimed in expenses in 2013-14

F14/215

I respectfully request the following information under the Freedom of Information (FOI) Act:

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.

F14/219

I am writing to request the following information under the Freedom of Information Act.

Could you please provide the salary details (including title, department and salary band to within £10,000) of all professional service staff (ie, non-academic) at the university who earn more than £100,000 a year, and who are included in the vice-chancellor's/principal's central team (senior leadership team or equivalent).

Please also state the number of professional service staff in total at the university who receive a salary (including bonuses) of at least £100,000 a year.

Please also state the number of academic staff who receive a salary of £100,000 or more at the university – for this category, please also state how many academic staff earning at least £100,000 a year are clinical staff, which receive some NHS funding towards their salary, and how many are non-clinical staff.

The claimed exemption

Section 43 – prejudice to commercial interests. This exemption covers two situations:

- when information constitutes a trade secret (such as the recipe for a branded product); or
- when complying with the request would prejudice or would be likely to prejudice someone's commercial interests.

Both parts of this exemption are qualified by the public interest test.

Preliminaries

The requests, responses and draft public interest test arguments were circulated to Panel members by email. The Panel was also provided with the Information Commissioner's Decision Notice (ICO decision notice , February 2014, on a request submitted to King's College London:

http://ico.org.uk/~media/documents/decisionnotices/2014/fs_50513117.ashx)

and the First tier tribunal decision of October 2014 in relation to the same case:

[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)

The Panel was also provided with the ICO's *Definition Document for Universities and other Higher Education Institutions*, links to a number of media articles demonstrating the public interest in senior salaries, and to information about the disclosure / non-disclosure of salary information at York and elsewhere.

Mr Town outlined the purpose and procedure of the Panel meeting, and noted the reasons for bringing 3 similar Freedom of Information requests together to be considered by a single Panel: consistency of approach and judgement, and speed and equity of response.

Discussion

The Panel noted the relevance and importance of the similar request posed to King's College London, King's response, the subsequent decision by the Information Commissioner and the decision by the First Tier tribunal. It noted in particular the importance of judging each case on its merits.

The Panel accepted the public interest in senior salaries paid by bodies in receipt of public funds. It observed that the link between a salary, a role and the holder of that role is personal data and is therefore caught by the Data Protection Act, which takes precedence over Freedom of Information. The Director of Human Resources informed the Panel that every staff member has a contract of employment with York that, *inter alia*, obliged the University to maintain the confidence of personal information; the Panel concluded from this that staff other than the Vice Chancellor, whose salary has been published annually for two decades as a matter of course, would have the reasonable expectation that the University would not disclose details of their salaries. The Panel noted that in these circumstances any decision about the disclosure of personal data should be informed by the wishes of the data subjects in this matter. Dr Duncan undertook to contact the people concerned.

The Panel considered the Public Interest Arguments in favour of disclosing the withheld information

- There is a presumption of a general public interest in disclosure. University values, policy and practice recognise the principles of openness enshrined in the FOIA.
- There is strong interest in allowing the public to scrutinise how public funds are being used and ensuring the University is getting value for money.
- There is a clear and strong public interest in understanding which specific publicly-funded jobs attract high salaries. This allows stakeholders and the public to understand why certain jobs in the public sector attract high salaries.

Increasing access to information on senior staff salaries has further significant public interest functions in:

- advancing accountability and openness in the use of public funds;
- promoting trust and public confidence in the proper administration of University business by increasing the transparency of its processes (in this case remuneration policy);
- allowing salary discussions to take place on a more transparent basis;

- informing and promoting current public debate on an issue of live concern (see links below). This links with debates on tuition fees and sources of funding;
- demonstrating accountability in line with the University's highest ethical standards, the 7 Nolan Principles for public life, disclosure practices in private and public sectors, while (a) equitably sharing the transparency of pay scales and grading for more junior roles and (b) acknowledging the greater reason for transparency in connection with more senior and public-facing roles;
- permitting scrutiny of remuneration across categories of staff (e.g. academic versus non-academic roles);
- enabling the proper scrutiny of the University's actions and decisions as a legally constituted public authority under FOI legislation and recipient of public funding.

The Panel considered the Public Interest Arguments against disclosing the withheld information

- There is a public interest in ensuring that universities and other bodies are able to compete fairly, without unfair advantage. Disclosure in a context where the information is not widely available adds to the sensitivity of the information and would give an unfair advantage to another organisation competing for key assets, such as senior staff.
- There is a public interest in not prejudicing the bargaining position of the University and in ensuring the University can secure best value for its students, sponsors and stakeholders: harming its negotiating or bargaining position would result in the less effective use of public money.
- There is a public interest in protecting the integrity and effective operation of the recruitment process.
- There is a public interest in respecting confidentiality and managing personal and sensitive information in line with the expectations of those whose information it is or whom it concerns, and likewise in preventing any unwarranted distress or harm to their interests or privacy.
- The sensitivity of commercial information diminishes over time. The currency of the information concerned means that it remains sensitive. A public interest in promoting transparency and enabling proper accountability is met through the routine and long-standing publication by the University and higher education sector of information on the number of higher paid staff and their remuneration by year within anonymised £10,000 bands.
- There is a public interest in safeguarding the University's relationship with its staff and the data subjects whose information is involved.
- There is a public interest in allowing the University to have a safe space in which to conduct itself and in the ability of public bodies to demonstrate that they can respect the confidentiality of sensitive commercial and personal information otherwise released to it.
- There is an implicit public interest in not undermining the ability of the University, as a

self-governing and charitable body, to achieve its lawful objectives.

In discussion the Panel noted:

- that publication of salaries would be likely to make recruiting from the private sector more expensive because many staff would not like to have it advertised that they have taken a pay cut. This in turn would be likely to make the recruitment of able private sector staff more difficult, as well as building into the system an undesirable degree of rigidity.
- that publication of senior salaries would be likely to produce a levelling of salaries across the HE system, which would inhibit the effective use of performance-related pay, and the Panel referred to the examples of Higher Education systems abroad, such as Canada, where the publication of all salary data is the norm, and has led to a lack of competition because of the difficulty of using salaries and bonuses to differentiate one employer from another.
- that it was not the social norm in the UK for salary and tax details to be public knowledge, in contrast to some Scandinavian countries where this was usual practice.
- that poaching between HE organisations would be more likely to occur because knowledge of remuneration would enable organisations to target senior staff in a more refined way than at present.
- that poaching by the private sector would be likely to occur because of the publication of senior salaries, and that salary inflation would be likely to occur in order to prevent this happening.
- that the argument by the Tribunal that the inflation of Vice Chancellors' salaries occurred only a decade after publication was not relevant in this case, where less specialised roles could be shared between Higher Education and the private sector, in contrast to the rarity and unique nature of VCs' roles .

Decision

Having weighed the arguments the Panel decided that, in all the circumstances of the case, and with regard to its existing publication of information on higher salaries in its Annual Report, it was not in the public interest to publish the requested information about senior salaries linked to roles, from which role holders could be identified, and therefore upheld the claimed exemption. However, the Panel also had regard to the ICO Definition Document and decided that it would be in the public interest to affirm the disclosure of the requested information in relation to the numbers of staff at the University earning over £100,000. The Panel, noting the data before it and the arguments in the King's case, decided that the information to be supplied should relate to the salaries of professional services staff on the Senior Management Group, but not to academic staff in that Group.