

Mr JJ Hermes

Sent via email to [jamesjhermes@gmail.com]

17 November 2014

Dear Mr Hermes,

Thank you for your information request dated 20 October 2014 concerning senior staff members making more than £150,000 in total emoluments for the year ended 31 July 2014. Your request has been handled under the Freedom of Information Act 2000 ("FOIA"). We confirm that we hold the information you have requested. However, we consider that exemptions apply to the disclosure of some of the information you have 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).

As recorded in the forthcoming annual report and financial statements for the year ended 31 July 2014, besides the Vice-Chancellor, Professor Koen Lamberts, there was one other member higher paid staff whose remuneration (excluding employer's pension contributions and employer's national insurance contributions) exceeded £150,000.

We consider the exemptions for personal information and commercial interests at sections 40(2) and 43(2) of FOIA and set out below apply to the name and title of the other member of staff. This information will accordingly not be disclosed.

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.

The University, in common with other UK HEIs, does not have a system of tenure. Technically the answers to (a)-(c) are therefore 'zero' in each case. The Vice-Chancellor is the University's chief executive and is both the University's most senior

academic and also its most senior administrative officer. The other staff member is a member of the University's academic staff.

3. The total emoluments for the past five (5) years for each of the senior staff identified in the first request.

The emoluments of the Vice-Chancellor are recorded in the Annual Report and Financial Statements, which are publicly available at <http://www.york.ac.uk/communications/publications/corporate-publications/> for the period since 2000.

We consider the exemption for personal information at section 40(2) of FOIA, set out below, applies to the salary information of the other member of staff. As such, this information will not be disclosed.

The specific exemptions which apply in relation to your request for information are as follows:

Personal Information (s.40(2) FOIA)

University employees will be identifiable from the disclosure of their job titles in conjunction with other information that is already publicly available. The name, title and salary information of the other staff member constitutes their personal data. Personal Data is exempt under s.40(2) of the FOIA if disclosure of such personal data would contravene the data protection principles set out in the Data Protection Act 1998 ("DPA"). This is an absolute exemption.

We consider the disclosure of this personal data would contravene the first principle of the DPA, i.e. that the processing of personal data must be fair. The disclosure of the University employee's salary information would not be fair. Disclosure of this information would have unjustified adverse effects on the employees involved. It is widely accepted that disclosure of an employee's salary information is an infringement into their privacy as it reveals details of their financial situation. It is also accepted that it is reasonable to consider that disclosure of this information would cause the employees unwarranted distress or unjustified damage. We consider that disclosure of the employees' salary information in bands of £10,000, when this is associated with a particular role-holder, does not avoid the infringement of privacy and unwarranted distress associated with disclosure of exact salary figures.

It is in the reasonable expectations of our employees (professional service staff and others) that such personal data will not be disclosed. These reasonable expectations are based on the way this information is usually treated by the sector as a whole and within our University.

Such personal data is not routinely disclosed in the higher education sector. Our employees have been given no indication that such data would be

disclosed. We do not publicise the ICO's "Definition document for universities and other higher education institutions" to our employees and there is no reason why this guidance would be known to our employees. In any event, this guidance is widely understood within the higher education sector as only requiring the publication of certain salary information in an anonymised way. We consider this requirement is satisfied by the information currently published by the University in our financial statements. The guidance also makes it clear that the information should not be made available if it is exempt under one of the other FOIA exemptions.

Within the University our policy is to keep individuals' salary information confidential. This approach is consistently taken from the initial advertisement of jobs, through to salary negotiations, correspondence and payslip information. This reinforces our employees' expectation that the University would not disclose such personal data.

We acknowledge that there is a legitimate public interest in the disclosure of information about the expenditure of public authorities. We consider that this public interest is significantly diluted by the fact we are a research intensive University and therefore our financial makeup and reliance on the 'public purse' differs dramatically from traditional public authorities. This is the case now more than ever; as the introduction of the student fee regime has dramatically reduced the amount of public funding the University receives. Further, we consider that any public interest that does exist is satisfied by the information already published in our annual financial statements, which are available at <http://www.york.ac.uk/communications/publications/corporate-publications/>. These statements include details of the Vice Chancellor's salary and the number of employees earning over £100,000 per annum. We consider this satisfies the public interest in understanding the spending decisions of the University.

Prejudice to Commercial Interests (s.43(2) FOIA)

We consider that all of the information requested is commercially sensitive and disclosure of such information would be likely to prejudice, the commercial interests of the University. Therefore, this information is exempt under s.43(2) of FOIA.

The ICO has acknowledged that higher education institutions have commercial interests that they are entitled to protect and that there is a causal connection between the potential disclosure of salary information and the prejudice to these commercial interests. Disclosing the information requested poses a real and significant risk of prejudice to the University's commercial interests.

The University operates in a highly competitive environment. The recruitment of professional service staff is at least as competitive as the

recruitment for academic staff. The University competes with other higher education institutions, industry and other private sector companies and public sector bodies when recruiting talented professional service staff who play a fundamental role within the University. The unwarranted disclosure of their salary information would have far reaching consequences within the University. This includes the risk of losing talented staff, as they may leave due to the unwarranted disclosure of their salary information or they may be poached by competitors; increased costs of recruitment and salary costs going forward; and unrest amongst both professional service staff and academics.

The commercial interests' exemption applied is qualified by consideration of the public interest. A public interest test is required to determine whether the public interest in maintaining the exemption outweighs the public interest in the release of the information. When a qualified exemption applies to the information requested and the public interest test is engaged, the Act allows us to extend the time for our full response for a reasonable time period for us to consider the public interest. We require additional time to consider the public interest issues. This will include a meeting of our internal Public Interest Panel. We anticipate being able to let you have the outcome of the public interest test and thus our full response by 21 November 2014. If it appears that it will take longer than this to reach our conclusion we will keep you informed.

The University aims to comply fully with FOIA and to provide an efficient and helpful service to those applying for information held by the University. If you are dissatisfied with the way we have handled your request, you can contact us to make a complaint. Details of how to make a complaint and to request an internal review of this decision, and our procedure for complaints and reviews, can be found at <http://www.york.ac.uk/records-management/foi/foi-policy/foi-complaints/>. In the first instance, if an issue cannot be resolved informally in discussion with the staff handling your enquiry, please contact the University Records Manager:

University Records Manager
Borthwick Institute for Archives
University of York
Heslington
York
YO10 5DD
foi@york.ac.uk

Wherever possible, complaints will be dealt with by a senior officer who has not been involved in any original decision.

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire
SK9 5AF
www.ico.gov.uk

Yours sincerely,

Dr Charles Fonge
University Records Manager and Archivist