

Freedom of Information Act 2000 (FOIA)

Decision notice

Date: 10 July 2018

Public Authority: University of Bristol
Address: Senate House
Tyndall Avenue
Bristol
BS8 1TH

Decision (including any steps ordered)

1. The Complainant has requested from the University of Bristol (the University) the annual salaries of all senior managers by reference to their job titles and departments in £5,000 salary bands.
2. The Commissioner's decision is that the University has incorrectly applied section 40(2) (personal information) and 43 (commercial interests) of the FOIA to the withheld information. The Commissioner also found that the University breached section 10(1) of the FOIA due to the time it took to respond to the request.
3. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.

Disclose the annual salaries of all senior managers specified in the request by reference to their job titles and departments in £5,000 salary bands.

4. The public authority must take these steps within 35 calendar days of the date of this Decision Notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court pursuant to section 54 of the FOIA and may be dealt with as a contempt of court.

Request and response

5. On 21 June 2017, the complainant wrote to the University and requested information in the following terms:

"I would like to request the current annual salaries of your senior managers (by full job title and department). For clarity, this includes:

- Senior executive team
- Faculty Deans
- Heads of School
- Divisional Heads

Disclosure in £5,000 bandings, as recommended by the Information Commissioner's Office, is acceptable."

6. On 4 September 2017 the University responded. It confirmed that the requested information is held but only disclosed the annual salaries of members of its senior executive team by reference to job titles and in £5,000 salary bands. This included: the Vice-Chancellor, Deputy Vice-Chancellor, Chief Financial Officer, and Registrar and Chief Operating Officer (one post). The University applied section 40(2) of the FOIA to withhold the requested information relating to all other senior managers specified in the request.
7. On 3 November 2017 the University conducted an internal review and provided the complainant with its decision. It upheld the decision to apply section 40(2) of the FOIA to withhold from disclosure the information in relation to all other senior managers specified in the request, with the addition of its five Pro Vice-Chancellors who it said form part of its senior executive team. The University however accepted that there was a public interest in the information and therefore disclosed the annual salaries of all these individuals with all their job roles amalgamated in 1 column [not separately listing the job role, job title and department of each senior manager] and in £10,000 salary bands. The University also applied section 43 of the FOIA to this information.

Scope of the case

8. On 27 November 2017 the complainant contacted the Commissioner to complain about the way his request for information had been handled.

9. On 1 February 2018 the Commissioner wrote to the University and asked a series of questions about its handling of the request. The University replied to the Commissioner on 13 February 2018 enquiring if she was satisfied with the complainant's (the requester's) identity. It said that it was aware from a previous decision notice concerning disclosure of senior salaries at a University that the requestor being a member of staff was seen as a relevant factor as they were more likely to be able to identify individuals from job titles and/or other generic information than an unrelated third party would. The complainant subsequently confirmed to the Commissioner that he was not a member of staff at the University. In any event the Commissioner notes that the University disclosed some of the requested information to the requester in its initial response as well as further information in its review decision without first confirming his identity [that he was not a member of staff] itself and that this was before the Commissioner accepted his complaint for investigation.

10. On 15 March 2018 the University wrote to the Commissioner. It said *"The University's most recent financial statements also list the Deputy Registrar as a member of the senior executive team and it is accepted that their salary should therefore be considered as within the scope of this part of the request."* The Commissioner notes that the Deputy Registrar is listed as a member of the University's senior executive team in its Financial Statement dated September 2017, and therefore their annual salary also falls within the scope of the request. The University however said that it does not consider it fair to publish the salaries of the Deputy Registrar or Pro Vice-Chancellors by reference to their job titles, even though it accepted that they form part of its senior executive team.

11. On 29 March 2018 the University wrote to the Commissioner. It said that some of the annual salary information that was sent to the complainant in its initial response was inaccurate. It explained that this was due to difficulty in accessing historic records and the manner in which salary information was held. The Commissioner notes that this included the annual salaries of the Vice Chancellor and Chief Operating Officer. The University said that it was now confident that the revised information it provided to her was correct. To satisfy the public interest in the requested information relating to the Pro Vice-Chancellors, Deputy Registrar and all other senior managers specified in the request, the University proposed disclosing this information amalgamated by job roles [not separately listing the job title and department of each senior manager] and in £10,000 salary bands. The University also said: *"several of the roles, postholders and salaries have changed since the end of the academic year on 1 August 2017 ... In addition to the Deputy Registrar, we have now included the Chief Information Officer and*

Deputy Chief Operating Officer (a single role) as a member of the Senior Executive Team.” The University also applied section 40(2) and 43(2) of the FOIA and provided similar arguments to those in its internal review decision in relation to all other individuals specified in the request to withhold the Chief Information Officer/Deputy Chief Operating Officer annual salary information. It however included their salary within the amalgamated information to satisfy the public interest in the information. The Commissioner however notes that the Chief Information Officer/Deputy Chief Operating Officer was not listed as a member of the University’s senior executive team in its financial statement dated September 2017, and therefore information about their annual salary does not fall within the scope of the request.

12. The University then wrote to the Commissioner on 18 May 2018 and 11 June 2018 and said that it is only prepared to release the requested information in relation to members of the senior executive team, and that it is not prepared to release information in relation to its Pro Vice-Chancellors, Deputy Registrar, Chief Information Officer/Deputy Chief Operating Officer and all other senior managers specified in the request and asked the Commissioner to prepare a decision notice.
13. The Commissioner has therefore considered the University’s application of section 40(2) and 43(2) of the FOIA to withhold from disclosure the annual salaries [by reference to job title and department and in £5,000 salary bands] of the Pro Vice-Chancellors, Deputy Registrar and all other senior manager’s specified in the request. She has also considered the time it took to respond to the request and internal review.

Reasons for decision

Section 40(2) – Personal information

14. Section 40 of the FOIA specifies that the personal information of a third party must not be disclosed if to do so would contravene any of the data protection principles.
15. Taking into account her dual role as regulator of both the FOIA and the Data Protection Act 1998 (the DPA), this being the relevant legislation in force at the time the University responded to the request the Commissioner has considered whether the University was correct to withhold the requested information.

Is the withheld information personal data?

16. Personal data is defined by section 1 of the DPA as:

" ... data which relate to a living individual who can be identified –

(a) from those data, or

(b) from those data and other information which is in the possession of, or likely to come into the possession of, the data controller, and includes any expression of opinion about the individual and any indication of the data controller or any person in respect of the individual..."

17. In order for the exemption to apply the information being requested must constitute personal data as defined by section 1 of the DPA.

18. The requested information in this case is the annual salaries of senior managers at the University by reference to job titles and departments and in £5,000 salary bands and therefore clearly relates to living individuals who can be identified from it, on this basis, the Commissioner is satisfied that the withheld information constitutes personal data.

Would disclosure breach the data protection principles?

19. The data protection principles are set out in schedule 1 of the DPA. The Commissioner considers that the first data protection principle is most relevant in this case. The first principle states that personal data should only be disclosed in fair and lawful circumstances, the conditions of which are set out in schedule 2 of the DPA.

20. The Commissioner's considerations below have focused on the issues of fairness in relation to the first principle. In considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the data subject and the potential consequences of the disclosure against the legitimate public interest in disclosing the information.

Reasonable expectations of the data subject

21. When considering whether disclosure of personal data is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the data subject(s). However, their expectations do not necessarily determine the issue of whether the disclosure would be fair. Public authorities need to decide objectively what would be a reasonable expectation in the circumstances.

22. The Commissioner believes that an individual's expectations in this respect should depend upon a number of factors; including whether the requested information relates to their professional role, their seniority,

whether they are public facing, any general policy on transparency, the consequences of disclosure and the balance of private rights and freedoms with legitimate public interests.

23. The Commissioner has already noted that although the Pro Vice-Chancellors and the Deputy Registrar form part of the senior executive team the University has not disclosed their annual salaries. It has argued that these salaries are not in the public domain and that the individuals concerned have a strong and reasonable expectation that their individual salaries would not be disclosed in a manner that enables them to be identified, and to do so would therefore be unfair and cause distress and personal detriment. The University has made the same arguments in respect of all other senior managers specified in the request, with the addition that these roles are not public facing, in that they do not deal with members of the public, and that that the University is only partly publicly funded.
24. The University has also pointed out to the Commissioner that, unlike other public authorities (e.g., local authorities) it is not subject to specific statutory regulations¹ and central government guidance² that require senior staff salary information to be routinely published.
25. The Commissioner notes that in the University's financial statement dated September 2017, it provides the Vice Chancellor's precise annual salary, as well as the annual salaries of the other members of the senior executive team in a collective total figure and the annual salaries of all "*other higher paid staff*" amalgamated without job roles and job titles and in £10,000 salary bands. The Commissioner however also notes that in the "Working at Bristol" section of the University's website it provides job vacancy information relating to other/junior roles including job title, division/school and salary (both precise and range), and where by range the salary is provided in £5,000 salary bands.
26. The Commissioner has referred to her guidance on 'Requests for personal data about public authority employees'³ and emphasised that

¹ The Accounts and Audit (Amendment No. 2) (England) Regulations 2009

² The Code of Recommended Practice for Local Authorities on Data Transparency.
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/5967/19974_68.pdf

³ https://ico.org.uk/media/for-organisations/documents/1187/section_40_requests_for_personal_data_about_employees.pdf

individuals paid from the public purse should reasonably expect some information about their salaries to be made available to the public, the Commissioner makes the further point that the guidance itself also sets a reasonable expectation for the individuals concerned in this case that the information would be disclosed in the manner requested (salaries over £50,000 will be disclosed by reference to job title and department in £5,000 salary bands).

The consequences of disclosure and potential distress to the data subject

27. The University has said that, given the expectations of the senior managers concerned, disclosure of their salary bands may be distressing to them:

"Their individual salaries are not in the public domain and to disclose their salaries by reference to their specific job titles would in our view cause distress. Many of their salaries are individually negotiated and disclosure may give significant information about that individual, which could cause them personal detriment"

28. The University has not produced any evidence to demonstrate that it has approached any of the senior managers specified in the request to see whether they had any objection to the disclosure their salary bands or indeed whether they believed that any such disclosure would cause them any distress or harm.

Balancing private rights and freedoms with legitimate public interest

29. Assessing fairness also involves balancing the individuals' rights and freedoms against the legitimate interest in disclosure to the public. Despite the reasonable expectations of individuals and the fact that damage or distress may result from disclosure, it may still be fair to disclose the requested information if it can be argued that there is a more compelling public interest in its disclosure.
30. As disclosure under the FOIA is considered to be disclosure to the world at large and not to the individual applicant, it is the legitimate interest of the public in disclosure that must be balanced against the interest of the data subjects, including their right to privacy.
31. The interest in disclosure must be a public interest, not the private interest of the individual requester. The requester's interests are only relevant in so far as they reflect a wider public interest. While the complainant may have personal reasons for wanting access to the requested information, the Commissioner must consider whether or not it is appropriate for the requested information to be released to the general public.

32. The complainant has argued that there is a clear and strong public interest in the transparency of how public funds are apportioned to pay senior managers across the University.
33. The University acknowledged that increasing access to information about staff salaries has an important function in advancing transparency in how public funds are used and said that any legitimate public interest in the information was met with the information published in its financial statements and its proposed disclosure of the information amalgamated by job role and in £10,000 salary bands.
34. The University also referred to the Commissioner's decisions in FS50639191 and FS50513117 and the subsequent Information Rights Tribunal ruling in EA/2014/0054 in support of its position. It has not however provided any compelling arguments in relation to the facts or decisions in these cases. It has merely stated that it has had "*regard to case law*" when referring to its proposal to use amalgamated job roles and £10,000 bands to provide salary information to satisfy the public interest.
35. In FS50639191⁴ the requested information specifically related to the salaries of senior professors *without* senior management responsibilities (academic staff) at the University of Roehampton, the Commissioner noted the public authority's release of the information in £10,000 salary bands to satisfy the public interest, she did not however accept the use of this banding generally. Given that the focus of the request in that case specifically related to senior professors without senior management responsibilities and the request in this case relates to all senior managers, the Commissioner advised the University that she does not believe that FS50639191 provides any direction in this matter, and has since not received any arguments from it in response to her position.
36. In FS50513117⁵ the requested information was the job titles, departments and £10,000 salary bands of all staff at King's College London earning over £100,000 per annum. The Commissioner did not uphold the College's application of section 40(2) of the FOIA in the case. This is because, she said that the individuals concerned all earned in excess of £100,000 per annum and occupy senior positions, some of

⁴ <https://ico.org.uk/media/action-weve-taken/decision-notices/2017/2013973/fs50639191.pdf>

⁵ https://ico.org.uk/media/action-weve-taken/decision-notices/2014/956142/fs_50513117.pdf

which are public facing and/or involve responsibility for influential decisions, she believed that (in line with her previous Decision Notices and guidance) it is not unreasonable for the public authority to disclose the requested information. The bands in this case were agreed by the complainant. Although the Commissioner notes that in the subsequent Tribunal ruling [EA/2014/0054⁶], it upheld the College's application of section 40(2) in relation to the salaries of 'Professional Services Staff' (PSS) that were not on the 'Principal's Central Team' (PCT), she specifically notes that in relation to the PSS in that case it stated:

"We do not say that disclosure would always be unfair in respect of those not on the PCT. However, except in relation to the distinction between those on the PCT and those not on the PCT, we were not urged to draw a distinction, nor indeed was evidence put forward to allow a meaningful distinction to be drawn, between the individual PSS who are not on the PCT, based on their specific roles. Although there was some evidence of the outward facing or inward facing aspects of the roles of those individuals, it is not at all evident to us that those distinctions are clear or meaningful, nor that an inward facing role in an organisation like the College with its substantial body of students and staff, is less significant in relation to the considerations under discussion, than a role that might be described as being outward facing, but which, in reality, may be more limited in scope and influence."

37. The Commissioner also notes that the PSS who provided the witnesses statements referred to in the ruling were the Director of Finance, Director of Human Resources, and the Director of Governance and Legal Affair Management and do not encompass all the staff groups specified in the request in this case. Moreover, the extract from the ruling (above) specifically states that the Tribunal would not always deem disclosure of the annual salaries of all PSS that are not a member of the PCT unfair, but does not specify in relation to which members of PSS it would deem disclosure fair, it states that it was not urged to draw any distinction in roles of PSS, or make a decision in relation to this issue and that it was not provided with any evidence to enable it to do so. The Commissioner is therefore satisfied that the Tribunal's ruling in that case does not provide any clear direction on the issue of the application section 40(2) to all other senior managers specified in the request in this case.

Conclusion

⁶ http://www.fretna.org/openrecords/KCL_FirstTierTribunal.pdf

38. The Commissioner acknowledges that although it may not be the case that all the individuals specified in the request have public facing roles, it is clear in that the information requested, namely their job title and department and £5,000 salary bands relate to their professional roles as opposed to private matters (such as health, or disciplinary record, tax code). The Commissioner also acknowledges that the University is different from other public bodies in how it is funded; which is a mixture of public and private money. However, Universities are public authorities and receive significant public funds. The Commissioner therefore believes that the senior managers earning in excess of £50,000 should reasonably expect a level of information concerning their salaries to be disclosed. The Commissioner also believes that it is fair to release more information about senior managers than other/less junior staff. The Commissioner's view is that increased seniority is commensurate with increased responsibility, especially in relation to the making of influential decisions about policy, expenditure, course provision and the running of departments. In this case all the individuals falling within the scope of the complainant's request are senior staff because they are senior managers. This includes the senior executive team, faculty deans, heads of school and divisional heads, and these individuals are therefore likely to represent the University to the outside world (such as at meetings with other bodies or as a spokesman), make influential decisions and have greater responsibilities than junior staff.
39. The Commissioner acknowledges that the University already publishes some information about senior staff salaries, although this is limited, e.g., in relation to its senior executive team this is in a collective figure and in relation to all other senior staff this is £10,000 salary bands without reference to job role, job title or department. She also acknowledges that the University has proposed to disclose the annual salaries of the remaining individuals covered by the request using amalgamated job roles and in £10,000 salary bands to meet the public the public interest in the information. She however also notes that the University currently discloses the job titles, departments and £5,000 salary bands and precise salaries of its other / junior staff on the employment section of its website. The Commissioner notes that all the individuals specified in the request are senior managers and their salaries will come albeit in part from the public purse. At a time when the increased costs of tuition fees, and the quality of the education offered by different universities is still featured in the news, and when all aspects of public expenditure is closely scrutinised, she considers there is a legitimate public interest in the way in which the University, which receives public funds allocates them particularly in relation to the salaries of its non-academic staff, in this case its senior managers earning £50,000 and above.

40. The Commissioner also notes that in FS50513117 the Tribunal found that section 40(2) did not apply to members of the PSS that were a part of the PCT, as their individual rights to privacy were outweighed by the public interest in their salary information. Therefore, in this case section 40(2) does apply to the Pro Vice-Chancellors and Deputy Registrar salary information as they were also members of the senior University's executive team at the time the request was received.
41. Having taken into account all the circumstances of the case, and having considered the reasonable expectations of the individuals concerned, the potential consequences of disclosure, and the public interest factors, the Commissioner has concluded that there is a legitimate public interest in disclosure which outweighs any detriment which might be caused to the individuals concerned. It is therefore the Commissioner's view that the University has incorrectly applied section 40(2) of the FOIA to withhold the requested information relating to the Pro Vice-Chancellors, Deputy Registrar and all other senior managers specified in the request. The Commissioner will now go on to consider the University's application of section 43 of the FOIA to the information.

Section 43(2) – Commercial interests

42. Section 43(2) of the FOIA states that information is exempt if disclosure would, or would be likely to prejudice the commercial interest of any person (including the public authority holding it).
43. In this case the University has argued in its review decision dated 3 November 2017 and in further correspondence to the Commissioner dated 15 March 2018 that it intends to rely upon the higher threshold that disclosure 'would' prejudice its commercial interests.

Commercial interests

44. The Commissioner states in her Section 43 – Commercial Interests Guidance⁷:

⁷ <https://ico.org.uk/media/for-organisations/documents/1178/commercial-interests-section-43-foia-guidance.pdf>

"A commercial interest relates to a person's ability to participate competitively in a commercial activity. The underlying aim may be to make a profit however it could also be to cover costs or to simply remain solvent."

45. The Commissioner is also mindful of comments made by the Information Tribunal in the cases of The Student Loans Company and Information Commissioner EA/2008/0092 and the University of Central Lancashire and Information Commissioner and David Colquhoun (EA/2009/0034) in which it said that 'commercial interests' is a term which deserves a broad interpretation dependant largely on the particular context.
46. The University said that it values its key senior staff and strategic decision makers very highly and does not wish to take actions which could prove prejudicial to retaining them or recruiting high calibre staff in the future. It said it competes nationally and internationally for senior managers, often against competitors that are not public authorities. It operates in a different environment to other public authorities subject to the FOIA, in large part due to the requirement to raise funds from non-public sources. It also said that disclosure of the requested information into the public domain could induce adverse publicity for the University, which could prove damaging to its reputation and negate its ability to attract funding, donations, research grants and students.
47. The University (together with other domestic Universities) depend upon being able to recruit and retain high calibre senior staff and decision makers in the competitive environment in which it operates in order to facilitate the running of the University and its departments and also to devise and run courses in order to attract fee paying students, research grants and external funding.
48. In the Commissioner's view a public body that depends upon income from such sources to carry out its functions has a commercial interest in maintaining the assets (including its staff) upon which its ability to generate income depends.
49. The Commissioner is therefore satisfied in this case that the University has commercial interests which it is entitled to protect.

Prejudice to Commercial Interests

50. The University has argued that disclosure of the requested information would prejudice its commercial interests in three ways.
51. Firstly, it believes that disclosure would increase the costs of recruiting

and retaining staff by encouraging competitor universities to raise their salary offers to outbid it by making higher salary offers.

52. Secondly, it believes that disclosure would impede salary negotiations by encouraging candidates for senior posts to bid for higher salaries based on posts they consider comparable. This could result in it having to pay higher salaries than it currently does to retain staff or make future appointments. The University has argued that this would not represent an effective use of the public funding it receives.
53. Thirdly, it believes that disclosure could induce adverse publicity for the University, which could prove damaging to its reputation and negate its ability to attract funding, donations, research grants and students. It also says that ill feelings between colleagues could also result, impacting on its efficient operation and therefore not serve the interests of the University, its members or stakeholders, or the public.

Likelihood of prejudice

54. In this case, the University has argued that the chance of prejudice as a result of disclosure is subject to the higher threshold test of 'would' occur as opposed to 'would be likely' to occur.
55. In relation to this higher threshold, the Commissioner believes that the chance of prejudice occurring must be more probable than not to occur, e.g., more than a 50% chance of the disclosure causing the prejudice, even though it is not absolutely certain that it would do so.
56. The University has not provided the Commissioner with any tangible evidence or strong arguments to show that the likelihood of prejudice is more probable than not.
57. The University has advanced three arguments (under points 47 – 49) in relation to the prejudice that it believes would be caused to its commercial interests.
58. In relation to the University's first argument outlined in paragraph 51, the University appears to have made a number of assumptions to support its view. Firstly, that a vacancy for a comparable post would have to exist at the same time the University was recruiting. Secondly, that the competing university would have to have the necessary funds to pay for the vacancy, if the salary offered by the University was significantly higher than that of its competitors for a comparable position, the competitor may not even consider it possible or worthwhile to make an increased bid. If the salary offered by the University was less than that offered by a competitor for a comparable

position, it would raise the question as to whether the University was offering a figure below the market value. Thirdly, there is an assumption that a candidate looking for a new role would be influenced solely by the salary offered. The Commissioner believes that other factors would also be relevant, including: responsibilities, geographical location, available facilities, and opportunities for progression, the organisation's reputation and any other benefits offered. Fourthly, the Commissioner has already noted above that the University provides job vacancy information relating to junior staff roles by reference to job title and including salary (both precise and range in 5,000 bandings) on its website, and therefore it appears to have assumed that the possibility of it being outbid by a competitor for a comparable position only applies to senior staff earning significant salaries.

60. In relation to the University's second argument outlined in paragraph 52, the University again appears to have made a number of assumptions to support its view. Firstly, the fact that a potential candidate might be able to make reference to a higher salary being paid for a comparable position would not mean that the University would have to pay it. Factors such as the applicant experience, age and qualifications would be relevant in determining the level of any salary offered. However, in terms of transparency, fairness and equity it might be regarded as unfair if (for example) an internal applicant was precluded from being made aware of salaries for comparable positions. Secondly, a competitor organisation would need to have substantial funds in their budgets in order to offer a higher salaries to entice staff. If the University is already providing a competitive salary, the competitor may not even consider it possible or worthwhile to make an increased bid/offer. Thirdly, the Commissioner has already noted above that the University provides job vacancy information relating to junior staff roles by reference to job title and including salary (both precise and range in 5,000 bandings) on its website, and therefore it appears to have assumed that the possibility of candidates bidding for higher salaries only applies to senior managers earning significant salaries (£50,000 and over).
62. In relation to the University's third argument, the University's assumption that disclosure could result in adverse publicity and cause ill feelings between colleagues to the extent that there would be an impact on its efficient operation therefore begs the question as to whether it is using public funds to pay senior staff annual salaries that are at a figure in line with the market value. Senior staff are likely to know the market value for their skills. Also, there has been no evidence presented that the University's ability to attract funding, donations, research grants or students would be impacted by disclosure of this information. Nor has there been any evidence

presented of there being any impact to the University's funding or admissions following disclosure of the annual salaries of the other members of the senior executive team [in its initial response to the complainant] or the salaries of the junior staff advertised on its website.

64. These assumptions are the same or very similar to those in respect of the University's position in its review decision. The University refers to the King's College London's application of section 43(2) in FS50513117 and the ruling in the proceeding Information Rights Tribunal case EA/2014/0054 and again says it has used these in forming its opinion. The Commissioner again however notes that it has not provided any compelling arguments in relation to the facts or decisions in these cases to support its own position.
65. In FS50513117 The Commissioner did not accept the College's assumptions or arguments and did uphold its application of section 43(2) to all the staff earning over £100,000, and the subsequent Tribunal ruling only upheld the application of the section 43(2) in relation to the College's academic staff and decided that the exemption was not engaged in relation to members of the PSS on the PCT. The Tribunal did not therefore consider whether section 43(2) was engaged in relation to the PSS alone. This is because, the Tribunal considered that section 40(2) was engaged in relation to the PSS and therefore did not consider section 43(2) separately in relation to these staff. The Commissioner has already noted that the Tribunal's decision to uphold section 40(2) in FS50513117 does not provide any clear guidance in this case and she decided that the exemption was incorrectly applied by the University. She has therefore gone on to separately consider the University's application of section 43 in relation to the circumstances of the case.
66. The Commissioner notes that in FS50513117 it was the Tribunal's decision that section 43(2) did not apply to salary information relating to the College's PSS that were on the PCT, and therefore in accordance with that ruling it is her view in this case that as the Pro Vice-Chancellors and Deputy Registrar were a part of the University's senior executive team at the time the request was received section 43(2) has been incorrectly applied by the University to withhold their salary information.
67. In relation to all other senior managers specified in the request, the above assumptions made by the University lead the Commissioner to conclude that it has not produced sufficient evidence to establish that the likelihood of prejudice by disclosure is more probable than not to occur. Moreover, she has not been presented with any arguments or

evidence by the University to show that the chance of prejudice from disclosure of the requested information would meet the lower threshold test, e.g., that prejudice 'would be likely' to occur from releasing this information.

68. In view of the above, the Commissioner finds that section 43(2) of the FOIA is not engaged. Accordingly, she has not gone on to consider the public interest test.

Other matters

Section 10 – time for compliance

69. Section 10(1) of the FOIA says that a public authority must comply with a request as soon as possible and within 20 working days following the date of receipt of the request.
70. In this case, the complainant submitted his request on 21 June 2017 and did not receive a response until 4 September 2017. Therefore, the University breached section 10(1) of the FOIA on this occasion.

Section 45 – internal review

71. There is no obligation under the FOIA for a public authority to provide an internal review process. However, it is good practice to do so, and where an authority chooses to offer one, the code of practice established under section 45 of the FOIA sets out, in general terms, the procedure that should be followed. The code states that reviews should be conducted promptly and within reasonable timescales.
72. The Commissioner has interpreted this to mean that internal reviews should take no longer than 20 working days in most cases, or 40 working days in exceptional circumstances.
73. The complainant asked for an internal review of his request on 15 September 2017 and the University provided the outcome of the internal review on 3 November 2017, 35 working days later.
74. The Commissioner has not been presented with any evidence that demonstrate the circumstances of this case to be exceptional and she therefore considers that in failing to conduct an internal review within 20 working days, the University has not acted in accordance with the section 45 code.

Right of appeal

75. Either party has the right to appeal against this Decision Notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

76. If you wish to appeal against a Decision Notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
77. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this Decision Notice is sent.

Signed

**Pamela Clements
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SK9 5AF**