

Mr Paul Philips
request-125xxxxxxxxxxxx@xxxxxxxxxxxxxxxxxxx

26 June 2009

Our Ref: 2009/90 – F0060765

Dear Mr Philips,

Re: Freedom of Information (Scotland) Act 2002 – Request for Information

Thank you for your email which was received by the University on 28 May 2009 timed 07:34 hours, and your subsequent clarification email dated 10 June 2009 timed 14:59 hours, requesting information about:

Email dated 28 May 2009 timed 07:34 hours

“I would like information on the following points:

1. How many spin-out companies has the University formed in the past five years and how much did it cost the University to create each company?
2. Could you provide me with a breakdown of costs incurred by the University for each spin-out company formed within the past five years? This breakdown should include: - legal costs involved in the formation of each company; - salary costs for any University employees responsible for the formation of each spin-out; and – any other overheads involved, i.e. bonuses for said staff, consultancy costs, accommodation and travel costs.
3. Could you also provide amounts of all income earned from University spin-out companies within the same five-year period, excluding equity/shares held by the University in those companies?
4. If you can neither provide the costs nor the quantifiable amounts of actual income can you provide me with the justification for such expenditure from the public purse?
5. How many spin-out companies have registered actual sales and how many of these companies are trading at a profit? Could you please provide details of profit and loss accounts for these companies? If none of these spin-out companies have made a profit, can you provide me with justification for continuing to spend public funds in this area?

6. What is the ratio of costs incurred by the University to income earned by each spin-out company formed? Does this represent good use of public funds?

7. Have the University's Vice Chancellor, Pro Vice Chancellor responsible for financial matters, Secretary of Court, Director of Finance or any of the University's governing bodies ever called for an investigation/review regarding the cost to the University of creating spin-out companies? If so, could you please provide me with the relevant details/reports?

8. What level of legal/business qualifications do the people responsible for creating spin-out companies possess? If they do not possess such qualifications, is the University going to take any action against the Director of Human Resources for appointing these people, bearing in mind that it is public funds being used here?

(This refers to anyone employed by the University whose dedicated function/role includes the creation of spin-out companies.)

9. Are the University's managers with financial control for spin-out companies required to keep a record of all expenditure? If they are, are they required to report this to the Secretary of Court or Director of Finance? If so, could you please provide me with the relevant details/reports?"

Clarification email dated 10 June 2009 timed 14:59 hours

"Further to your request of 8 June 2009 for clarification, my replies to your queries are below:

Point 1. Please provide clarification of 'costs' to the University to create each company.

- 'costs' should include anything that can be identified with the creation of each spin-out company including, but not limited to, costs for all legal and accountancy advice, costs for external consultants' advice, costs for any dedicated University staff having responsibility for company formation, recruitment costs for spin-out employees, etc.

Point 8. Please provide clarification of "people responsible for creating spin-out companies".

- This refers to anyone employed by the University whose dedicated function/role includes the creation of spin-out companies."

University's Response

Please find the University's response to questions 1 (related to costs) and question 2 below:

1. How many spin-out companies has the University formed in the past five years and how much did it cost the University to create each company?

The question does not define the term 'spin-out company'. We have therefore assumed that the term is used here to describe any company formed either by the University or formed by a third party in which the University has a shareholding with the aim to commercialise intellectual property generated at the University. Under this definition the number of spin-outs formed in the last 5 years is 10.

With regard to the question of cost to the University to create each of these companies, please refer to the University's response to question 2. You provided clarification as to what you meant by the term 'costs'. In your clarification you indicated that you were seeking information on:

'...anything that can be identified with the creation of each spin-out company including, but not limited to, costs for all legal and accountancy advice, costs for external consultants' advice, costs for any dedicated University staff having responsibility for company formation, recruitment costs for spin-out employees, etc. ...'.

2. Could you provide me with a breakdown of costs incurred by the University for each spin-out company formed within the past five years? This breakdown should include: - legal costs involved in the formation of each company; - salary costs for any University employees responsible for the formation of each spin-out; and – any other overheads involved, i.e. bonuses for said staff, consultancy costs, accommodation and travel costs.

The University has estimated that the cost of responding to your request will exceed the fee limit as set out in the Freedom of Information (Fees for Required Disclosure) (Scotland) Regulations 2004. As a result, we are not obliged to provide a response. The fee limit set down by the Regulations is £600, and in this instance this equates to a combination of staff time capped at a rate of £15 per hour plus the reproduction of documents at the rate of 30p per A4 sheet. It is estimated that in order to reproduce the information requested would take more than £600. The University has estimated that it would take approximately 16.5 hours in order to collate the information required to provide the information requested.

Please be advised that a modified request will be given due consideration. Any modification of your request will be treated as a new request for the purposes of the Freedom of Information (Scotland) Act 2002.

3. Could you also provide amounts of all income earned from University spin-out companies within the same five-year period, excluding equity/shares held by the University in those companies?

£4,310,982

4. If you can neither provide the costs nor the quantifiable amounts of actual income can you provide me with the justification for such expenditure from the public purse?

Please refer to the University's response to question 3 above.

5. How many spin-out companies have registered actual sales and how many of these companies are trading at a profit? Could you please provide details of profit and loss accounts for these companies? If none of these spin-out companies have made a profit, can you provide me with justification for continuing to spend public funds in this area?

On the assumption that this question also relates to the past 5 years we can advise that:

- (a) 7 of the 10 companies had recorded sales (please note: 2 of the 10 were formed in 2009 and have not yet prepared accounts)
- (b) 1 of the 10 companies has recorded a trading profit in 2008

Section 1 of the Act sets out the right of any person requesting information from a Scottish Public Authority, such as the University of Glasgow, but this general right is subject to a number of exemptions. After careful consideration and having applied both the “harm test” and the “public interest test” set out in the terms of the Act where appropriate, the University has reached the conclusion that details of the profit and loss accounts for the spin-out companies should not be disclosed. That is, we consider that it is not in the interests of the public for the requested information to be disclosed.

Section 33 (1)(b) Commercial interests and the economy

- The disclosure of the information would, or would be likely to, **prejudice substantially** the commercial interests of any person (including the University)

The University of Glasgow considers that the release of information in the profit and loss accounts for the spin-out companies is likely to prejudice substantially the commercial interests of both the University and the spin-out companies.

The University has considered the public interest by applying the “public interest test”. That is, the University has balanced whether the release of the information is in the public interest against whether disclosure would substantially prejudice its own, or another person’s, commercial interests. The view of the Office of the Scottish Information Commissioner (OSIC), in its advice on the application of the “public interest test”, is that the public interest should not be interpreted as “of interest to the public”. That is, the potential release of the information must be in the interests of the public and not merely of individual interest. The public interest in the disclosure of the information requested is slight. The University of Glasgow operates in a very competitive environment and the public interest is in ensuring the continuing success of the University. The disclosure of the requested information would be likely to be detrimental to the public interest by inhibiting organisations from entering into relationships and working with the University.

In addition, the University must also consider the commercial interests of other person(s)/ companies. These organisations operate in a very competitive environment and any release of the information requested would be likely to adversely affect the commercial position of the organisation, causing real and significant substantial prejudice to their commercial interests.

The University therefore concludes that the “public interest test”, as required when applying section 33 of the FOISA, is met as the disclosure of the information requested would cause real and significant substantial prejudice to the commercial interest of the person/s in question. The public interest in withholding the information is greater than the public interest in its release.

The University therefore concludes that the public interest is in withholding the requested information and consequently the exemption under section 33(1)(b) applies.

6. What is the ratio of costs incurred by the University to income earned by each spin-out company formed? Does this represent good use of public funds?

The University of Glasgow does not hold the information that you have requested and is not aware of any other public authority that could respond to your request. Section 17 of FOISA states that where public authorities receive requests for information that they do not hold, they must issue a notice advising that they do not hold the requested information.

7. Have the University's Vice Chancellor, Pro Vice Chancellor responsible for financial matters, Secretary of Court, Director of Finance or any of the University's governing bodies ever called for an investigation/review regarding the cost to the University of creating spin-out companies? If so, could you please provide me with the relevant details/reports?

No investigation or review regarding the cost to the University of creating spin-out companies has ever been called. Accordingly, the University of Glasgow does not hold the information that you have requested and is not aware of any other public authority that could respond to your request. Section 17 of FOISA states that where public authorities receive requests for information that they do not hold, they must issue a notice advising that they do not hold the requested information.

8. What level of legal/business qualifications do the people responsible for creating spin-out companies possess? If they do not possess such qualifications, is the University going to take any action against the Director of Human Resources for appointing these people, bearing in mind that it is public funds being used here?

Further to your clarification of “people responsible for creating spin-out companies” which you provided as follows:

‘..This refers to anyone employed by the University whose dedicated function/role includes the creation of spin-out companies.... ‘

The qualifications are an honours degree in a business related discipline plus relevant professional experience in technology commercialisation.

9. Are the University's managers with financial control for spin-out companies required to keep a record of all expenditure? If they are, are they required to report this to the Secretary of Court or Director of Finance? If so, could you please provide me with the relevant details/reports?

All University expenditure is recorded on the University Finance System. Expenditure by the company is recorded and managed by the company. There are no specific financial reports on spin-outs for the Secretary of Court or Director of Finance.

The supply of documents under the terms of the Freedom of Information (Scotland) Act 2002 does not give the applicant or whoever receives the information any right to re-use it in such a way that might infringe the Copyright, Designs and Patents Act 1988 (for example, by making multiple copies, publishing or otherwise distributing the information to other individuals and the public). The Freedom of Information (Scotland) Act 2002 (Consequential Modifications) Order 2004 ensured that Section 50 of the Copyright, Designs and Patents Act 1988 ("CDPA") applies to the Freedom of Information (Scotland) Act 2002 ("FOISA").

Breach of copyright law is an actionable offence and the University expressly reserves its rights and remedies available to it pursuant to the CDPA and common law. Further information on copyright is available at the following website:

<http://www.ipo.gov.uk/copy.htm>

Your right to seek a review

Should you be dissatisfied with the way in which the University has dealt with your request, you have the right to require us to review our actions and decisions. Please refer to the Review Procedure (<http://www.gla.ac.uk/services/dpfoioffice/policiesandprocedures/foisa-complaintsandreview/>) for further information. All complaints regarding requests for information will be handled in accordance with this procedure.

Yours sincerely,

Data Protection and Freedom of Information Office