



University
of Glasgow

Paul Philips
[request-18xxxxxxxxxxxx@xxxxxxxxxxxxxxxx.xxx]

22 October 2009

Our Ref: FOI 2009/164 – F0072089

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 23 September 2009 timed 21:32 hours requesting the following information:

For the list of companies below, identified by the University of Glasgow as its spin out companies formed in the past five years, can you please provide the following information for each one:

(a) valuation of company on incorporation; (b) value of any equity held by the University of Glasgow in each company; (c) names of all other shareholders; (d) current valuation of each company; and (e) how many of these companies have an operational base in Scotland.

If the answer to (e) is that one or more of these companies is based outside Scotland, can you explain why the public purse is being used to create companies that do not create jobs in Scotland and do not contribute to the Scottish economy or to the tax revenue collected by HMRC.

Is this a deliberate attempt by the University of Glasgow to avoid paying tax on its investments?

Grannus Biosciences Ltd MD Biosciences Inflammation Discovery Services Ltd Crucial Genetics Ltd Mode Diagnostics Ltd Xanic Ltd Reactivlab Ltd TMRI Ltd Senectus Therapeutics Ltd Pathfinder LLC Cara Therapeutics Inc

DATA PROTECTION AND FREEDOM OF INFORMATION OFFICE

Main Building, University of Glasgow, Glasgow G12 8QQ

Data Protection: Telephone: 0141-330-3111 E-Mail: data.prot@xxx

Freedom of Information: Telephone: 0141-330-2523 E-Mail: foi@gla.ac.uk

The University of Glasgow, charity number SC004401

University's Response

- a.) The University of Glasgow, after consultation with the companies in question, has agreed to release the requested information for the following:

Pathfinder LLC – no valuation on incorporation
TMRI Ltd - no valuation on incorporation
Crucial Genetics Ltd - no valuation on incorporation

For the remainder of the companies, and after consultation, the University considers that disclosure of the valuation on incorporation of such spin out companies would be likely to prejudice substantially the commercial interests of both the University and the spin out companies.

Notwithstanding the result of the “harm test”, section 33 of FOISA does not provide an absolute exemption to the general entitlement to information. The University has therefore considered whether, notwithstanding the exemption, it is in the public interest to release the information.

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. This potential to fail to achieve best value would substantially prejudice the commercial interests of the University of Glasgow.

In addition, the University must also consider the commercial interests of each of the spin out companies. Each operates in a very competitive environment and any release of information concerning its valuation may be likely to lead to their competitors gaining an advantage. This would in turn be likely to adversely affect the commercial position of these organisations thus potentially jeopardising the position and reputation of the University in future activities or negotiations with others for similar initiatives.

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 prejudice substantially the negotiating position of the University. The public interest in withholding the information is greater than the public interest in its release.

- b.) There have been no recent material events such as shareholder transactions for these companies which could be used as a method to base a current valuation. Any value of equity held by the University of Glasgow would therefore be both speculative and notional. 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.
- c.) The names of all other shareholders for the spin-out companies, with the exception of Cara Therapeutics Inc, are attached in Appendix A. Please note the information within Appendix A, is also available from Companies House <http://www.companieshouse.gov.uk/>.

The University of Glasgow, after consultation with the company, considers that disclosure of the names of all other shareholders in Cara Therapeutics Inc would be likely to prejudice substantially the commercial interests of both the University and the spin out company.

Notwithstanding the result of the "harm test", section 33 of FOISA does not provide an absolute exemption to the general entitlement to information. The University has therefore considered whether, notwithstanding the exemption, it is in the public interest to release the information.

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. This potential to fail to achieve best value would substantially prejudice the commercial interests of the University of Glasgow.

In addition, the University must also consider the commercial interests of each of the spin out companies. Each operates in a very competitive environment and any release of information concerning its shareholders may be likely to lead to their competitors gaining an advantage. This would in turn be likely to adversely affect the commercial

position of these organisations thus potentially jeopardising the position and reputation of the University in future activities or negotiations with others for similar initiatives.

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 prejudice substantially the negotiating position of the University. The public interest in withholding the information is greater than the public interest in its release.

- d.) Again, there have been no recent material events such as shareholder transactions for these companies which could be used as a method to base a current valuation. Any current valuations held by the University of Glasgow would therefore be both speculative and notional. 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.
- e.) Of the ten spin companies, eight have operational bases in Scotland and two are based outwith Scotland.
- f.) 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.

Both companies with a base outwith Scotland, Pathfinder LLC and Cara Therapeutics, were created and financed by US based groups not the University of Glasgow. As is traditionally the case, these companies have, if appropriate, as part of their development programmes sought and obtained University of Glasgow owned Intellectual Property, in return for equity stakes in the companies.

- g.) 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.

Please note, the University is an exempt charity within the meaning of schedule 2 of the Charities Act 1992 and as such is a charity within the meaning of section 506(1) of the Income and Corporation Taxes Act 1988 (ICTA 1988). Accordingly the institution is potentially exempt from taxation in respect of income or capital gains received within categories covered by s.509 of ICTA 1988 or s.256 of the Taxation of Charitable Gains Act 1992, to the extent that such income or gains are applied to exclusively charitable purposes. The institution received no similar exemption in respect of Value Added

Tax. The University is registered with the Office of the Scottish Charity Regulator under number SC004401.

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