



1 April 2010

Ms Hannah Hutchison

Dear Ms Hutchison

Request under the Freedom of Information Act (FOI Act) 2000

I am formally responding on behalf of Liverpool John Moores University (LJMU) to your request received by email on 8 March 2010 for a disclosure of information under the Freedom of Information Act 2000.

You requested various pieces of information relating to the Global Warming Policy Foundation (GWPF) and Dr Benny Peiser.

Before proceeding to respond to the specifics of your request, the University considers that it would be helpful if it clarified the position in respect of its relationship with the Global Warming Policy Foundation. [GWPF]

Liverpool John Moores University has no association with the Global Warming Policy Foundation [GWPF]. Dr Benny Peiser is employed as a 0.5FTE lecturer in this institution. The other 0.5FTE of his time is spent acting on behalf of GWPF as their Director. These roles are separate. Any activities that Dr Peiser undertakes on behalf of the Foundation do not form part of his duties as a member of staff of this institution.

Turning to your request, the FOIA requires a public authority in receipt of a request for information to inform the requestor if the information is held and, subject to any exemption that might apply, to disclose the information.

In deciding whether the information is "held" as defined by the Act, the University has referred to The Information Commissioner's Office [ICO] Guidance Note No. 12 [*When is information caught by the Freedom of Information Act?*]

http://www.ico.gov.uk/upload/documents/library/freedom_of_information/detailed_specialist_guides/awareness_guidance_12_info_caught_by_foi_act.pdf

The Guidance Note states "*non-official information in the possession of public authorities..... would not be caught by FOI, provided that the information is not created by a member of staff in the course of their duties*".

The guidance note then goes further to describe the factors that "*would indicate that the information is held solely on behalf of another person*:"

- *The authority has no access to, use for, or interest in the information*
- *The authority is merely providing storage facilities, whether physical or electronic”*

In other words, the mere possession of information by the University, does not amount to “holding” it under the terms of the Act if it has not been created or collected by a member of staff of the University in the course of his/her duties.

This interpretation of information “held” has been re-affirmed by a number of Decision Notices, including FS5082767 [*British Broadcasting Corporation*] and FS50245527 [*University of Plymouth*].

http://www.ico.gov.uk/upload/documents/decisionnotices/2006/fs50082767_dn.pdf

http://www.ico.gov.uk/upload/documents/decisionnotices/2010/fs_50245527.pdf

The Information Commissioner decided in both cases that information generated by a public authority employee, where acting in a private capacity outside of any employment by the public authority, is not held by that public authority within the terms of the Act. In the case of FS50245527, the Information Commissioner also decided that *“an individual could take part in other activities and send and receive personal emails through an employer’s system whilst in paid employment”*.

As stated earlier in this letter, Dr Benny Peiser’s activities with the Global Warming Policy Foundation are not part of his duties as an employee of this University. Consequently, any information that may be on the University’s systems is not “held” by virtue of Section 3(2) of the Freedom of Information Act.

The University considers it has fully complied with your request, but if you wish to seek an internal review, you should do so in writing to Mr Brian Kerrigan, Director of Corporate Services, Liverpool John Moores University, Rodney House, Liverpool L3 5UX. A copy of the University’s Freedom of Information Complaints and Appeals Procedure is enclosed.

Once having appealed, if you are still not satisfied with our response you have the right to apply to the Information Commissioner for a decision whether, in any specified respect, your request for information has been dealt with in accordance with the requirements of Part I of the Freedom of Information Act 2000. The Information Commissioner’s address is: Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF. Details on how to complain can be found on the Information Commissioner’s website: www.ico.gov.uk

Yours sincerely

Jeanette Wordsworth

Jeanette Wordsworth
Freedom of Information Officer

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Jeanette Wordsworth : Freedom of Information Officer