

Mr Neil Davies  
By email only to [request-472221-b78185b8@whatdotheyknow.com](mailto:request-472221-b78185b8@whatdotheyknow.com)

18 April 2018

Dear Mr Davies,

**Our ref: FOI-18-0076**

Thank you for your correspondence of 19 March 2018, in which you requested the following information from the University of Sussex.

**Request**

Please provide a copy of your college's response to the 2017 and 2014 UUK USS valuation consultations.

**Response**

Your request has been dealt with under the Freedom of Information Act 2000 ("the Act").

Please see attached for the requested documents; note that some redactions have been made where applicable as the University is not obliged to provide information that is the personal data of another person.

You can find out more about Section 40(2) by reading an extract from the Act and some guidance points considered when applying this exemption, in the form of a Guidance Note attached to this letter

If you are not satisfied with this response you may request a review but this must be within 40 days of receiving this response. In the first instance please write to Alexandra Elliott, the Head of Information Management and Compliance, at the address below. Full details of our Freedom of Information internal review procedure are at:

<http://www.sussex.ac.uk/ogs/policies/information/foi/procedure>.

If you need to contact us about your request please quote your reference number FOI-18-0076.

Yours sincerely,

Lucy Pattenden  
Information Officer  
Information Management and Compliance

## Guidance Note

### Explanation of FOIA - Section 40(2) – Information Relating to Third Parties

You will find additional information about Section 40 of the Freedom of Information Act provided below. An extract from the legislation, as well as some of the guidance used when applying it is included.

#### **Section 40: Personal Information.**

- (2) Any information to which a request for information relates is also exempt information if—
  - (a) it constitutes personal data which do not fall within subsection (1), and
  - (b) either the first or the second condition below is satisfied.
- (3) The first condition is—
  - (a) in a case where the information falls within any of paragraphs (a) to (d) of the definition of “data” in Section 1(1) of the Data Protection Act 1998, that the disclosure of the information to a member of the public otherwise than under this Act would contravene—
    - (i) any of the data protection principles, or
    - (ii) Section 10 of that Act (right to prevent processing likely to cause damage or distress), and
  - (b) in any other case, that the disclosure of the information to a member of the public otherwise than under this Act would contravene any of the data protection principles if the exemptions in Section 33A(1) of the Data Protection Act 1998 (which relate to manual data held by public authorities) were disregarded.
- (4) The second condition is that by virtue of any provision of Part IV of the Data Protection Act 1998 the information is exempt from section 7(1)(c) of that Act (data subject’s right of access to personal data).

#### **Guidance**

Section 40(2) of the Act applies to requests for personal data of someone else (a third party). Personal data of a third party is exempt under Section 40(2) if its disclosure to a member of the public would contravene one or more of the data protection principles, and such a request must be refused.

The eight data protection principles are as follows:

Personal data must be:

1. fairly and lawfully processed
2. processed for specified and lawful purposes
3. adequate, relevant and not excessive
4. accurate, and kept up to date
5. not kept longer than necessary
6. processed in accordance with individuals' rights under the Data Protection Act
7. kept secure
8. not transferred to non-EEA countries without adequate protection

In most cases, personal data will be exempt if disclosure would be ‘unfair’. Disclosure of personal data relating to a third party will often breach the fair processing principle if there was a legitimate expectation by a third party that this information would remain confidential, or there was otherwise an expectation of privacy.

The Section 40(2) exemption is absolute and is not subject to the public interest test outlined in the Act.

The Information Commissioner has issued guidance on this exemption which is available at:

<https://ico.org.uk/media/for-organisations/documents/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

You can find the full text of the relevant legislation at <http://www.legislation.gov.uk/ukpga/2000/36/section/40>) and <http://www.legislation.gov.uk/ukpga/1998/29/contents>).