

Mr Austin Li

By email only to [request-743222-bf010343@whatdotheyknow.com](mailto:request-743222-bf010343@whatdotheyknow.com)

21 April 2021

Dear Mr Li,

**Our ref: FOI-21-0083**

Thank you for your correspondence of 1 April 2021, in which you requested the following information from the University of Sussex.

**Request**

I would be very grateful if you can kindly provide the following data for 2020 fall entry admission cycle until the date you reply to me:

1. List of all undergraduate programmes
2. Numbers of all applications (each specific programme)
3. Numbers of all offers made (each specific programme)
4. Numbers of Chinese nationality applications (each specific programme)
5. Numbers of Chinese nationality offers made (each specific programme)

**Response**

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

Please find attached the information you have requested.

To prevent the possibility of individuals being identified in the case of small numbers, where there are between 1 and 4 individuals in a category, the figure has been shown as '<5' in compliance with Section 40(2) of the Freedom of Information Act. Our position is based on definitions of personal data as set out in European ARTICLE 29 Data Protection Working Party Opinion 4/2007 on the concept of personal data (01248/07/EN WP 136) and the case of Edem v IC & Financial Services Authority [2014] EWCA Civ 92.]

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-21-0083.

Yours sincerely,

Lucy Pattenden  
Information Officer



## 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 does not fall within subsection (1), and
- (b) the first, second or third condition below is satisfied.

(3A) The first condition is that the disclosure of the information to a member of the public otherwise than under this Act –

- (a) would contravene any of the data protection principles, or
- (b) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded.

(3B) The second condition is that the disclosure of the information to a member of the public otherwise than under this Act would contravene Article 21 of the GDPR (general processing: right to object to processing).

(4A) The third condition is that –

- (a) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for access to personal data, the information would be withheld in reliance on provision made by or under section 15, 16 or 26 of, or Schedule 2, 3 or 4 to, the Data Protection Act 2018, or
- (b) on a request under section 45(1)(b) of that Act (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

(5A) The duty to confirm or deny does not arise in relation to information which is (or if it were held by the public authority would be) exempt information by virtue of subsection (1).

(5B) The duty to confirm or deny does not arise in relation to other information if or to the extent that any of the following applies –

- (a) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) –
  - (i) would (apart from this Act) contravene any of the data protection principles, or
  - (ii) would do so if the exemptions in section 24(1) of the Data Protection Act 2018 (manual unstructured data held by public authorities) were disregarded;
- (b) giving a member of the public the confirmation or denial that would have to be given to comply with section 1(1)(a) would (apart from this Act) contravene Article 21 of the GDPR (general processing: right to object to processing);
- (c) on a request under Article 15(1) of the GDPR (general processing: right of access by the data subject) for confirmation of whether personal data is being processed, the information would be withheld in reliance on a provision listed in subsection (4A)(a);

- (d) on a request under section 45(1)(a) of the Data Protection Act 2018 (law enforcement processing: right of access by the data subject), the information would be withheld in reliance on subsection (4) of that section.

## **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 six data protection principles are as follows:

1. Lawfulness, fairness and transparency
2. Purpose limitation
3. Data minimisation
4. Accuracy
5. Storage limitation
6. Integrity and confidentiality (security)

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/2018/12/contents/enacted/data.htm>