

25<sup>th</sup> March 2020

Email sent to: [request-650898-7489d278@whatdotheyknow.com](mailto:request-650898-7489d278@whatdotheyknow.com)

Reference number: 17

Dear Ms Handley

Thank you for your email of 27<sup>th</sup> February 2020 requesting the following information:

*Please can you provide me with your total agency spend in the 2018/2019 and 2019/2020 academic years along with a breakdown of which agencies that have been used and how much has been spent per agency.*

*Please also provide the total spend for permanent recruitment at the college, including the split between advertising, agency fees (including which agencies) and transfer fees etc.*

I can confirm that Hadlow College holds information relevant to your request.

Unfortunately we are unable to provide you with this information. This is because it is covered by exemption section 43(2) of the Freedom of Information Act. This exempts information if its disclosure under this Act would, or would be likely to; prejudice the commercial interests of any person (including the public authority holding it).

Information relating to Hadlow College's recruitment agency spend is likely to prejudice the commercial interests of the recruitment agencies and our working relationship with them. Further, the ICO regards information about the procurement of goods and services by a public authority as usually commercially sensitive. We maintain that the disclosing of this information about our financial transactions with one third party would prejudice our commercial interests in subsequent negotiations with another third party.

Section 43(2) is a qualified exemption and as such Hadlow College is required to conduct a public interest test.

For further information about why these exemptions have been applied and the outcome of the public interest test, please see the explanatory below:

### Exemption Applied – Section 43(2) – Commercial Interests

Section 43(2) exempts information if its disclosure would be likely to prejudice the commercial interests of any person (including the public authority holding it).

Section 43(2) is a qualified exemption and we are required to conduct a public interest test when applying any qualified exemption. This means that after it has been decided that the exemption is engaged, the public interest in releasing the information must be considered. If the public interest in disclosing the information outweighs the public interest in withholding it then the exemption does not apply and must be released. In the FOI Act there is a presumption that information should be released unless there are compelling reasons to withhold it.

Considerations in favour of the release of the information included Hadlow College's commitment to openness and transparency in its commercial activities, to allow public scrutiny and to demonstrate that public funds are being used in an efficient and effective way. Furthermore private sector companies engaging in commercial activities with the public sector must expect some information about those activities to be disclosed.

Considerations against disclosure included the recognition that disclosure may cause damage to an recruitment agency's reputation, reflected by a low spend with that agency, affecting the recruitment agency's competitive position in their respective market and confidence that its customers, suppliers or investors may have in its commercial operations. Disclosure would be likely to deter potential bidders for future contracts from competing and sharing commercially sensitive information with us, which would negatively impact upon the quality and quantity of Hadlow College's recruitment agency base. Hadlow College must retain commercial confidence of third party bidders when they choose to engage in commercial activities with us. The release of this information may jeopardise this commercial confidence.

In conclusion, Hadlow College have determined that it is not in the public interest to prejudice the commercial interests of the unsuccessful suppliers. As such this information has been deemed exempt from disclosure under section 43(2) of the Act.

### **How to Appeal Internal Review**

If you are not satisfied with this response, you have the right to an internal review. The handling of your request will be looked at by someone who was not responsible for the original case, and they will make a decision as to whether we answered your request correctly.

If you would like to request a review, please write or send an email to the Data Protection Officer within two months of the date of this letter, at the following address:  
Address

E-mail: [foi@hadlowgroup.ac.uk](mailto:foi@hadlowgroup.ac.uk)

**Information Commissioner's Office**

If you remain dissatisfied after an internal review decision, you have the right to apply to the Information Commissioner's Office. The Commissioner is an independent regulator who has the power to direct us to respond to your request differently, if he considers that we have handled it incorrectly.

You can contact the Information Commissioner's Office at the following address:

Information Commissioner's Office,  
Wycliffe House,  
Water Lane,  
Wilmslow,  
Cheshire  
SK9 5AF

Internet address: <https://ico.org.uk/global/contact-us/>

Yours sincerely



**Dr L Pamphilon**

Group Vice Principal, Quality, Standards and Performance