

**PRIVATE AND CONFIDENTIAL**

Peter Maxwell

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10 May 2012

Dear Mr Maxwell,

**Request for Information under the Freedom of Information (Scotland) Act 2002**  
**Date of Request: 1<sup>st</sup> April 2012**

I refer to your request dated 1 April 2012 to Edinburgh Napier University ("the University") under the Freedom of Information (Scotland) Act 2002 (FOISA) in which you ask for the following information:

- a copy of all correspondence, whether by letter or email, between Napier University and the Scottish Funding Council that pertains to the disposal of the Craighouse campus;
- any documentation or other records supplied to or received from the Scottish Funding Council by Napier University in relation to the Craighouse campus; and
- any minutes of meetings held between Napier University and the Scottish Funding Council pertaining to Craighouse campus.

An application for information held by public authorities under section 1 of FOISA requires that a public authority release all information held, subject to any applicable exemptions.

Following a thorough search of our records I can confirm that the University holds correspondence between itself and the Scottish Funding Council relating to the disposal of the Craighouse Campus. With regards the other information requested we do not hold any relevant records.

## **Disclosed information**

- Letter dated 11<sup>th</sup> March 2008 from Edinburgh Napier University to SFC
- Letter dated 24<sup>th</sup> April 2008 from SFC to Edinburgh Napier University
- Letter dated 7<sup>th</sup> May 2008 from Edinburgh Napier University to SFC
- Letter dated 8<sup>th</sup> May 2008 from SFC to Edinburgh Napier University
- Letter dated 23<sup>rd</sup> May 2008 from SFC to Edinburgh Napier University
- Letter dated 30<sup>th</sup> May 2008 from Edinburgh Napier University to SFC
- Letter dated 11<sup>th</sup> July 2008 from Edinburgh Napier University to SFC
- Letter dated 30<sup>th</sup> July 2008 from SFC to Edinburgh Napier University
- Letter dated 1<sup>st</sup> September 2008 from Edinburgh Napier University to SFC
- Letter dated 16<sup>th</sup> October 2008 from SFC to Edinburgh Napier University
- Letter dated 18<sup>th</sup> March 2011 from Edinburgh Napier to SFC

The University is withholding some information contained in the letters. The reason for our decision to withhold information is set out below.

### **Section 30(b)(ii) – Free and frank exchange of views for the purposes of deliberation**

The University considers that the disclosure of some of the information contained in the letters dated the 7<sup>th</sup> May 2008, 30<sup>th</sup> May 2008 and 1<sup>st</sup> September 2008 would, or would be likely to, inhibit substantially the free and frank exchange of views for the purposes of deliberation and is therefore being withheld under s.30(b)(ii) of FOISA. Section 30(b)(ii) exemption is subject to the public interest test contained within section 2(1)(b) of FOISA.

The University must now consider the application of the public interest test and in particular whether, in all the circumstances of the case, the public interest in disclosing the withheld information is outweighed by the public interest in maintaining the exemption.

### **Public Interest Test**

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 inhibit substantially the free and frank exchange of views for the purposes of deliberation. 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 be 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. Edinburgh Napier University operates in a very competitive environment and the public interest lies primarily in ensuring the continued success of the University. The disclosure of some of the information contained within the correspondence requested would be likely to be detrimental to this public interest as it would be likely to substantially inhibit the University’s senior management from engaging in the free and frank discussions required to allow them to fully and properly consider available options and make

robust decisions for the benefit of the University. This in turn would adversely affect the effective operation of the University, which would not serve the public interest.

The University therefore concludes that the “public interest test”, as required when applying section 30 of the FOISA, is met as the disclosure of the information requested would cause real, significant and substantial prejudice to the effective conduct of public affairs. The public interest in withholding the information is greater than the public interest in its release. The University therefore concludes that the public interest is in withholding the requested information and consequently the exemption under section 30(b)(ii) applies.

### **Section 38(1)(b) – Personal Data Exemption**

This exemption has been applied to some information contained in some of the disclosed information.

Section 38(1)(b) together with section 38(2)(a)(i) of FOISA creates an exemption from disclosure where the information requested constitutes the personal data of a third party and disclosure of that data would breach any of the data protection principles set out in the Data Protection Act 1998 (“DPA”). As an absolute exemption, there is no need to consider the public interest in the application of this exemption.

Information has been withheld from you under the exemption in section 38(1)(b), taken together with section 38(2)(a)(i). The withheld information contains names and signatures of individuals. We are satisfied that the information that has been withheld constitutes the ‘personal data’ of the individuals concerned, as defined in section 1(1) of the DPA.

The first data protection principle states that personal data must be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in schedule 2 to the DPA is met. The University must examine whether or not disclosure of the information you have requested, insofar as that is personal data, would breach the requirements of the first data protection principle.

#### **Fairness**

In assessing whether release of the information would be fair, we have had regard to the Scottish Information Commissioner’s Exemption Briefing Series on the section 38 exemption<sup>1</sup>, and to guidance<sup>2</sup> produced by the UK Information Commissioner, who has overall responsibility for data protection issues throughout the UK. In line with that guidance, and in coming to the decision to withhold personal data on the basis that it would be unfair to release it, we have taken into consideration:

- the seniority of the individuals’ positions;

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<sup>1</sup> <http://www.itspublicknowledge.info/nmsruntime/saveasdialog.asp?IID=3085&SID=133>

<sup>2</sup> Freedom of Information Act and the Environmental Information Regulations – The exemption for personal information, which is available at [http://www.ico.gov.uk/~media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/PERSONAL\\_INFORMATION.ashx](http://www.ico.gov.uk/~media/documents/library/Freedom_of_Information/Detailed_specialist_guides/PERSONAL_INFORMATION.ashx)

- any potential damage or distress which may be caused by disclosure of the information;
- whether the information relates to the public or private life of the individual; and
- the expectations of the data subjects with regard to the release of the information.

The individuals whose personal data have been withheld are not senior public officials. The individuals do not have public profiles and disclosure of their personal data into the public domain may cause them damage or distress. It would not be within the expectations of the individuals that their personal data would be put into the public domain.

Release of the information would therefore be unfair and consequently would be in breach of the first data protection principle and unlawful in that regard. Given that the disclosure would be unfair, and therefore unlawful, in terms of not complying with the first data protection principle, it is not necessary to go on to consider any of the conditions in schedules 2 or 3 to the DPA, or other aspects of lawfulness. The information must be withheld under section 38(1)(b) of FOISA, taken together with section 38(2)(a)(i).

## **Copyright**

Copyright in the information you have been given belongs to Edinburgh Napier University or to another party. Copyright materials must not be copied, distributed, modified, reproduced, transmitted, published (including on the Internet or an Intranet), or otherwise made available in whole or in part without the prior written consent of the copyright holder.

## **Follow-up procedural guidance**

If you are not happy with the way the University has dealt with your request for information, you have a right under FOISA to request a review of this decision. If you wish to exercise this right, you must write to the University to request a review within forty working days of receipt of this decision. Your request for a review must be in writing and you must specify your name and address for correspondence. You must also identify the decision that you wish reviewed.

Should you wish to request a review, please address your request to the:

Jacqueline Timlin  
Governance Services  
University Secretary's Office  
Edinburgh Napier University  
Room 7.B.16, Sighthill Campus,  
Edinburgh EH11 4BN, or email: [j.timlin@napier.ac.uk](mailto:j.timlin@napier.ac.uk)

Your review will be undertaken by staff not involved in the original decision making process. If you are dissatisfied with the outcome of a review, you have a right under the FOISA to appeal to the Scottish Information Commissioner. If you wish to do so,

you must appeal to the Commissioner within six months following the date of receipt of the review notice. The Commissioner's contact details are as follows:

The Scottish Information Commissioner

Kinburn Castle

Doubledykes Road

St Andrews, Fife

KY16 9DS

Email: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info) Tel: 01334 464610

### **Complaints Procedure**

Should you have any complaints about the University's procedure in respect of handling your request, please contact the University at the above address.

Kind regards

Jacqueline Timlin

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