

Dear Pd Jamieson

**Information Request
Freedom of Information (Scotland) Act 2002 ("FOISA")**

I refer to your email dated 15 May 2013, received by us on that date, requesting the following information:

1. the current annual salary of the designate principal of West College as at May 2013;
2. what the annual salary of the Principal of West College will be from August 2013 when the West College starts
3. what benefits the principal gets ie. pension or healthcare or car allowance.

An application for information under section 1 of FOISA requires that a public authority releases all information held, subject to any applicable exemptions. Under FOISA, public authorities have twenty working days following the date of receipt of the request to respond to an applicant. The 27 May 2013 was not a "working day" in terms of FOISA, because it was a spring Bank Holiday. The deadline for responding to your request is therefore 13 June 2013.

I have examined all of the information that is held by, or on behalf of, Reid Kerr College.

I have provided the information sought in the third part of your request in full and not sought to claim any exemptions under FOISA.

3. The current benefits that the designate Principal of West College receives are pension benefits. No healthcare benefits and no car allowance is received.

In relation to the information sought in the first and second parts of your request in terms of the exact salary figures of the current Principal and designate Principal, I have applied the exemption in FOISA in relation to third party personal data in section 38(1)(b), when read together with section 38(2)(a)(i). I have provided, below, an explanation of that exemption and why I consider that exemption to apply to requests 1 and 2.

However, I have provided salary band details in response to 1 and 2, under the duty to give advice and assistance and to disclose to you as much information as possible falling outwith the scope of the section 38(1)(b) exemption.

1. The current salary of the designate principal of West College as at May 2013 is within the band £110,000 to £120,000.

2. The annual salary of the Principal of West College will, from August 2013, be within the band £125,000 to £135,000.

Section 38(1)(b) of FOISA

The exemption in section 38(1)(b), together with section 38(2)(a)(i), of FOISA has been applied to requests 1 and 2 in terms of the request for disclosure of exact current and proposed salary figures. This 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"):

*"personal data" means data which relate to a living individual who can be identified—
(a) from those data, or
(b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller,
and includes any expression of opinion about the individual and any indication of the intentions of the data controller or any other person in respect of the individual."*

As this is an absolute exemption, there is no requirement to consider the public interest test under FOISA.

The information you have requested is information from which a living individual, i.e. the current Principal and designate Principal, can be identified, when taken together with other information held by the College and in the public domain. The information is clearly focused on the current Principal and Designate Principal and is biographical of her in a significant sense. Therefore, I am satisfied that the information falling within the scope of your above requests 1 and 2 constitutes the "personal data" of the current Principal and designate Principal, 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. I have examined whether disclosure of the information you have requested would breach the requirements of the first data protection principle.

Fairness

In assessing the fairness of disclosure of the personal data you have requested, I have considered the consequences of the processing for the data subject and guidance published by the UK Information Commissioner, who has responsibility for ensuring compliance with the DPA.

The UK ICO guidance *"When should salaries be disclosed?"*, states that no one rule can be applied in every case, but notes that disclosure should only be to the extent necessary to fulfil a legitimate public interest and that this may involve narrowing down published salary scales to the nearest banding. The guidance states that, although senior staff should expect more scrutiny than junior staff, the disclosure of exact pay is likely to be justified only in exceptional circumstances. The circumstances of the current request do not appear to fall within the scope of what could be described as exceptional circumstances and do not give rise to additional public interest factors that would warrant disclosure of exact salary figures.

Whilst the current Principal and designate Principal expects some salary information to be made public, this information also relates to personal financial matters and deserves an element of protection. On that basis, it is considered that it would be unfair to disclose the actual salary figures you have requested. If a disclosure would be unfair, it would thereby also be unlawful. On that basis, I am not required to go further in examining whether the disclosure of the exact salary figures would be otherwise unlawful in terms of the first data protection principle. In all the circumstances, I conclude that the first data protection principle

would be breached by disclosure of the information requested and therefore that the information must be withheld under section 38(1)(b) and 38(2)(a)(i) of FOISA.

Complaints and Right to request a review under FOISA

If you have any complaints about how any aspect of your information request was handled by the College, please contact Charlie McDade, Acting Principal (cmcdade@reidkerr.ac.uk), setting out your complaint.

You have a right under FOISA to request a review of this decision. If you wish to exercise this right, you must write to us 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 Charlie McDade, Acting Principal. Your review will be undertaken by staff not involved in the original decision making process.

Right of appeal under FOISA

If you are dissatisfied with the outcome of a review, you have a right under 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:

The Scottish Information Commissioner
Kinburn Castle
Doubledykes Road
St Andrews
Fife
KY16 9DS
Email: enquiries@itspublicknowledge.info
Tel: 01334 464610

Yours faithfully

Anita Osborne
Director