



Information Assurance and Governance
Office of the Principal

9 October 2020

Dear Mr/Ms Dickinson,

Freedom of Information (Scotland) Act 2002
Our Ref: 291-20

I refer to your enquiry dated 11 September 2020 asking to be supplied with information under the provisions of the Freedom of Information (Scotland) Act 2002 ("the FOISA") as outlined in the response below.

1. Confirm how your governance meetings (i.e. governing body/Court/Senate) have been held since mid-March and whether these have been in person/online?

The University Court is the governing body of the University. Minutes of meetings of University Court are published on our website and give details of how the meetings held in April and June were convened (<https://www.st-andrews.ac.uk/about/governance/court/meetings/minutes/>).

As you are being directed to information that is readily available on our website in answer to this part of your enquiry, section 25(1), *Information otherwise accessible* of the FOISA is applicable. The University has responsibilities to the taxpayer and other stakeholders to provide value for money. Where the University has expended resource to proactively make information available from its Freedom of Information publication scheme and the public interest is best served by referring an applicant to that alternative source, then it will do so. Please note that this exemption is absolute and does not require validation through application of the public interest test.

2. Indicate whether any such governing body meetings, or those of related committees, have been delayed or cancelled in this period?

No meetings of University Court have been delayed or cancelled during the specified period.

3. Confirm how staff and student input/transparency has been achieved during the pandemic period?

We don't hold recorded information that specifically relates to your enquiry. The University has published Coronavirus information and guidance on our website to keep students/

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students, staff and applicants fully informed. Additionally, the Principal has communicated to students, staff and applicants via email, and the University has hosted a series of virtual meetings open to all staff to discuss elements of Covid. Service Directors meet frequently and brief their staff on developments and changes in operational matters. Naturally, recognised Trade Unions are engaged, through the normal channels.

4. Provide the agenda and all meeting papers of your Reinforced Extraordinary Committee of Court, which was established in April 2020, for all meetings held from then to the present date?

The Reinforced Extraordinary Committee of Court (RECC) was a sub-committee of Court and, as is the case for all sub-committees, the agenda, papers and minutes are not routinely published.

There have been 10 meetings in total of the Reinforced Extraordinary Committee of Court (RECC) that have taken place. The agenda for each meeting followed a standard format covering the following topics:

- Minutes of previous meeting
- Update from Principal
- Coronavirus – Financial Approach and planning; Admissions and student numbers.
- Furloughing
- Staff Cost Control
- Any Other Competent Business.

The minutes of these meetings are being disclosed subject to the redaction of some information which is being withheld, along with the supporting papers, under the following exemptions available under the FOISA:

- Section 30(b)(i) – Free and frank provision of advice;
- Section 30(c) – Prejudicial to the effective conduct of public affairs; and
- Section 38(1)(b) – Personal Information.

Full application of the exemptions is outlined below.

5. Confirm when you intend resuming the regular governance arrangements in place before the pandemic period?

The regular cycle of Court/Senate meetings has resumed and no further meetings of the RECC are scheduled.

Information not held

Section 17 of the FOISA requires that a Scottish public authority confirms in writing where information requested of it is not held. For the reasons given at questions 2 and 3, the University does not hold recorded information of relevance and notice is therefore given to this effect.

Section 30(b)(i) – Free and frank provision of advice

The supporting papers were prepared for operational purposes. The section 30(b)(i), FOISA exemption is being applied to information which was prepared for the purposes of providing free and frank advice as the global Covid-19 pandemic evolves. This exemption is also being applied to information relating to the financial situation, forecasts, assumptions, operational

and staffing matters contained within the documentation which were included for internal purposes to inform the University's deliberations.

The University is of the view that disclosure of this information would have the effect of inhibiting substantially, the free and frank provision of advice.

The University requires a degree of private space to receive advice to inform discussions and fully explore all possibilities surrounding matters, freely and frankly without any constraints in terms of such contributions being made public. Additionally, in order to support effective decision making, the free and frank provision of advice is required to enable the University Court and/or members of the Principal's Office to fully assess forecasted events before reaching an agreed approach. To do this effectively private space is required. The University is of the view that the release of the withheld information would curtail efforts to fully assess and explore options and that this would be damaging where the identification and consideration of all viable options is imperative when steering the University through the unprecedented challenges and level of change which the Covid-19 pandemic has presented. This would have the effect of subsequently limiting the options and advice which the University's senior management can present, both now and in the foreseeable future.

Withholding such information is not without precedence, in Decision 009/2020, the Scottish Information Commissioner recognised the need for officials to have "private space to develop, discuss, test and revise lines and handling plans before arriving at a final position, designed to be communicated publicly." In this decision, the SIC also acknowledged that disclosure would substantially inhibit the provision of advice, in the form of briefings.

Section 30(c), Prejudicial to the effective conduct of public affairs

The exemption available at section 30(c), *Prejudicial to the effective conduct of public affairs* is being applied to withhold information that relates to matters in the early stages of negotiation, forecasts, options and proposed plans for consideration.

The University is of the view that disclosure of this information at the present time would be harmful to its operations and the effectiveness of the organisational response to the current global pandemic. The situation is constantly evolving during these unprecedented times with the University considering and adapting its response in line with public health guidance, from the local authority and government as and when that develops.

The withheld information was produced at various stages of the pandemic, reflecting the position at that point in time. The University has taken the approach of pro-actively publishing information as soon as decisions are made to keep our students, staff and applicants informed.

The University is of the view that disclosure of the withheld information at the present time would be highly disruptive and damaging to the University's operations, undermining its efforts to successfully steer the organisation through these unprecedented times for the following reasons:

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- a) As we have seen over successive months, the pandemic and corresponding public health guidance can change rapidly. Disclosure of the withheld information in the University's view would lead to unwarranted focus on matters which have subsequently been superseded or yet to be determined or materialise. This would cause confusion at a time when clear messaging is critical to the wellbeing and safety of our staff and students.
- b) Release of some of the withheld information would cause undue anxiety for some staff – the University has regularly and clearly communicated with staff the difficulties that are likely to arise in the short to medium term from the impacts of the pandemic. Many staff will also be informed from commentary in the press on the financial impacts the higher education sector may face. Release of information which is subject to a high degree of change as the country eases out of lockdown, has the potential to give a distorted view of the economic situation and this would be harmful to staff wellbeing.
- c) The University operates within a global competitive environment and it would not be in the University's interests to release information which would be detrimental to future negotiations with government, funders and commercial partners, weakening its ability to secure resources and financial support should this be required and influence policy decisions with government and sector partners. The interests of the University would also be substantially harmed where release of information would undermine confidence and negatively impact on activity. i.e. individuals may view the University differently, which may unduly influence any decisions on study or work.
- d) Cyber security currently poses a significant threat to public authorities and private individuals. As a data controller the University has a duty under the provisions of the General Data Protection Regulation and Data Protection Act 2018 to have in place adequate protection mechanisms to safeguard personal data in its possession against unauthorised access i.e. an information security breach. There is a risk that disclosure of some content would enable a determined person to undermine the security measures the University has in place to protect its ICT environment and assets, to the detriment of the University, notably when individuals are working remotely.

Public Interest

When applying the section 30(b)(i) and 30(c) exemptions, consideration must be given to where the public interest lies. The University must balance the recognised public interest in transparency against that in allowing academic institutions a degree of private space to receive advice and to discharge their functions effectively.

The definitive financial position will be reflected in the Reports and Financial Statements of University Court for 2019/20 which are scheduled to be published in January next year. These reports along with information that has already been published and will continue to be published on our website in relation to the Coronavirus, goes some way to meet the identified public interest in transparency.

The University believes that in this instance, there is a greater public interest in the information being withheld for the following reasons:

- a) It would not be in the public interest for information to be disclosed that would negatively impact on the University's efforts to steer the organisation through this global pandemic. There is a strong public interest in affording the University a degree of freedom to carry out its business and manage its response to the current pandemic as effectively as possible without any undue external interference.

- b) Arising from the pandemic, the market globally is volatile and it would not be in the public interest for information to be disclosed which could negatively impact on the University's ability to recruit and retain students and staff, or on its wider standing in the Higher Education sector.
- c) Disclosure would be to the detriment of the operation of the University, where the quality of information made available to inform deliberation and support decision-making were not fully and frankly expressed; Public authorities need to be afforded a degree of private space to receive advice without any inhibition and enable options to be explored freely.
- d) It would not be in the public interest for information to be disclosed which would have a detrimental and damaging effect on the University's ability to adequately protect its information and ICT infrastructure on which its ability to operate relies upon. The Scottish Information Commissioner reached a similar conclusion in *Decision 084/2016: Mr N and the Chief Constable of Police Scotland* i.e. that it would not be in the public interest to release details where this would increase the risk of a successful cyber-attack.

In relation to points (a) and (b), similarities, have been drawn with Decision 232/2016: *Mr Mark McLaughlin and the Chief Constable of the Police Service of Scotland* which related to the early consideration of potential options for managing the revenue budget. In this case, the Scottish Information Commissioner concluded that "there is a strong public interest in allowing public authorities, in confidence, to consider policy options which are at an early stage of development" and that it would not be in the public interest for information to be disclosed which risks jeopardising the authority being able to meet their objectives.

Taking all of the above into account, the University is of the view that the public interest in maintaining the exemptions is considered to outweigh that in disclosure and the sections 30(b)(i) and 30(c) exemptions under the FOISA are therefore applicable.

Section 38(1)(b) – Personal Information

Information contained in the papers which has been found to constitute the personal information of an identifiable individual(s) is being withheld under section 38(1)(b), *Personal Information* of the FOISA. This is an absolute exemption and is not subject to the public interest test.

Your right to seek a review of how your information request was managed

If you are not satisfied with the University's response and/or our reasoning set-out above, you have the right to request a review of our decision. The timelines in which this right is available are set out in section 20(5)(a) and (b) FOISA and regulation 16 of the EIRs. In broad terms the right to seek a review must be exercised within 40 working days of receiving this response.

The Information Assurance and Governance team are currently working remotely due to the Coronavirus pandemic. Any request for review at this time should be sent by email to foi@st-andrews.ac.uk stating:

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- a) your name and address;
- b) details of your original request; and
- c) the reasons why you are dissatisfied with our response.

If you remain dissatisfied with how your request for information has been dealt with following Review, you also have the right to apply to the Scottish Information Commissioner (SIC) for a decision. In the event of an appeal to the SIC, the Commissioner will generally only be able to investigate the matters raised in the request for review.

Details on how to make an appeal online to the SIC can be found on their website: <http://www.itspublicknowledge.info/YourRights/Unhappywiththeresponse/AppealingtoCommissioner.aspx>.

This concludes the University's response.

Yours sincerely

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Information Assurance and Governance Officer

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