

SN/JMS

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Mr M Thomas

Date 8th August 2014

By E-mail only: [request-219048-694f4ae8@whatdotheyknow.com]

Dear Mr Thomas

Request under the Freedom of Information Act 2000 ("FOIA")

We write in response to your e-mails dated 4 July 2014, in which you made requests under the FOIA to Wigan & Leigh College ("the College") for the below information. We have added numbering to your requests, for ease of reference in this letter.

E-mail at 20:45:

1. *I would like to know the reasons for Cath Hurst leaving please.*
2. *Please also send the minutes of the governors meeting the night previously.*
3. *Also [sic] please state if a compromise agreement was signed by Cath Hurst.*
4. *Also send a copy of the compromise agreement signed*

E-mail at 20:52:

5. *I would like details of the way your ex-principal Cath Hurst left the college.*
6. *Can you detail:*
 - 6(a) *the reason for leaving,*
 - 6(b) *if a compromise agreement was signed and if any payment was involved to Cath. All this information is relevant to be released to the public as you are funded by myself a tax payer.*
7. *Please also provide minutes of the governors [sic] meeting the day before Cath resigned.*

Duty to Confirm or Deny

The College has considered your request and I can confirm that the College holds the information you have requested.

Parson's Walk Centre
Parson's Walk
Wigan WN1 1RR

Silver Form Centre
School Lane
Leigh Sports Village
Leigh WN7 4JY

Regent Centre
Walsden Avenue
Wigan WN1 2JH

Image Centre
Weirley Road
Leigh WN7 1XL

School for the Arts
Parson's Walk
Wigan WN1 1RU

Principal
Cath Hurst OBE, BA (Hons) PGCE

Chair of the Governing Board
Elizabeth Shea

Communication

The information requested is held by the College, but some of the information has not been provided because it is exempt from disclosure under the FOIA. Further details on the exemptions applicable to your request are set out below.

Item 1 and 6(a) of your request

We are pleased to be able to confirm that we hold the following information which sets out the reasons for Ms Hurst leaving the College:

"Cath Hurst OBE, who has been Principal of Wigan and Leigh College since 2008, has decided to leave the College to explore new challenges. The College has had many successes during her time including a number of transformational capital building projects which transform the Parson's Walk campus and formed a dedicated Engineering and Construction Centre at Pagefield which has seen an increase in learners. Cath, who sits on the Wigan Forward Board, has promoted the College's work with businesses at a critical time when assisting people to gain skills is vital.

As Vice Principal since 2002, she has led the College through three Ofsted inspections where at the last in February 2010 the College gained a "good" with outstanding practice in its partnerships and in meeting the needs for students. The College also gained silver in Investors in People in February 2014. Cath, who attended the College as a student in 1979, said "I am really proud to have worked with so many committed staff that genuinely care about students and want them to succeed. There are many effective partnerships which have supported the College and I am sure it will go from strength to strength. Wigan has been a fantastic place to work and I wish it well. Cath was awarded an OBE for services to further education in 2012."

We can confirm that we hold additional information that falls within the scope of your request at item 1 and 6(a), however this information is exempt under the FOIA for the reasons set out below.

Section 40(2) FOIA

The College has withheld part of the information requested as it contains the personal data of the former Principal and the College considers that disclosure of this information would breach the First Data Protection Principle of the Data Protection Act 1998 (the "DPA"). This First Data Protection Principle states that personal information must be processed fairly and lawfully at all times. When considering the application of this exemption, the College must consider whether Ms Hurst would expect this information to be disclosed to anyone other than the College. The information has been withheld as the College considers that Ms Hurst would not expect her personal information to be disclosed, particularly considering the potentially sensitive nature of this information.

Ms Hurst provided this information on the understanding that the College would keep it confidential. Disclosure of this confidential information would therefore be unfair and there are no grounds for lawfully disclosing this information under the DPA. Such a disclosure would be in breach of the Data Protection Principles and exempt under section 40(2) of the DPA.

Item 3, 4, 5 and 6(b) of your request

We can confirm that we hold information falling within the scope of these items of your request. However, this information is exempt for the reasons set out below.

Section 22 FOIA

The College holds part of this information with a view to and intention to publish the information at an appropriate time in the future, ie September 2014, to the public at large as part of the College's accounts reporting obligations.

It is standard practice within the College to withhold such information prior to publication, in particular as such information forms part of a structured and complex document which needs to be reviewed internally and agreed at the next governors meeting prior to public release. It is normal practice for educational institutions to publish this information annually, as the report as a whole provides details on the previous academic year, which must have been completed in order for the institution to report in full. This information is commercial in nature, setting out the College's financial plans, which if disclosed at an inappropriate time and prior to sign-off internally and externally, could lead to misleading information being released into the public domain. As a result, to disclose the information at this stage, prior to publication, would therefore be unreasonable in all the circumstances.

We have taken account of the fact that there is an assumption that disclosure is in the public interest and that there is a public interest in transparency and accountability for public authorities. However, we consider that the public interest in maintaining the exemption is greater than the public interest in providing the information prior to publication. In particular, the College intends for the information to be released within the next two months and disclosure earlier would not be of benefit to the public, due to the potentially misleading information that the accounts information may contain.

Section 40(2) FOIA

The College has withheld part of the information requested as it contains the personal data of the former Principal and the College considers that disclosure of this information would breach the First Data Protection Principle of the DPA. This First Data Protection Principle states that personal information must be processed fairly and lawfully at all times. When considering the application of this exemption, the College must consider whether Ms Hurst would expect this information to be disclosed to anyone other than the College. The information has been withheld as the College considers that Ms Hurst would not expect her personal information to be disclosed, particularly considering the potentially sensitive information on arrangements for Ms Hurst's departure from the College.

Ms Hurst provided this information on the understanding that the College would keep it confidential. Disclosure of this confidential information would therefore be unfair and there are no grounds for lawfully disclosing this information under the DPA. Such a disclosure would be in breach of the Data Protection Principles and exempt under section 40(2) of the DPA.

Section 41 FOIA

Information held under these items of your request have also been withheld as the College considers this to be exempt under section 41 FOIA. The College believes that this exemption applies to the information requested under these items, to the extent that it contains confidential information that was provided to the College by Ms Hurst,

as disclosing that information to the public would constitute an actionable breach of confidence by Ms Hurst against the College. The circumstances, nature of and way in which the information was supplied to the College by Ms Hurst expressly confirmed that such information would have a confidential quality.

The quite clear assumption in supplying this information was that the College would respect the obligation of confidence, as not to do so would cause detriment to Ms Hurst. The confidential information is not in the public domain and there is no intention for this to be (save for the part of the information that is due for future publication) and at no point has Ms Hurst given her consent to disclosure of this information to the public. Considering the specific nature of this information, the duty of confidentiality should not be overridden, as, in all the circumstances, it would not be in the public interest to authorise a breach of confidence at law. This information is therefore exempt under section 41 FOIA.

Section 43(2) FOIA

Some of the information falling within the scope of these items of your request is exempt from disclosure under section 43(2) of the FOIA, as it is commercially prejudicial information which specifically relates to the College's sensitive commercial interests, disclosure of which would affect our ability to participate competitively in commercial activity and be effective in negotiations.

The FOIA states that the application of this exemption is subject to the public interest test. This requires that the information requested should be disclosed where that disclosure would be in the greater public interest. Obviously, this test requires consideration of the interests of the public at large, not public curiosity or private individual/group interests.

There is a public interest in promoting accountability and transparency in the expenditure of public money. We have taken account of the fact that there is an assumption that disclosure is in the public interest and that there is a public interest in transparency, accountability for decision making (and especially financial decision making using public funds). However, there is a high probability of prejudice from disclosure of the commercially sensitive information at issue under the FOIA because disclosure is considered disclosure to the public at large and at this current time could impede current and future discussions and the viability of current proposals in relation to the departure of members of staff from the College. It would therefore be harmful to the negotiating stance and other resources of the College and/or commercially prejudicial details at present. This could lead to more public money having to be spent on such arrangements in the future because financial details of what may be acceptable for these types of arrangements have been made available in advance. This would also not be in the greater public interest.

Accordingly, we consider that the significant risk of disclosing this information would be likely to have a material negative impact on the College, its resources and costs which cannot be justified in the circumstances, is disproportionate to the legitimate public interest in any details being disclosed and not in the wider public interest. As a result, we believe that the public interest in maintaining the exemption outweighs the public interest in disclosing the information at present.

Item 2 and 7

Section 22 FOIA

The College holds part of this information with a view to and intention to publish the information at an appropriate time in the future, i.e. September 2014, to the public at large as part of the College's publication requirements.

It is standard practice within the College to withhold such information prior to publication, in particular as such information needs to be reviewed and signed off internally prior to public release. This information is commercial in nature, setting out the College's plans, which if disclosed at an inappropriate time and prior to sign-off internally, could lead to misleading information being released into the public domain. As a result, to disclose the information at this stage, prior to publication, would therefore be unreasonable in all the circumstances.

We have taken account of the fact that there is an assumption that disclosure is in the public interest and that there is a public interest in transparency and accountability for public authorities. However, we consider that the public interest in maintaining the exemption is greater than the public interest in providing the information prior to publication. In particular, the College intends for the information to be released within the next two months and disclosure earlier would not be of benefit to the public, due to the potentially misleading information that the accounts information may contain.

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The College has withheld part of the information requested as it contains the personal data of the former Principal and the College considers that disclosure of this information would breach the First Data Protection Principle of the DPA. This First Data Protection Principle states that personal information must be processed fairly and lawfully at all times. When considering the application of this exemption, the College must consider whether Ms Hurst would expect this information to be disclosed to anyone other than the College. The information has been withheld as the College considers that Ms Hurst would not expect her personal information to be disclosed, particularly considering the potentially sensitive information on arrangements for Ms Hurst's departure from the College.

Ms Hurst provided this information on the understanding that the College would keep it confidential. Disclosure of this confidential information would therefore be unfair and there are no grounds for lawfully disclosing this information under the DPA. Such a disclosure would be in breach of the Data Protection Principles and exempt under section 40(2) of the DPA.

Section 41 FOIA

Information held under these items of your request have also been withheld as the College considers this to be exempt under section 41 FOIA. The College believes that this exemption applies to the information requested under these items, to the extent that it contains confidential information that was provided to the College by Ms Hurst, as disclosing that information to the public would constitute an actionable breach of confidence by Ms Hurst against the College. The circumstances, nature of and way in which the information was supplied to the College by Mr Hurst expressly confirmed that such information would have a confidential quality.

The quite clear assumption in supplying this information was that the College would respect the obligation of confidence, as not to do so would cause detriment to Ms Hurst. The confidential information is not in the public domain and at no point has Ms Hurst given her consent to disclosure of this information to the public. Considering the specific nature of this information, the duty of confidentiality should not be overridden, as, in all the circumstances, it would not be in the public interest to authorise a breach of confidence at law. This information is therefore exempt under section 41 FOIA.

Section 42 FOIA

In addition, the College considers part of the information to be exempt under section 42 FOIA. The College instructed solicitors in order to obtain specialist professional legal advice on their legal position, obligations and rights and to understand how best to deal with the former Principal's departure in a legally compliant and practical manner, in accordance with their responsibilities as an accountable public authority subject to specific legal obligations.

Legal professional privilege has not been waived or lost in any of the legal advice withheld. The details have only been shared between the legal advisors and authorised personnel at the College and have been dealt with confidentially and not disclosed further or without confidentiality restrictions.

The legal advice in question was obtained recently and relates to a matter which is still live and is ongoing. The advice is still being relied upon and would be relied upon in the future for any assessments of the way in which the College has dealt with this matter.

Here, disclosure of the legal advice in the context of these governors meetings would damage the willingness and ability of the College to obtain relevant legal advice on a full and frank basis about how to approach such employee issues. In addition, we have strong concerns regarding the weakening and/or waiver of privilege in any legal advice.

We understand that there are public interest arguments in favour of disclosing the information to ensure that the College is transparent and accountable to the public in respect of its operations and decision making, especially where involving the use of public funds.

However, we also consider that there is an extremely strong public interest in maintaining the confidentiality of legal advice. In particular, due to the public benefit from the College feeling able to seek legal advice on its rights and obligations without fear of interference, in order to set out its needs and concerns and requirements honestly and fully and take full and proper account of risks and concerns (if any) provided in legal advice in order to understand and minimise risks faced by the public authority and so potential liabilities and claims on it, in order to reduce the risk to public fund.

As legal advice was obtained very recently in relation to a live ongoing matter and is still being relied upon, its disclosure would have more serious consequences as it could still be manipulated by interested parties to the detriment of the College, its stakeholders and taxpayers providing the public funds involved.

The core public interest in non disclosure is to safeguard the ability of the College to request and receive in return full and frank legal advice in confidence without the fear of interference or future publication, especially when a matter is still live and being dealt with in parallel in real time.

The consequences from disclosure of such legally privileged information both in this particular case and future cases would far outweigh any legitimate interest for the public to view this specific legal advice to the College. As such, the College considers that the public interest arguments in favour of maintaining the exception very considerably outweigh those in favour of disclosing it, even taking account of the presumption in favour of disclosure.

Section 43(2) FOIA

Some of the information falling within the scope of these items of your request is exempt from disclosure under section 43(2) of the FOIA, as it is commercially prejudicial information which specifically relates to the College's sensitive commercial interests, disclosure of which would affect our ability to participate competitively in commercial activity and be effective in negotiations.

The FOIA states that the application of this exemption is subject to the public interest test. This requires that the information requested should be disclosed where that disclosure would be in the greater public interest. Obviously, this test requires consideration of the interests of the public at large, not public curiosity or individual private or private group interests.

There is a public interest in promoting accountability and transparency in the expenditure of public money. We have taken account of the fact that there is an assumption that disclosure is in the public interest and that there is a public interest in transparency, accountability for decision making (and especially financial decision making using public funds). However, there is a high probability of prejudice from disclosure of the commercially sensitive information at issue under the FOIA because disclosure is considered disclosure to the public at large and at this current time could impede current and future discussions and the viability of current proposals in relation to the departure of members of staff from the College. It would therefore be harmful to the negotiating stance and other resources of the College and/or commercially prejudicial details at present. This could lead to more public money having to be spent on such arrangements in the future because financial details of what may be acceptable for these types of arrangements have been made available in advance. This would also not be in the greater public interest.

Accordingly, we consider that the significant risk of disclosing this information would be likely to have a material negative impact on the College, its resources and costs which cannot be justified in the circumstances, is disproportionate to the legitimate public interest in any details being disclosed and not in the wider public interest. As a result, we believe that the public interest in maintaining the exemption outweighs the public interest in disclosing the information at present.

Appeals

If you are in any way dissatisfied with the handling of your request, you may ask for an internal review of our decision. Internal review requests should be submitted within two months of the date of receipt of the response to your original request and should be addressed to:

Amanda Hindley, Technology and Learning Resources Manager, E-mail:
a.hindley@wigan-leigh.ac.uk

If you are not content with the outcome of the internal review, you have the right to make a complaint to the Information Commissioner's Office (the independent body who oversees the FOIA) at:

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

If you have any further queries, please do let us know.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Simon Nixon', with a stylized flourish at the end.

Simon Nixon
Vice Principal, Resources