

Your ref:

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The Centre for Tobacco Control Research
University of Stirling
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13 October 2010

Your Ref: FOI 403 Plain Packs

FAO: Ms Margaret MacLeod

Dear Sirs

**Freedom of Information Request to the University of Stirling dated 24 August 2010 –
Piloting the Use of Plain Packs in a Real Life Environment**

We refer to your letter of 17 September in response to our freedom of information request dated 24 August on behalf of our client Philip Morris International.

In that letter you state that the information requested in item 1 is exempt under section 25(1) of the Freedom of Information (Scotland) Act 2002 ("FOISA"). In relation to items 2, 3 and 4 of our request you seek further clarification. We note that it has taken 24 days for you to formulate this request for clarification. We would refer you to the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under the Freedom of Information (Scotland) Act 2002 ("the Section 60 Code"). This states (at paragraph 20) that "[w]here more information is needed to clarify the request, it is important that the applicant is contacted as soon as possible, preferably by telephone, fax or e-mail ... the Commissioner will take a hard stance against any authority that uses clarification as a means of delaying dealing with an application".

1. The terms of reference of the project

You state that the terms of reference for this project are available on the internet at the following addresses and you give two URLs. We formally request an internal review of the way in which this request has been dealt with. In particular, we would like you to review

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whether the material available on the URLs provided is a summary or re-statement of the terms of reference which the researchers were given, or used, to carry out this project. While it is not possible for us to know whether there are other terms of reference besides those referenced, we would be surprised if there were not a more detailed terms of reference, setting out the scope of the project in more scientific, objective or analytical terms. The material supplied is clearly intended for public dissemination and the way in which it is worded suggests it was drafted for marketing purposes, rather than with the aim of providing a full, scientific framework for a project of this nature. We also consider that there are likely to be written communications in which the terms of reference were discussed, and drafts of the terms of reference. We would expect the internal review to scrutinise closely whether the University holds information which falls within this request and which has not been disclosed / is not publicly available.

2. Information relating to the methodology used in the project

You asked us to explain what we mean by "**information relating to** [the methodology]".

We consider that these words are straightforward English words which are used frequently, for example, in the FOISA itself, and that they are capable of being interpreted in accordance with their normal meanings. The words "in relation to" (or the similar word "relate") appear in sections 15, 16, 20 and 29 FOISA. For example, section 29 provides that information held by the Scottish Administration is exempt if "it **relates to** (a) the formulation on development of government policies; (b) ministerial communications; (c) the provision of advice by any of the law officers or any request for the provision of such advice; or (d) the operation of any ministerial private office". In section 38, sub-section 5 personal census information is defined as census information, *inter alia*, "which **relates to** an identifiable person or household".

The University of Stirling is relying in its reply on the provision in section 1 FOISA which states that the public authority is not obliged to give the requested information until it has been given further information which it requires in order to identify and locate the requested information. However, this is subject to the qualification "provided that the requirement is reasonable".

We consider that it is not reasonable for the University of Stirling to ask us to state what the words "in relation to" mean. If this is the case, the University of Stirling is in breach of the section 1 requirement to provide the information requested within twenty working days, starting from 24 August 2010.

We are concerned, however, that prolonged discussions over whether it is reasonable or not, would only delay the release of the information requested further. We therefore provide further clarification, as requested.

We would suggest that, in relation to our request for "information related to the methodology used in the project", you consider whether there has been correspondence on the choice of the methodology that would be used in the project. Are there emails, letters to and from vendors or experts? Are there minutes of meetings at which the methodology was discussed? Has there been correspondence during execution or after completion of the project which refer to methodology? Have there been letters, emails and/or minutes of meetings to discuss progress/status? Are there minutes of meetings held after completion of the project to analyse results? These are intended to be examples of the kind of information which you may hold, and are not intended to be an exhaustive list.

3. Information relating to the design and purpose of the project

Once again, you have asked us to explain what we mean by a number of commonly used, easily comprehensible English words, in asking for an explanation of our request for "**all information relating to the design and purpose of the project**" in the context of item 3". We refer you to our comments above concerning the meaning of these words and the requirement for the University of Stirling to be reasonable in requesting further clarification.

Nevertheless, in order to clarify our request, we would ask that you consider whether there has been correspondence on what the purpose(s) of the project would or should be, and/or on how the project would or should be designed and then executed. Are there emails and/or letters to and from vendors, experts or others which discuss the way in which the project is to be designed, and/or the reasons for undertaking the project? As above, this clarification is intended to help you understand our request, but not to limit its scope.

4. All data collected and drafts produced in connection with the project

In relation to item 4 you ask us to "provide a more specific description of what you are referring to by "all data collected and drafts produced in connection with the project".

We consider that our request is sufficiently clear so as not to require further explanation, and would refer you to our statements above on the University of Stirling's duty to provide assistance, and the duty to provide information requested within twenty working days unless further clarification is **reasonably** required.

Nevertheless, we confirm that this request would include primary data collected by researchers as part of the project. We are aware that there is an exemption in the FOISA (section 27) for "information obtained in the course of, or derived from a programme of

research" (while the programme is continuing). This exemption is subject to the public interest test. We would therefore ask that the University of Stirling consider whether information within this item falls within the section 27 exemption. If so, the University of Stirling should state why it considers the information to fall within this exemption, and state which arguments it considered in its application of the public interest test.

If section 27 applied at the time you received our original request (because the programme was then continuing), but does not apply as at the date you receive this letter (because the programme has since been completed), then you should treat this letter as an **additional** request for information held as at the date of receipt of this letter.

In addition, we consider that item 4 would also include reports prepared in draft by the researchers and which are held by the University of Stirling.

The University of Stirling is reminded of its legal obligation under section 15 FOISA:

1. A Scottish public authority must, so far as it is reasonable to expect it to do so, provide advice and assistance to a person who proposes to make, or has made, a request for information to it.
2. A Scottish public authority which, **in relation to** [emphasis added] the provision of advice or assistance in any case, conforms with the code of practice issued under section 60 is, as respects to that case, to be taken to comply with the duty imposed by sub-section (1).

The University of Stirling is also asked to remember that the FOISA provides a right of access to **information** and not a right of access to copies of specific documents (as clarified by guidance recently published by the Scottish Information Commissioner). Therefore it is not up to the applicant for information to ask for, or refer to, specific documents. Since, in many cases, the applicant is not aware, and cannot be aware, what specific documents the public authority holds or has created, or which documents contain the information it seeks, it is normal and appropriate for requesters to ask for **information** and to describe that information (as described by section 8) by reference to the subject matter (for example, by using the words "**relating to**").

In summary, the University of Stirling is requested to carry out an internal review of its response to the information requested in item 1, and to respond **as quickly as possible** to the requests for information in items 2,3 and 4. Arguably, the University of Stirling is already in breach of the FOISA on the grounds that its request for further clarification in relation to items 2,3 and 4 was not reasonable. We would therefore expect to receive a substantive response on these items **promptly**. If for any reason the University of Stirling requires still

further clarification, they should be mindful of paragraph 20 of the Section 60 Code, which states that it is important that the applicant is contacted as soon as possible if the public authority requires further information and preferably by telephone, fax or email. You should address your reply to Patricia Barratt and Luke Tolaini, who are representing the applicant in this matter. A telephone number and an email address is provided above.

Yours faithfully

A handwritten signature in black ink that reads "Clifford Chance LLP". The script is cursive and fluid, with the letters "C", "C", and "L" being particularly prominent and stylized.

Clifford Chance LLP