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20 October 2010

Clifford Chance LLP
10 Upper Bank Street
London
E14 5JJ

For the attention of : Patricia Barratt and Luke Tolaini

Your ref: LRT/70-40375423/PJXB
Our Ref: FOI 404 Point of Sale

Dear Sirs

FREEDOM OF INFORMATION REQUEST TO THE UNIVERSITY OF STIRLING DATED 27 AUGUST 2010 – POINT OF SALE DISPLAY OF TOBACCO PRODUCTS

I refer to the information request made by you dated 27 August 2010 and received by us on 1 September 2010. We note that your letter of 27 August 2010 names the applicant in this request as your client Philip Morris Ltd of 5 Thameside Centre, Kew Bridge Road, Brentford, Middlesex TW8 0HF. However, in response to our letter of 17 September 2010 seeking clarification of your request, you state in your letter of 13 October 2010 that your client in this request is Philip Morris International. Subject to any further clarification as to the identify of the applicant in this request, we will deal with this request on the basis of the most recent information provided by you, confirming the applicant as Philip Morris International.

Your client's request for information held by the University of Stirling is framed by reference to the terms of a request made by Clifford Chance on 14 September 2009, which was held to be invalid by the Scottish Information Commissioner on the basis that Clifford Chance did not disclose the identity of the true applicant.

The request dated 14 September 2009 was in the following terms, seeking information held by the University as at 14 September 2009:

"We refer to the report Point of Sale Display of Tobacco Products, produced by the Centre for Tobacco Control Research and dated August 2008 (the "Report"). We refer in particular to the survey referred to in the 'Introduction' to the Report (page 4) as the "Cancer Research UK CTCR survey of adolescents' reactions to tobacco marketing" (the "Survey").

In that regard we should be grateful if you would provide us with the following information pursuant to the provisions of the Freedom of Information (Scotland) Act 2002 (the "Act"):

- 1. all primary data relating to the Survey and the analysis in the Report based on the Survey;*
- 2. all questionnaires used in carrying out the Survey;*
- 3. all interviewers' handbooks and/or instructions used in carrying out the Survey;*
- 4. all data files, including weight variables, connected with the Survey; and*
- 5. all record descriptions connected with the Survey.*

In addition, we should be grateful if [you] would provide us, pursuant to the provisions of the Act, with all information held by the Centre for Tobacco Control Research, the Institute for Social Marketing and/or the University of Stirling relating to:

- (a) *sampling in the context of the Survey (including any information on categories of stratification of the wards, the distribution of the selected wards and of all the wards in these categories, the quota definitions for respondent selection, and the mechanisms and criteria for respondent selection);*
- (b) *data collection in the context of the Survey (including any information on the identity of the professional interviewers, whether interviewers belonged to a commercial organisation or were freelance, whether and what kind of training sessions were organised for the interviewers, the content of any training sessions and whether all interviewers attended, whether parents or children were approached first in respondent selection, the language used to ask consent to participate, whether interviews were conducted immediately after obtaining consent, and whether parents were present at interviews);*
- (c) *the handling of non-response in the context of the Survey (including any information on how many people were approached to obtain responses, the characteristics of those who did not agree to participate, and when the questionnaire was considered as completed); and*
- (d) *post-stratification weighting and analysis in the context of the Survey (including any information on whether weighting was used to make data similar to population or to make surveys similar to each other, the distribution of the weights, the obtaining of standard errors and confidence intervals for the data, the use of goodness-of-fit measures with logistic regression and multiple regression, and the goodness-of-fit indicated by these measures)."*

In response to our letter of 17 September 2010 requesting confirmation of the date to be applied in terms of the cut-off date for information falling within the scope of your request of 27 August 2010, you responded on 13 October 2010 to indicate that the cut-off date for the request was the date the University received your letter of 27 August 2010, which was 1 September 2010.

Having given consideration to the request made on behalf of your client, I must inform you that the University has reached the view that your client's request for information is vexatious within the terms of section 14(1) of the Freedom of Information (Scotland) Act 2002 (FOISA). Section 14(1) of FOISA states that a Scottish public authority is not obliged to comply with a request for information if the request is vexatious. As the University has determined that your client's request is vexatious, the University is accordingly not obliged to comply with the request.

The decision that your client's request is vexatious has not been taken lightly by the University. The University is committed to providing information to applicants in accordance with FOISA and in the spirit of openness and transparency. In arriving at the decision to apply section 14(1) of FOISA in this case, the University has given detailed consideration to the guidance from the Scottish Information Commissioner on the requisite criteria for determining a request to be vexatious and is of the view that the requisite criteria for the application of section 14(1) have been met in relation to your client's request.

Right to request a review under FOISA

Your client has a right under FOISA to request a review of this decision. If your client wishes to exercise this right, the request for a review must be made within forty working days. A request for a review must be in writing and must specify the requester's name and address for correspondence. It must also identify the decision to be reviewed. Should your client wish to request a review, the request should be sent to Margaret MacLeod, Corporate Governance Officer, Policy Planning and Governance,

Registry and Governance Services, University of Stirling, Stirling, FK9 4LA,
margaret.macleod@stir.ac.uk or foiunit@stir.ac.uk

A review will be undertaken by staff not involved in the original decision-making process.

Right of appeal under FOISA

If your client is dissatisfied with the outcome of a review, there is a right under FOISA to appeal to the Scottish Information Commissioner. If your client wishes to do so, the appeal must be made to the Commissioner within six months. 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 sincerely

A handwritten signature in dark ink, reading "Margaret MacLeod". The signature is written in a cursive style with a large initial 'M'.

Margaret MacLeod, Corporate Governance Officer