

The Centre for Tobacco Control Research
University of Stirling
Stirling
FK9 4LA

15 November 2010

For the attention of: Ms Margaret MacLeod

Dear Sirs

Freedom of Information Request for Information on the Report, Point of Sale Display of Tobacco Products

We refer to your letter dated 20 October 2010, which related to a request made by us, on behalf of our client, Philip Morris International for:

- "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",

where 'Survey' and 'Report' were defined by reference to the 'Cancer Research UK CTCR Survey of Adolescents' Reactions to Tobacco Marketing', and to 'Point of Sale Display of Tobacco Products', a report produced by the Centre for Tobacco Control Research dated August 2008, respectively.

We also requested "all information held by the Centre for Tobacco Control Research, the Institute for Social Marketing and/or the University of Stirling relating to:

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- (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 your letter dated 20 October, you state that the University considers this request for information to be vexatious within the terms of section 14(1) of the Freedom of Information (Scotland) Act ("FOISA"). You further state that 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".

We have also reviewed the Scottish Information Commissioner's guidance on vexatious requests. This states that, to be vexatious, a request must (a) impose a significant burden on a public authority and (b) meet one of the following four criteria:

- (i) it does not have a serious purpose or value;
- (ii) it is designed to cause disruption or annoyance to the public authority;
- (iii) it has the effect of harassing the public authority; and/or

- (iv) it would otherwise, in the opinion of a reasonable person, be considered to be manifestly unreasonable or disproportionate.

We set out below a short history of this request. We first made a request for the information outlined above on 14 September 2009. On 13 October 2009 the University sent some of the information originally requested (at item 3) and withheld the remaining information on the basis of various exemptions.

We asked for an internal review of the University's decision to withhold the information on 3 December 2009. On 5 January 2010 the University responded confirming the University's decision to withhold the information.

On 14 April 2010 we wrote to the Scottish Information Commissioner to appeal the University's decision not to disclose the information. However, on 22 April the Scottish Information Commissioner informed us of a decision from the Court of Session¹ (dated subsequent to the date on which we had made the request) which held that a request for information was not a valid FOISA request if it did not identify the true applicant. Since we were acting in this matter on behalf of Philip Morris Limited, but had not named Philip Morris Limited as the applicant the FOISA request was therefore not valid.

On 27 August 2010 we therefore made a new request to the University of Stirling for the same information, stating that the request was made on behalf of our client, Philip Morris Limited. On 17 September 2010 the University responded, asking for clarification of the scope of our request. In particular you asked whether our request was intended to include "any further information that may now be held by us falling within the categories 1 to 5 that was not held by us at the time of your request of 14 September 2009".

On 13 October we replied asking you to treat our request as a request for information held at the date on which you received our renewed request, i.e. as at the date you received our letter dated 27 August.

On 20 October you responded, stating that you would deal with our request on the basis that the applicant was Philip Morris International (as indicated in our letter of 13 October) and that you considered the request vexatious. We confirm that we are content for you to treat the applicant as Philip Morris International.

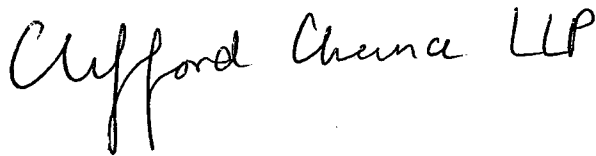
¹ *Glasgow City Council and Dundee City Council v Scottish Information Commissioner* [2009] CSIH 73 (dated 30 September 2009)

Against this background, we consider the University of Stirling's decision to declare this request vexatious to be wholly inappropriate, and we ask the University of Stirling to carry out an internal review of this decision. We ask the University in particular to address the question of what "significant burden" is placed on the University of Stirling by this request, and which of the four criteria outlined above the University believes is relevant. We note that the University of Stirling did not consider the request vexatious when it was first made, in identical terms, in September 2009, and that the University has not given any reasons why it has since decided that this request is vexatious.

We note that the public authority must carry out a review within 20 working days. If we are unhappy with the outcome of the review, we understand that we are entitled to apply to the Commissioner for a decision.

You should address your reply to Patricia Barratt and Luke Tolaini, who are representing the applicant, Philip Morris International, in this matter. A telephone number and 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 "Clifford" and "Chance" being more prominent than "LLP".

Clifford Chance LLP