



**UNIVERSITY OF  
STIRLING**

**CONFIDENTIAL**  
Mr Fraser Campbell  
Clifford Chance LLP  
10 Upper Bank Street  
London  
E14 5JJ

**REGISTRY AND GOVERNANCE SERVICES**

Joanna Morrow  
Academic Registrar

University of Stirling  
Stirling FK9 4LA Scotland

Telephone: +44 (0) 1786 467030  
Facsimile: +44 (0) 1786 466671  
E-mail: j.f.morrow@stir.ac.uk

Date:

5 January 2010

Dear Mr Campbell

**Request for a review of the University of Stirling's decision under FOISA**

I refer to your letter dated 3 December 2009. You have requested that the University of Stirling ("the University") reviews its decision in relation to your original request for information under the Freedom of Information (Scotland) Act 2002 ("FOISA").

In your letter you request a review of the decision by the University to withhold information under sections 33(1)(b), 38(1)(b), 36(2), and 27(2) of FOISA, as detailed in the letter to you dated 13 October 2009. I have considered your request for a review of the University's decision in relation to disclosure of

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

Your initial request for information was dealt with by Mr Ian Robertson, Head of Policy, Planning & Governance at the University. I have now completed an independent review of the University's decision and my response is set out below.

When conducting my review, I examined, in light of FOISA, the information held by the University which fell within the scope of your request. As you will know, an application for information held by public authorities under section 1 of FOISA requires that a public authority release all information held, subject to any applicable exemptions.

In the letter to you dated 13 October 2009, you were advised that the University was withholding the information falling within the request as follows:

- Request 1 – on the basis of sections 27(2), 33(1)(b), 36(2) and 38(1)(b) of FOISA;
- Request 2 – on the basis of sections 27(2), and 33(1)(b) of FOISA;
- Request 3 – on the basis of section 33(1)(b) of FOISA;
- Request 4 – on the basis of sections 27(2), 33(1)(b), 36(2) and 38(1)(b) of FOISA; and
- Request 5 – on the basis of sections 27(2), 33(1)(b), 36(2) and 38(1)(b) of FOISA.

Following a review of the decision, I am upholding the University's decision to withhold the information requested as follows:

- Request 1 – on the basis of sections 27(2), 33(1)(b), 36(2) and 38(1)(b) of FOISA;
- Request 2 – on the basis of sections 27(2), and 33(1)(b) of FOISA;
- Request 3 – on the basis of section 33(1)(b) of FOISA;
- Request 4 – on the basis of sections 27(2), 33(1)(b), 36(2) and 38(1)(b) of FOISA; and
- Request 5 – on the basis of sections 27(2), 33(1)(b), 36(2) and 38(1)(b) of FOISA.

#### **SECTION 27(2) - INFORMATION INTENDED FOR FUTURE PUBLICATION**

This exemption was applied to information falling under requests 1, 2, 4 and 5.

Section 27(2) of FOISA provides that information obtained in the course of, or derived from, a programme of research is exempt information if the programme is continuing with a view to a report of the research (whether or not including a statement of that information) being published by a public authority or any other person, where disclosure of the information before publication would, or would be likely to prejudice substantially the programme, the interests of any individual participating in the programme, the interests of the authority holding the information or the interests of the authority that will publish the information (if it is not the one holding the information).

The Scottish Information Commissioner has given guidance on this exemption, in which he advises that there are three tests or questions which must be considered in relation to section 27(2):

- Whether the information is part of a programme of research;
- Whether there is an intention to publish the results of this research at a future date; and
- Whether premature disclosure would be likely to substantially prejudice the programme, or the interests of participants, or any public authority holding the information.

The term 'programme of research' is not defined in FOISA, however the Scottish Information Commissioner considers that the intention of the Scottish Parliament in passing the Freedom of Information (Scotland) Bill was to safeguard against the forced disclosure of research which is incomplete and which could result in misrepresentation of the incomplete data or could significantly harm the value of the research. To claim this exemption, a public authority must be able to demonstrate that the 'programme of research' is a piece of finite research, and make clear the point at which the research would be considered complete. The research programme, the Youth Tobacco Policy Survey ("YTPS") to which your request relates is a long-term study designed to monitor adolescents' response to the tobacco

advertising and promotion ban and other tobacco control policies which have been / will be implemented. In order to gauge the impact of policy changes it is necessary to conduct research over several years thus enabling measures to be taken prior to, during and for a time period beyond the implementation of policies. It is also necessary to measure a broad range of variables including known correlates of smoking behaviour in addition to policy relevant measures. It is for these reasons that the YTPS is an ongoing programme of research with the ability to maintain core outcome measures and the flexibility to develop and incorporate policy relevant behaviours as they arise. A rolling programme of research is essential for studying response to policy implementation. A snapshot survey would provide correlates between variables at one time point only. The long-term approach enables response on outcome variables to be examined over time and any changes in these can be analysed against any changes in policy relevant variables and is, therefore, much better placed to inform judgements about policy impact. The survey questionnaires are updated with each survey wave and piloted/pre-tested with young people. They form part of the rolling programme of research and disclosure before the completion of the programme and final publication of academic material would be likely to jeopardise the research programme. The current programme of research is due to be completed in 2012. I am therefore satisfied that this programme of research is one to which section 27(2) applies.

The University intends that the complete results of this programme of research will be published in 2012 at the conclusion of the current funding period.

The research programme is therefore one in respect of which there is an intention to publish at a future time. This exemption is also subject to the substantial prejudice test.

#### **Section 27(2) and the substantial prejudice test**

Any public authority refusing information under this exemption should be able to show that the damage which would be caused by disclosing the information is both real and significant, as opposed to hypothetical or marginal. If the disclosure of the information is likely to cause harm, the Scottish Information Commissioner's view is that there must be a 'significant probability' that the harm would occur. I have looked at the nature of the requested information and consider that it contains details which, if released, would cause damage to the programme of research, the interests of individuals participating in the programme and the interests of the University of Stirling.

In order to sustain this ongoing programme of research, the University must maintain its ability to collect information from participants in future surveys. Disclosure of information of this type would be likely to lead to an undermining of the trust of research participants, with the result that the University is unable to collect relevant information from participants in future surveys. It is necessary that participants are able to engage in the research programme without inhibition, failing which the flow of information in the research process would be restrained and suppressed, with damaging consequences for the quality of the research.

The participants were informed by the University that the information they provided would be classed as confidential. If the University were to disclose any of the requested information, this would be likely to significantly undermine confidence in the confidentiality of the process, and would deter participants in future research programmes from participating or from providing full or frank responses.

Publication of information of this type would also damage the University's ability to publish findings from its research in peer-reviewed journals, on which University research funding is contingent. It is unlikely that such journals would publish research that is already in the

public domain. To explain the impact of the release of information on the University, I will expand on the meaning of redundant and duplicate publication, and the effect on the University's ability to publish in peer-reviewed journals in the following paragraphs.

Redundant publishing is when an author, or a group of authors, publishes the same study in more than one journal (or another format) without acknowledging the other version. Duplicate publication of original academic research can distort the available scientific evidence base as it can result in unintentional double counting or the inappropriate weighting of a single study's results. There are, however, legitimate reasons for duplicate publishing, for example, when a study has previously appeared as an organizational report (or 'grey literature' report), as a short summary of study in a journal with a different readership, in a different language or as a meeting/conference abstract. All these duplications should occur with full disclosure by the author(s) and editor(s) of both publications and include a clear statement of duplication. For an academic journal, duplicate publishing can be problematic due to international copyright laws, ethical conduct and the cost-effective use of resources. As university research funding is currently contingent on citation counts (the number of times researchers' published work is cited by their peers), there is increased competition to publicise research results and to publish in high impact journals. It is unlikely such journals will use resources to publish research that is already in the public domain.

The Committee on Publication Ethics (COPE, <http://publicationethics.org>) was formed in 1997 and is "concerned with the integrity of peer-reviewed publications in science". The committee is UK-based and has an international membership of over 5,200 editors and publishers. COPE's 2009 'Best Practice Guidelines for Journal Editors' state that an editor should "encourage reviewers to ensure the originality of submissions and be alert to redundant publication and plagiarism" and to "Ensur[e] the integrity of the academic record [by] tak[ing] steps to reduce covert redundant publication". The majority of the publishing houses that publish scientific academic research have signed up their complete catalogue of journal titles as COPE members, including Elsevier, Wiley-Blackwell, Springer, Taylor & Francis, Palgrave Macmillan and the BMJ Publishing Group. Some examples of online authors' guidelines of high impact/highly cited journals are given below.

American Journal of Public Health (AJPH)	<i>"The AJPH does not publish work that has been published elsewhere, with the exception of work that has been presented as an abstract or in a report of a scientific meeting, or reprinting of classic papers that have historical value."</i>
British Medical Journal (BMJ)	<i>"Redundant Publication – To save readers and researchers from being overwhelmed by redundant material we do not want to publish articles that overlap substantially with articles published elsewhere."</i>
Social Science & Medicine	<i>"Submissions will be considered on the understanding that: the article comprises original, unpublished material (except in the form of a conference abstract or as part of a published lecture or a thesis submitted for an academic qualification) ... [and] if accepted, it will not be published elsewhere in the same form, in English or in any other language, without the written consent of the Publisher."</i>

Further, the University has consulted with Cancer Research UK on its views in relation to disclosure of the information noted above. Cancer Research UK has provided evidence to the University to the effect that such harm is a likely result of disclosure of the information. It has indicated that disclosure could mean that data is released through other mechanisms than via peer-reviewed journals or via reports that pull together previously peer-reviewed studies. Previous publication elsewhere would jeopardise the University's ability to publish in these ways. Cancer Research UK has indicated that it is vital that the data outputs from

this programme of research are published in scientific journals and that it makes grants to organisations on the basis that the grantee will publish their findings in scientific peer-reviewed journals.

Disclosure of the information would therefore substantially prejudice the programme of research, the interests of individuals participating in the programme, the interests of the University and the interests of Cancer Research UK.

### **Section 27(2) and the public interest test**

The exemption in section 27(2) is not an absolute exemption and, accordingly, I must consider where the public interest lies in relation to disclosure of the information, i.e. whether the public interest is better served by disclosing or withholding the information.

The 'public interest' has been described as something that is of serious concern or benefit to the public, not merely of individual interest. It has also been stated that public interest does not mean 'of interest to the public' but 'in the interest of the public'.

The Scottish Information Commissioner has not issued any decisions regarding section 27(2) to date. However, the Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA sets out some of the factors which may inform a decision about the public interest. This non-exhaustive list includes:

- 'The general public interest that information is accessible i.e. whether disclosure would enhance scrutiny of decision-making processes and thereby improve accountability and participation;
- Whether disclosure would contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money'; and
- Whether disclosure would contribute to a debate on a matter of public interest.

I have considered the arguments you raise in your letter of 3 December 2009 in relation to the public interest to disclose the requested information. These include the assertion that disclosure is necessary to allow the findings of the report to be scrutinized by the public at large and that disclosure must occur now, due to current consideration of legislation relating to point of sale display of tobacco. I have also considered the presumption in FOISA that it is in the public interest to disclose information unless a public authority can show why there is a greater public interest in withholding it. In coming to a decision on the public interest, I have also considered the spirit of FOISA and its promotion of transparency and openness.

The public interest arguments for withholding the information requested include:

- Maintaining the rolling programme of research, with the potential to impact very positively on public health issues; disclosure now could impact on the University's ability to complete the programme of research and attract research participants, to whom confidentiality has to be assured;
- Enabling the findings from the full programme of research to be published in scientific peer-reviewed journals, to contribute positively to the provision of information from rigorous research which will inform public health policies over time; disclosure now could jeopardise the University's ability to publish in such journals due to issues of repeat and redundant publishing as explained above, and therefore limit the ability to inform the debate on public health policies over time;
- The view from Cancer Research UK that the information collected may contain information on young people's brand awareness and brand opinions which could be used to construct strategies that would be at the expense of protecting public health.

I have carried out a balancing exercise to determine where the public interest lies and am of the opinion that the public interest in withholding the information to enable the rolling programme of research to be completed and published in scientific peer-reviewed journals outweighs the public interest in disclosing the information.

On the basis of the above, I am satisfied that the information held by the University in respect of requests 1, 2, 4 and 5 is exempt in its entirety under section 27(2) of FOISA.

### **SECTION 33(1)(b) – COMMERCIAL INTERESTS**

This exemption was applied to information falling under requests 1, 2, 3, 4 and 5.

Section 33(1)(b) of FOISA exempts information from disclosure where its disclosure under the Act would, or would be likely to, prejudice substantially the commercial interests of any person. As it is a qualified exemption, the public interest test must be applied.

For section 33(1)(b) to apply, commercial interests in relation to the information must exist. The term 'commercial interests' is not defined in FOISA, but the Scottish Information Commissioner has provided guidance in his Exemption Briefing Series to the effect that a distinction is to be drawn between commercial interests and financial interests. Whereas financial interests will relate to the management of financial resources and assets, commercial interests relate to commercial trading activity which will usually take place within a competitive environment. Further, although the information must relate to commercial activity, it is not necessary for its purpose to be the generation of profit. Therefore, public authorities such as the University, and third sector bodies such as Cancer Research UK, are capable of having commercial interests.

In the context of the research programme to which your request relates, the University's commercial interests include: attracting research funding; maintaining relationships with existing funders; and being able to publish our findings in scientific peer-reviewed journals. Further, the environment within which research activity is undertaken by the University is a competitive one. The University is in competition with private research companies as well as other higher education institutions to secure funding and maintain its reputation and expertise in conducting research. I am therefore satisfied that the University has commercial interests within the meaning of section 33(1)(b). Cancer Research UK's commercial interests include maintaining its reputation as a trusted authoritative voice on matters of public health, its reputation in making considered funding decisions and its ability to raise funds from the public. I am therefore satisfied that Cancer Research UK has commercial interests within the meaning of section 33(1)(b).

The application of section 33(1)(b) is also subject to a harm test. The harm which would, or would be likely to, result from disclosure of the information must amount to 'substantial prejudice'.

### **Section 33(1)(b) and the substantial prejudice test**

In determining whether the exemption in section 33(1)(b) applies to the information requested, I have considered the harm test and whether disclosure of the information would cause substantial prejudice to the University or any other person. I understand that the standard to be met when applying this test is a high one.

The Scottish Information Commissioner's view is that any public authority refusing information under this exemption should be able to show that the damage caused by disclosing the information is both real and significant, as opposed to hypothetical or

marginal. If the disclosure of the information is likely to cause harm, the Commissioner's view is that there must be a 'significant probability' that the harm would occur. I have looked at the nature of the requested information and consider that it contains details which, if released, would cause damage to the commercial interests of the University and Cancer Research UK.

Disclosure of information of this type would be likely to lead to an undermining of the trust of research participants, with the result that the University is unable to collect relevant information from participants in future surveys. It is necessary that participants are able to engage in the research programme without inhibition, failing which the flow of information in the research process would be restrained and suppressed, with damaging consequences for the quality of the research.

The participants were informed by the University that the information they provided would be classed as confidential. If the University were to disclose any of the requested information, this would be likely to significantly undermine confidence in the confidentiality of the process, and would deter participants in future research programmes from participating or from providing full or frank responses.

Disclosure of information of this type would also damage the University's ability to publish findings from its research in peer-reviewed journals, on which University research funding is contingent (as described in pages 3-5 above). It is unlikely that such journals would publish research that is already in the public domain. This would have a significant impact on the citation performance of the Centre for Tobacco Control Research (CTCR), would impact on its performance measurement in the Research Excellence Framework (REF) and its reputation with Cancer Research UK and other potential funding bodies. This, in turn, would also have a negative impact the University's reputation for research, which is informed by REF outcomes.

The University has consulted with Cancer Research UK on its views in relation to disclosure of the information noted above and its commercial interests. Cancer Research UK has provided evidence to the University to the effect that such harm is a likely result of disclosure of the information. It has indicated that disclosure could mean that data is released through other mechanisms than via peer-reviewed journals or via reports that pull together previously peer-reviewed studies. Previous publication elsewhere would jeopardise the University's ability to publish in these ways. Cancer Research UK has indicated that it is vital that the data outputs from this programme of research are published in scientific journals and that it makes grants to organisations on the basis that the grantee will publish their findings in scientific peer-reviewed journals.

Cancer Research UK has also indicated that its standing in the scientific community and its reputation as a funder of world class research are extremely valuable assets to the Charity. From the strength of its reputation it is able to attract world leading experts to carry out research; is viewed as a trusted authoritative voice on matters of public health; and the public are willing to donate their money to it because of its reputation in making considered funding decisions. Cancer Research UK considers that this disclosure could have a negative impact on both its reputation as an authoritative evidence-based organisation and ultimately its ability to raise funds from the public.

Disclosure of this type of information would also, therefore, damage the relationship between the University and Cancer Research UK over its ability to complete the rolling programme of research, and impact negatively on the ability of the University to gain funding from Cancer Research UK and other funding bodies due to the reputational aspects relating to publication

in scientific peer-reviewed journals and performance in REF, and its ability to complete programmes of research.

Disclosure of the information would therefore substantially prejudice the commercial interests of the University and Cancer Research UK.

### **Section 33(1)(b) and the public interest test**

The exemption in section 33(1)(b) is not an absolute exemption and, accordingly, I must consider where the public interest lies in relation to disclosure of the information, i.e. whether the public interest is better served by disclosing or withholding the information.

The 'public interest' has been described as something that is of serious concern or benefit to the public, not merely of individual interest. It has also been stated that public interest does not mean 'of interest to the public' but 'in the interest of the public'.

The Scottish Ministers' Code of Practice on the Discharge of Functions by Public Authorities under FOISA sets out some of the factors which may inform a decision about the public interest. This non-exhaustive list includes:

- 'The general public interest that information is accessible i.e. whether disclosure would enhance scrutiny of decision-making processes and thereby improve accountability and participation;
- Whether disclosure would contribute to ensuring effective oversight of expenditure of public funds and that the public obtain value for money';
- Whether disclosure would contribute to a debate on a matter of public interest.

In coming to a decision on where the public interest lies in relation to section 33(1)(b), I have considered the arguments you raise in your letter of 3 December 2009 in relation to the public interest to disclose the requested information. These include the assertion that disclosure is necessary to allow the findings of the report to be scrutinized by the public at large and that disclosure must occur now, due to current consideration of legislation relating to point of sale display of tobacco. I have also considered the spirit of FOISA, its promotion of transparency and openness and the presumption in FOISA that it is in the public interest to disclose information unless a public authority can show why there is a greater public interest in withholding it.

The public interest arguments for withholding the information requested include:

- Maintaining the rolling programme of research, with the potential to impact very positively on public health issues; disclosure now could impact on the University's ability to complete the programme of research and attract research participants, to whom confidentiality has to be assured;
- Enabling the findings from the full programme of research to be published in scientific peer-reviewed journals, to contribute positively to the provision of information from rigorous research which will inform public health policies over time; disclosure now could jeopardise the University's ability to publish in such journals due to issues of repeat and redundant publishing as explained above, and therefore limit the ability to inform the debate on public health policies over time;
- The view from Cancer Research UK that the information collected may contain information on young people's brand awareness and brand opinions which could be used to construct strategies that would be at the expense of protecting public health.

I have carried out a balancing exercise to determine where the public interest lies and am of the opinion that the public interest in withholding/disclosing the information outweighs the public interest in disclosing/withholding the information.

On the basis of the above, I am satisfied that the information held by the University in respect of requests 1, 2, 3, 4 and 5 is exempt in its entirety under section 33(1)(b) of FOISA.

## **SECTION 36(2) - CONFIDENTIALITY**

This exemption was applied to information falling under requests 1, 4 and 5.

Section 36(2) of FOISA provides that information is exempt if it is obtained by a public authority from a third party and its disclosure by that authority would constitute a breach of confidence actionable by the third party who gave the information to the authority, or by any other person.

A two-part test applies to the exemption in section 36(2) of FOISA. Firstly, the information must have been obtained by the public authority from another person. I am satisfied that the information falling within requests 1, 4 and 5 was "obtained" by the University from third parties.

Secondly, a further test required by the exemption in section 36(2) of FOISA is that disclosure of the information by the University would constitute a breach of confidence actionable either by the person who gave the information to the University, or by any other person. Although the term "actionable" is not defined in FOISA, nor was its meaning considered during the passage of the Freedom of Information (Scotland) Bill, the Scottish Information Commissioner has expressed the view that "actionable" means that the basic requirements for a successful action must appear to be fulfilled.

There are three main requirements which must be met before a claim for breach of confidence can be established. These are:

- The information must have the necessary quality of confidence;
- The public authority must have received the information from a third party in circumstances which imposed an obligation on the authority to maintain confidentiality;
- There must be a disclosure which has not been authorised by the person who communicated the information but which would cause damage to that person.

In order for information to have the necessary quality of confidence, it must not, in general, be common knowledge and a member of the public would have to apply skill and labour to produce the information him or herself. The questionnaires that were provided to participants contained an explicit statement that the responses would be treated confidentially. Clearly the primary data relating to the survey and the analysis in the Report based on the Survey, as well as the data files, including weight variables, connected with the Survey and the record descriptions connected with the Survey have the necessary quality of confidence, given the assurance of confidentiality, the subject matter and the fact that they are not in the public domain. I am of the view therefore that the information held by the University in relation to requests 1, 4 and 5 was received in circumstances from which an obligation on the University to maintain confidentiality could be inferred.

Disclosure of the information requested has not been authorised by those persons who communicated the information to the University. In addition, harm as a result of disclosure, would be caused to those who participated in a candid manner as part of the survey

process. Such information includes personal information and views from young people which cannot be anonymised, and from which the individuals could identify themselves, or others could identify individuals.

As such, the three requirements outlined above for an actionable breach of confidence have been met. I am of the view that the participants who provided information to the University as part of the survey process would have an actionable breach of confidence against the University if it were to disclose the requested information.

### **Section 36(2) and the public interest test**

The exemption under section 36(2) is an absolute exemption and is therefore not subject to the public interest test in section 2(1)(b) of FOISA. However, public interest considerations arising out of the common law of confidentiality must be taken into account when applying this exemption. The Scottish Information Commissioner in his Decision 166/2007 gave some guidance as to how public authorities ought to approach the common law public interest test and I have taken his guidance into account in relation to this case. He stated: "Although the law of confidence recognises that there is a strong public interest in ensuring that people respect confidences, and the burden of showing that a failure to maintain confidentiality would be in the public interest is therefore a heavy one, in certain circumstances, the public interest in maintaining confidences may be outweighed by the public interest in disclosure of the information. The courts have considered that there may be a public interest defence to actions of breach of confidentiality where to enforce an obligation of confidence would cover up wrongdoing, allow the public to be misled or unjustifiably inhibit public scrutiny or matters of genuine public concern".

In the circumstances of this particular case, I cannot see a reasonable basis to conclude that the University would have a defence to an action for breach of confidence on public interest grounds in the event that it disclosed the information.

On the basis of the above, I am satisfied that the information held by the University in respect of requests 1, 4 and 5 is exempt in its entirety under section 36(2) of FOISA.

### **SECTION 38(1)(b) – THIRD PARTY PERSONAL DATA**

This exemption was applied to information falling under requests 1, 4 and 5.

Section 38(1)(b) of FOISA creates an exemption from disclosure where the information requested constitutes the personal data of a third party and disclosure of that data would breach any of the data protection principles set out in the Data Protection Act 1998 ("DPA"). As it is an absolute exemption, there is no requirement to consider the public interest test.

The first data protection principle states that personal data must be processed fairly and lawfully and, in particular, shall not be processed unless at least one of the conditions in Schedule 2 to the DPA is met. In determining the meaning of 'fair', the UK Information Commissioner has issued guidelines stating that the following matters should be taken into account when deciding whether disclosure would breach the first data protection principle:

- The expectation of the data subject;
- Whether damage or distress would be caused to the data subject as a result of the disclosure;
- Any express refusal by the data subject; or
- Whether the information relates to the data subject's public or private life.

The information you have requested contains the personal data of the participants [as well as personal data of third parties]. I am satisfied that this information constitutes "personal data" as defined in section 1(1) of the DPA, i.e. data which relate to living individuals who can be identified (a) from those data, or (b) from those data and other information which is in the possession of, or is likely to come into the possession of, the data controller (i.e. the University). I must examine whether or not disclosure of this personal data would breach the requirement in the first data protection principle for processing to be fair and lawful.

I have taken into consideration the likely expectation of the participants in providing the information to the University for the purposes of the survey. Although the participants may have reasonably expected the information to be used for the purposes of reporting on the findings of the survey by the University, the participants were told by the University that their responses would be confidential and it is very unlikely that they would expect that the responses might be released to the general public under FOISA.

Disclosure of the personal data contained in the requested information would not be fair to those data subjects. The participants would not expect that the University would disclose this information under FOISA. The data subjects have not given their consent to disclosure of their personal data. Given that the disclosure of this information would not be fair, it is not necessary for me to go on to consider any of the conditions in Schedule 2 to the DPA. As disclosure of this personal data would breach the first data protection principle, the personal data in this information is absolutely exempt from disclosure under section 38(1)(b) of FOISA.

## **CONCLUSION**

Having carefully reviewed all information falling within the scope of your request and the exemptions in FOISA which were applied by the University to some of that information, I confirm that I have reviewed the exemptions applied to this information and am of the view that these exemptions should be maintained. This information is therefore being withheld from you as I agree with the reasoning adopted in relation to the application of the exemptions in sections 27(2), 33(1)(b), 36(2) and 38(1)(b) of FOISA.

## **COMPLAINTS PROCEDURE**

Should you have any complaints about the University's procedure in respect of handling your request for information, please contact me at the above address.

## **YOUR RIGHT TO AN APPEAL**

If you are dissatisfied with the outcome of this review, you have a right under section 47 of FOISA to appeal to the Scottish Information Commissioner. If you wish to do so, you must appeal to the Commissioner within six months following the date of receipt of this review notice. The Commissioner's contact details are as follows:

The Scottish Information Commissioner  
Kinburn Castle  
Doubledykes Road  
St Andrews  
Fife  
KY16 9DS  
Email: [enquiries@itspublicknowledge.info](mailto:enquiries@itspublicknowledge.info)  
Tel: 01334 464610

Yours sincerely

Joanna Morrow  
Academic Registrar