

## Freedom of Information Request 084-14/15

*Response Date: 5<sup>th</sup> January 2014*

Please supply me with the following information relating to an International Study Centre which I believe you operate in partnership with Navitas for each published intake since you started until September 2014.

The numbers of students for undergraduate and postgraduate study that started for each intake

The number of students that left before completion of the course for each intake

The number of students that progressed from the Centre to the University for each intake

### RESPONSE

Your request has now been considered and the University is not obliged to provide you with the requested information.

Section 17(1) of the Freedom of Information Act 2000 requires Swansea University, when refusing to provide such information (because the information is exempt), to provide the applicant with a notice which:

- (a) states the fact,
- (b) specifies the exemption in question and
- (c) states (if it would not otherwise be apparent) why the exemption applies.

In relation to your particular request, the following exemptions apply:

#### **Section 41(1) Information provided in confidence**

#### **Section 43(2) - Commercial Interests**

#### **Section 41(1) Information provided in confidence**

Section 41(1) refers to information being exempt if it was obtained by the public authority by any other person and that the disclosure of the information to the public by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

Section 41(1) is not subject to the public interest test, however this has been considered the view formed is that the public interest in disclosure does not outweigh the public interest in keeping the confidence.

The common law duty of confidence has been considered and it is confirmed that Swansea University is content that the following applies:

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- The information was imparted in circumstances giving rise to an expectation of confidence;
- The information has the necessary quality of confidence, ie: it is not available by other means, nor is it trivial;
- An unauthorised disclosure of that information would be detrimental to the confider; and
- There is no overriding interest defence against the breach of confidence.

The contractual obligations of confidence have also been considered and Swansea University is of the view that disclosure of information under this request would be perceived as a breach of contract by the relevant parties.

### **Section 43(2) - Commercial Interests**

Section 43(2) refers to information being exempt from disclosure if its disclosure would, or would be likely to; prejudice the commercial interests of any person (including the public authority holding it).

Section 43(2) is a qualified and prejudice based exemption therefore the legislators accept that there may be harm if released. The authority has to consider and describe the harm that would occur if the information were released and carry out a public interest test.

The 'public interest' is not however, what the public may find interesting, there must be some tangible benefit to the community in such disclosure. Ultimately it must be something which serves the interests of the public. It is a requirement to identify all the factors which serve these interests and also those which do not, only then can a decision be made.

### **Overall Harm**

The disclosure of the numbers of student information would be likely to prejudice the lawful and commercial interests of International College Wales Swansea (ICWS) in that competitors of ICWS could then utilise that information to calculate ICWS's revenue. The University would regard the numbers of student information as being material price sensitive information in that ICWS is a business unit of Navitas Limited. The agreement between the university, ICWS and IBT UK Holdings Ltd is an example of a public/private partnership. Public/private partnerships are an innovative and mutually beneficial means for universities and for-profit organisations (like ICWS) to collaborate together for the wider benefit of the education sector and society as a whole. Disclosure of the for-profit partner's financial information could put at risk public/private partnerships and would not put the public/private partnership on a level playing field compared with private partnership for-profit organisations that would not be subject to FOI and therefore would have no risk in having valuable financial information being made public.

Disclosure of the numbers of student information would also be likely to prejudice the commercial interests of the University and in particular the commercial relationship between the University and ICWS. The University's relationship with ICWS is a crucial element to the recruitment of Non EU students and essential to the University's overall financial strategy. Disclosure of the requested information may also result in civil action taken against the University.

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## **Public Interest Considerations**

### **Factors favouring disclosure**

There is a requirement to provide to the general public a better understanding of how public funds are spent. One of the underlying principles of the Act is the need for openness and transparency. In this case, there is a public interest in knowing how ICWS students have progressed through the University.

### **Factors favouring non-disclosure**

Swansea University has a duty to protect the sensitive commercial information it holds about any individual authority or private company it has dealings with.

The disclosure of the numbers of student information would be likely to prejudice the lawful and commercial interests of International College Wales Swansea (ICWS) in that competitors of ICWS could then utilise that information to calculate ICWS's revenue.

Disclosure of the numbers of student information would also be likely to prejudice the commercial interests of the University and in particular the commercial relationship between the University and ICWS. The University's relationship with ICWS is a crucial element to the recruitment of Non EU students and essential to the University's overall financial strategy. Disclosure of the requested information may also result in civil action taken against the University.

### **Balance Test**

In this case, there is a public interest in the need for openness and transparency which needs to be weighed against the damage that would occur to the commercial interests of International College Wales Swansea and the University. If we released the requested information, the lawful and commercial interests of ICWS may be compromised along with the commercial relationship the University has with ICWS and the future recruitment of Non EU students to Swansea University.

Therefore, on balance, the factors favouring non-disclosure outweigh the factors favouring disclosure.

As such, the public interest favours non-disclosure of the information at this time. Therefore in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

This letter represents a refusal notice for this part of your request.

**END OF RESPONSE**