



Ref. FOI/20210326/5

26 April 2021

Reply to request for information under the Freedom of Information Act	
Your ref	Email of 26 March 2021
Request	<p>It is my understanding that Stonewall provides members with 'action plans' as a form of feedback. Please provide me with (where applicable)</p> <ol style="list-style-type: none"><li>1) Copies of your Diversity Champions/workplace equality index action plans going back as far as possible, up to 2015.</li><li>2) Evidence/copies of any feedback or assessments you had in relation to the Stonewall diversity programme or workplace equality index</li></ol>

Dear Ms Lowther

I write in reply to your email of 26 March, requesting the above information.

**Item 1:**

The University created internal Workplace Equality Index actions plans in 2020 and 2021, copies of which can be found at the annex to this letter.

We have redacted from the annex references to staff members and any other information that could be used to identify them, except where reference was made to staff in senior, public-facing roles. In making these redactions, we have applied the exemption in section 40(2) of the Freedom of Information Act (FOIA). Section 40(2) provides an exemption from disclosure for information that is the personal data of an individual other than the requester, where disclosure would breach any of the data protection principles in Article 5 of the General Data Protection Regulation (GDPR). We consider that disclosure of this information would breach the first data protection principle, which requires that personal data is processed lawfully, fairly and in a transparent manner. Disclosure would be unfair to the individuals concerned, as it would be contrary to their reasonable and legitimate expectations. They would not reasonably expect that information relating to them would be made public in an attributable form under the FOIA without their consent. (Please note that a disclosure of information under FOIA is presumed to be a disclosure to the world at large, and not just a disclosure to the individual making the request.)

For the disclosure of personal data to be lawful, it must have a lawful basis under Article 6 of the GDPR. There are six possible lawful bases in Article 6; we do not consider that any of them would be satisfied in respect of the disclosure.

**Item 2:**

The University holds the information requested. However, we will not disclose it, as we believe that it is exempt from disclosure under section 41 of the Freedom of Information Act (FOIA). Section 41(1) provides that information is exempt from disclosure if:

- a) it was obtained by a public authority from another person, and

- b) the disclosure of the information to the public by the public authority holding it would constitute an actionable breach of confidence.

We believe that section 41 applies in this case as the University is bound by a confidentiality agreement with Stonewall. The feedback on the University's application for the Workplace Equality Index (WEI), was provided to the University in the expectation that it would be treated as confidential. Therefore, should the University disclose this information under FOIA (and therefore to the world at large), it would breach its duty of confidentiality to Stonewall, which would be able to pursue a successful claim against the University for such a breach.

Maintaining confidentiality is also important to ensure ongoing confidence in the WEI scheme. Were this information to be made public, it could allow organisations an unfair advantage in applying for the WEI, which could undermine confidence in the scheme. Stonewall would therefore suffer detriment were the University to breach its duty of confidentiality by disclosing the feedback.

The exemption in section 41 is an absolute exemption; it is not subject to the public interest test provided for in section 2(2)(b) of the FOIA. However, under the common law, a duty of confidentiality can be overridden if there is a sufficiently strong public interest in the disclosure of the information concerned. This public interest test is the reverse of that normally applied under FOIA; it assumes that the information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence. We consider that in this particular case, there are no public interest considerations sufficient to override the inherent public interest in maintaining the duty of confidence.

#### **INTERNAL REVIEW**

You may request an internal review of this response by e-mailing [foi@admin.ox.ac.uk](mailto:foi@admin.ox.ac.uk). A request for internal review should be submitted no later than 40 working days from the date of this letter.

#### **THE INFORMATION COMMISSIONER**

If, after the internal review, you are still dissatisfied, you have the right under FOIA to apply to the Information Commissioner for a decision as to whether your request has been dealt with in accordance with the FOIA. You can do this online using the Information Commissioner's complaints portal.

Yours sincerely

**Information Compliance Team**