



University of East Anglia

Information Services Directorate

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06 December 2016

Dear [REDACTED]

**Freedom of Information Act 2000 – Information request (ref: FOI\_16-218)**

We have now considered your request of 07 November 2016 for the following information:

*'Records regarding the acquisition, maintenance, upgrade and subscription costs of any social media monitoring software, including invoices, purchases orders, contracts, loan agreements, procurement documents (but not limited to solicitation documents or notices of proposed contracts, proposed bids, unsolicited proposals, and/or documents justifying contracting without full and open competition), correspondence with companies providing the software, from January 1st 2010 to the date of this request.'*

Our response is in the accompanying PDF file 'FOI\_16-218 Appendix A'.

On this occasion, it is not possible to provide all the requested information. The Act contains a number of exemptions that allow public authorities to withhold certain information from release. We have applied the following exemptions to part of your request.

Exemption	Reason
s.40(2), Personal information	Disclosure of information would contravene one of the data protection principles
s.43(2), Prejudice to commercial interests	Disclosure of information would, or would be likely, to prejudice the commercial interests of a person as defined by the Act

Personal data exemption

In line with s.40(2) of the Act we have removed certain personal data from the accompanying file(s); specifically, the names and contact details of those involved in negotiations and acquisition of social media monitoring software.

When a request is made under FOIA for information that includes personal data we are required to consider whether disclosing those data would breach the data protection principles contained within the Data Protection Act (DPA).

In considering a disclosure under FOIA, the University must also take into account that any information released under that Act will be placed in the public domain, through our own disclosure log or by other means.

We believe that disclosure of the requested information would breach the first data protection principle under the DPA; namely that information must be fairly and lawfully processed, and that the processing also meets one of the conditions set out in Schedule 2 of that Act (and in the case of sensitive personal data, a condition in Schedule 3).

We have followed the Information Commissioner's guidance<sup>1</sup> in assessing whether it is fair to disclose this information under FOIA. This involves considering the nature of the information, the expectations of and potential harm (of disclosure) to the data subjects, and how any legitimate public interest in this information is balanced against the rights and freedoms of the data subjects.

We note that the requested information is not publicly available. Those involved would not have had a reasonable expectation that this information would be made public, either now or at the time the document was created. We do not think there is a legitimate interest in disclosing this information to the public, and have therefore concluded that disclosure of this information would not be fair.

The Information Commissioner's guidance (see footnote 1) notes that if a public authority has determined disclosure would not be fair then it must not release the information under FOIA. In such circumstances there is no need to consider the conditions in Schedule 2 or 3 of the Data Protection Act.

#### 'Commercial interests' exemption

We have applied this exemption to the invoice costs and, where provided, unit prices and tax. It is our belief that release of this information would prejudice the commercial interests of the University.

As both an exempt charity under the Charities Act 2011, and a Public Authority for the purposes of FOIA, the University must obtain the best deal for the products and services it purchases. There are a number of companies offering similar social media monitoring services, who must compete against one another to win the University's business. The acquisition of such software is undoubtedly a commercial activity, conducted in a competitive environment.

In this environment, disclosure of the value of each invoice and unit price would enable competitor companies to see the University's spend on specific products over recent years. This information would undoubtedly be helpful to those offering similar services. We believe if competitor companies knew this information they would know how much the University was willing and able to pay, and adjust their pricing accordingly. This outcome would be likely to affect the University's ability to negotiate to achieve the best terms, and the procurement process would inevitably become less competitive.

A 'public interest test' must be applied to the exemption for prejudice to commercial interests. We acknowledge there is a legitimate public interest in knowing the amount and way in which public funds are spent, both to further the transparency and accountability of public spending. However, there is also a clear public interest in ensuring there is fair competition for public sector contracts. Any distortion of what is effectively a blind tendering process has the potential effect of raising costs to the public sector, which would not be in the public interest.

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<sup>1</sup> <https://ico.org.uk/media/1213/personal-information-section-40-and-regulation-13-foia-and-eir-guidance.pdf>

In addition, we do not feel that disclosure of the specific costs would increase access to information about the procurement process, nor encourage more potential suppliers to enter the market. On balance, we believe that on this occasion the public interest lies in withholding the invoice costs.

We hope this response will meet your requirements, however if you are not satisfied you have the right of appeal. If you wish to appeal, please set out in writing your reasons for appealing and send to the above address. You must appeal within 60 calendar days of the date of this letter. Any appeal received after that date will not be considered nor acknowledged. This policy has been reviewed and approved by the Information Commissioner's Office.

You also have a subsequent right of appeal to the Information Commissioner's Office. Further information is available on their website:

[https://ico.org.uk/Global/contact\\_us](https://ico.org.uk/Global/contact_us), or by telephone on 0303 123 1113.

Please note that any material over which UEA has copyright is released on the understanding that you will comply with all relevant copyright rules regarding reproduction and/or transmission of the information provided.

Please quote our reference given at the head of this letter in all correspondence.

Yours sincerely

Ellen Paterson  
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University of East Anglia