



University of East Anglia

Information Services Directorate

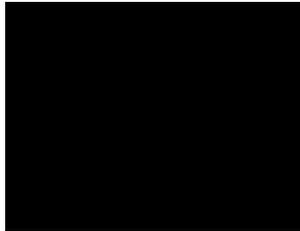
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18 March 2016

Dear 

**Freedom of Information Act 2000 – Information Request (Our file: FOI\_16-047)**

Your request for information received on 08 February 2016 for information regarding the details of UEA expenditures with companies during the calendar year of 2015 where the total expenditure with that company by UEA during that period was equal to or in excess of £20,000 (twenty thousand pounds) has now been considered. Our response is within the attached document entitled Appendix A\_Data file\_FOI\_16-047.xlsx and we hope this will meet your requirements.

We would wish to provide a caveat, however, in relation to the data released. The reporting and recording of VAT expenditures varies within the information submitted to our Finance Division so that the expenditures reported will have some figures with VAT included and some not. There is no consistent pattern to this variation.

Therefore, it should be noted that depending upon whether one wishes to consider VAT as part of the expenditure reported, there are some suppliers that are either within, or omitted, from the information released who should be either omitted or included. Additionally, even where some suppliers are undoubtedly within the scope of the request, the actual amount of the expenditure reported is not consistent in regards the inclusion of VAT.

Additionally, it is not possible on this occasion to supply some of the other requested information. The Act contains a number of exemptions that allow public authorities to withhold certain information from release. We have applied the following exemption to certain elements of your request.

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

### *Section 40(2) exemption explanation*

In regards the application of section 40(2), we believe that there are data within the information requested that meet the definition of 'personal information' as defined by section 1(1) of the UK Data Protection Act 1998 (hereafter 'DPA'). Specifically, we believe that the names of individuals within email addresses for the contacts for certain firms is personal data as defined by the DPA.

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

We believe that public 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 a set of conditions specified in Schedule 2 of the Act.

We have followed the Information Commissioner's guidance<sup>1</sup> in assessing whether it is fair to disclose this information under FOIA, and have considered how any legitimate public interest in this information is balanced against the rights and freedoms of the individual(s) concerned.

We note the requested information is not necessarily publicly available and whilst this information is shared with UEA in the process of providing goods and services, there would not be necessarily any expectation on the part of any of the individuals that this information would be released to the public at large. Additionally, we do not have consent from the individuals concerned to the release of this information nor do we think there is a legitimate interest in disclosing this information to the public.

Therefore we have concluded that disclosure of this information would not be fair and have redacted this information from the accompanying document. Redactions which under this exemption are indicated by the text '[Exempted – s.40(2), FOI]'.  
[Exempted – s.40(2), FOI]

### *Section 43(2) Exemption explanation*

In regards the application of section 43(2), it is our belief that the release of specific details of the expenditure on advertising and marketing activities, specifically the amount of each transaction and the identity of the firm with which that transaction was made, would or would be likely to, prejudice the commercial interests of the University.

The Information Commissioner's Office has established a multi-criteria test for assessing whether a section 43(2) exemption applies.<sup>2</sup> The first criterion is whether the information relates to, or could impact on a commercial activity. The First Tier Tribunal (Information Rights) has also conclusively stated that universities, despite their charitable status, do engage in commercial activities. The ICO guidance clearly indicates that a 'commercial activity' relates to the activity of buying or selling goods and services.

The commercial activities here are the activities that the University undertakes to sell itself to prospective students and researchers as a research, learning and teaching institution. The successful recruitment of students and staff is very much a vital element of this commercial activity for the University and is critical to maintaining our ability to compete within the Higher Education sector.

The second criterion is whether the commercial activity is conducted in a competitive environment. Universities operate in a global marketplace competing for research

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

<sup>2</sup> [http://www.ico.gov.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/AWARENESS\\_GUIDANCE\\_5\\_V3\\_07\\_03\\_08.ashx](http://www.ico.gov.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/AWARENESS_GUIDANCE_5_V3_07_03_08.ashx)

funding, students and accreditation. The UK HE sector is highly competitive as universities are seeking to recruit from a limited pool of prospective UK and International students.

The next criterion is whether the information is commercially sensitive. Significant resources are devoted to advertising and the creation of marketing collateral which is developed and delivered throughout an annual recruitment cycle with different activities being presented to the market at various points in the prospective students' decision making process.

Our ability to deliver a comprehensive and engaging marketing strategy to the aforementioned limited pool of students provides us with a possible advantage compared to our competitors who undertake this activity less effectively. Details of the expenditure on advertising within our tactical marketing and recruitment activities is not shared with competitors as this would provide them with the insight to match and exceed our activities, which, in turn could jeopardise our ability to deliver effective marketing, provide competitive activities and deliver unique and engaging activities at appropriate times.

The commercial sensitivity of the apportionment of our advertising expenditure lies in our assessment of the market and the emphasis we place on certain activities at certain times of the year and the combination of marketing collateral and marketing channels we use to communicate with our audience. Our brand development enables us to communicate our uniqueness to our audience and is something that many universities are looking to develop and enhance as the market becomes increasingly competitive.

Our position is therefore extremely sensitive and sharing details of our advertising expenditure would be damaging as our competitors could use this to challenge our position. The allocation of resources to advertising is a crucial element within the marketing strategy of UEA and if our competitors understood our expenditure in this area they would be able to compete through the procurement of greater and/or more targeted amounts of certain types of resource.

The next criterion goes to the prejudice itself; would there be damage to the University's reputation, business confidence or ability to compete? Under the Act, release to one requester can be considered as release to the world. It is our position that release of our advertising expenditure would, in effect, provide our competitors with information that we consider integral to our marketing and recruitment activities. It is our ability to compete that would be prejudiced in this case as our competitors could use this information to guide their own marketing plans and tactics. This would enable them to begin to enhance their activities by devoting more resources to particular areas – for example the ability to allocate budget to specific marketing channels enables a competitor to have a greater profile to the target audience.

We also have to determine the likelihood of prejudice being caused by release of this information. As noted above, our position is that the choice, composition and tactics employed within our marketing activities as represented by the advertising expenditure give us an advantage in engaging with our target audiences. Release would allow our competitors to 'close the gap', target their activities to those that we undertake, and as a consequence, reduce our ability to compete within this market.

We believe that there is a plausible causal link between the disclosure of the information in question and the argued prejudice. We would note that the third party agencies, media providers and marketing channels we use all regard this information as commercial and maintain confidentiality for each of their clients. To paraphrase ICO guidance, we assert that there is a real possibility that the circumstances giving rise to prejudice would occur, that it is not purely hypothetical.

### *Public Interest test*

A public interest test<sup>3</sup> must be applied to the exemption for prejudice to commercial interests. There is no doubt that there is a legitimate public interest in knowing the amount and way in which public time and effort are spent in this respect, both to further the transparency and accountability of public authority activities.

We would counter that there is also a public interest in protecting the ability of institutions to compete on a level playing field and to ensure that there is fair competition for prospective students. To disclose this information would prejudice an institution's competitive and commercial position, and it is difficult to see how this could be in the public interest. Given the importance of such activities to the recruitment of students to an institution, any distortion of the process would prejudice the ability of students to make a fully and properly informed decision regarding their education.

Therefore we have concluded that disclosure of this information would not be in the public interest and have redacted this information from the accompanying document. Redactions which under this exemption are indicated by the text *[Exempted – s.43(2), FOI]*.

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.

You have the right of appeal against this response. 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 quote our reference given at the head of this letter in all correspondence.

Yours sincerely

David Palmer  
Information Policy and Compliance Manager  
University of East Anglia

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<sup>3</sup>[http://www.ico.org.uk/for\\_organisations/guidance\\_index/~/\\_media/documents/library/Freedom\\_of\\_Information/Detailed\\_specialist\\_guides/the\\_public\\_interest\\_test.ashx](http://www.ico.org.uk/for_organisations/guidance_index/~/_media/documents/library/Freedom_of_Information/Detailed_specialist_guides/the_public_interest_test.ashx)