

[REDACTED]

21 November 2014

Dear [REDACTED]

Freedom of Information Act 2000 – Information request (Our ref: FOI_14-222)

We have now considered your request of 23 October 2014 for information relating to compensation, compromise and settlement agreements entered into by this University. Our response is provided on pages 4-5 of this letter, together with a copy of your original request.

However, some of the requested information is exempt from disclosure. Therefore, in accordance with section 17 of the Freedom of Information Act 2000 (FOIA) this letter acts as a partial Refusal Notice. The exemption is as stated below and we have indicated in the attached document where this exemption applies:

Exemption	Reason
s.41(1), Information provided in confidence	Release of some of the requested information would constitute an actionable breach of confidence
s.42(1), Legal professional privilege	Some of the requested information is subject to a claim of legal professional privilege
s.43(2), Commercial interests	Disclosure of information will be likely to prejudice the commercial interests of a person as defined by the Act

It is our belief that section 41(1) applies to the settlement agreement noted in question 5 of your request. This agreement is almost wholly based upon a template settlement agreement prepared by our solicitors, Mills and Reeve. This firm has indicated that this information was given to us in confidence with an expectation of confidence.

This document includes work and intellectual property of Mills and Reeve that was intended solely for the use of this University and there was never any expectation on the part of the firm that this information would be disseminated more widely. It is our belief, based on this information, that disclosure of this document would, in each and every case, constitute a breach of confidence actionable by this firm.

The section 42(1) exemption also applies to information requested in question 5, on the basis that some information is covered by legal professional privilege.

Application of the s.42(1) exemption requires us to consider the public interest in withholding or disclosing this information. We acknowledge that by disclosing the manner in which settlements are agreed by the University we would be increasing transparency in our handling of such matters. However, we believe that the other information provided in this response provides an adequate level of detail in this regard, and there is nothing within the withheld information that would significantly enhance transparency to the extent that it would outweigh the strong public interest in maintaining the sanctity of legal professional privilege.

In regards the application of section 43(2), it is our belief, based on direct evidence from Mills and Reeve that release of this document would, or would be likely to, prejudice the commercial interests of that firm.

The Information Commissioner's Office has established a multi-criteria test for assessing whether a section 43(2) exemption applies.¹The first criterion is whether the information relates to, or could impact on a commercial activity. It is clear that the buying and selling of legal services is a widespread and lucrative commercial activity and that the nature of the information in question has a direct relationship with this commercial activity.

The second criterion is whether the commercial activity conducted in a competitive environment. Given the number and range of legal firms within the UK, there can be little doubt that this commercial activity occurs within a highly competitive environment.

There is also no doubt that this information is commercially sensitive. This document represents an essential service provided by any legal firm and is unique in its drafting and construction to this firm. We also have direct evidence from the firm that they consider this information to be commercially sensitive.

As to the prejudice itself, the document in question represents the intellectual skill, knowledge and experience of this firm. Disclosure of this document releases this example of such skill, knowledge and experience, for which the University pays a significant amount of funds, to the world. It could be reused widely thus removing the need to seek the services of this firm. Additionally, competitors of this firm can review, and react to this product and put the firm at a competitive disadvantage.

Finally, we have to determine the likelihood of the prejudice being caused. Clearly, the firm concerned feels that it is likely that commercial prejudice will occur. The fact that not only this firm, but other firms in this field, do not make publicly available the documents they draft on behalf of clients indicates a perception that there is a likelihood of prejudice if released. While we cannot state with assurance that the harm would be certain, we are convinced by the evidence that there is a significant risk rather than a remote possibility of prejudice to those interests.

A public interest test must also be applied to the exemption for prejudice to commercial interests. There is no doubt that there is a legitimate public interest in knowing the nature of, and funds expended in relation to these sort of agreements.

We would counter, however, there is a strong public interest in non-disclosure in that there is a public interest in protecting the ability of legal firms to compete fairly. To disclose information that represents the core service of a firm where that information is not common knowledge would, we believe, be likely to be used by competitors to

¹http://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

gain an unfair competitive advantage and thereby skew the competitive environment unfairly.

We would also contend that the public interest in such agreements is ably served by the other information released in response to this request and by the existence of substantial information regarding such agreements in the public domain. We therefore believe that the public interest in release does not outweigh that in non-release.

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 decision. If you wish to appeal, please set out in writing your reasons for appealing and send to the above address.

You must appeal our decision 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 whose [contact details](#)² can be found on their website.

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

² https://ico.org.uk/Global/contact_us

Response to Freedom of Information request (FOI_14-222)

Under the Freedom of Information Act 2000 I seek the following information about compromise agreements, settlement agreements or compensation agreements:

1. The number of these agreements (named above) made with former or current staff, students, donors, or any other people from the start of 2008-2014 (so far). To clarify I mean calendar year, not academic or financial year.

Could this be broken down by year, type of agreement (compromise, settlement, compensation) and category (current staff, former staff, donors, students, etc).

The requested information is presented in the two (2) tables below.

Agreement Type	Year							
	2008	2009	2010	2011	2012	2013	2014	Total
Compensation	0	0	0	0	0	0	0	0
Compromise	0	0	0	0	0	0	0	0
Settlement	14	16	13	29	7	16	28	123
Total	14	16	13	29	7	16	28	123

Agreement Category	Year							
	2008	2009	2010	2011	2012	2013	2014	Total
Current Staff	0	0	0	0	0	0	0	0
Former Staff	14	16	13	29	7	16	28	123
Students	0	0	0	0	0	0	0	0
Donors	0	0	0	0	0	0	0	0
Others	0	0	0	0	0	0	0	0
Total	14	16	13	29	7	16	28	123

2. The number of each type of agreement that contained confidentiality or non-disclosure clauses.

If the cost limit of this request is not yet exceeded could you now answer question 3 and then if it is still not exceeded, 4 then 5 and 6.

All 123 agreements referred to in question 1 above contained a confidentiality clause.

3. The total amount spent on each type of agreement or the total amount paid to those who have signed them for the years 2008-2014. For example five compromise agreements in 2008 cost £75k in pay-outs.

The requested information is presented within the below table. Please note that we are presenting the total amount paid to signatories to these agreements in each noted year by type of agreement.

Year	Agreement Type		
	Compensation	Compromise	Settlement
2008	£0.00	£0.00	£71,159.00
2009	£0.00	£0.00	£160,402.54
2010	£0.00	£0.00	£165,800.00
2011	£0.00	£0.00	£345,705.81
2012	£0.00	£0.00	£60,780.18
2013	£0.00	£0.00	£151,446.32
2014	£0.00	£0.00	£270,750.69

4. *The most paid to an individual who has signed any of these agreements with a confidentiality clause. If possible could this be done for each of the following categories: staff, students, donors, businesses, others.*

£55,516.00 is the most paid to an individual pursuant to any of the above-noted agreements. This individual was a former member of staff.

5. *I would also like a copy of the agreement with the highest payout. I understand data protection restrictions may apply but it should be possible to release a redacted version.*

[Information exempted pursuant to s.41(1), s.42(1), & s.43(2), Freedom of Information Act]

The requested information has been exempted from release for the reasons noted above in this letter.