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[REDACTED]

28 August 2015

Dear [REDACTED]

**Freedom of Information Act 2000 – Information request (ref: FOI\_15-137)**

We have now considered your request of 30 July 2015 for information regarding the expenditure of funds on works of art at UEA. Our response is provided on page 5 of this letter, together with a copy of your original request. We hope this response will meet your requirements.

It is, however, not possible to satisfy all elements of your request, and in accordance with section 17 of the Freedom of Information Act 2000 this letter acts as a partial Refusal Notice, and I am not obliged to supply all of the requested information. The exemptions are clearly indicated within the attached document and the reasons for exemption are as stated below:

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*

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 amount paid for the piece of work noted within question 2 and the total expenditure for 2014/15 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 relates to one person (the artist Susan Gunn) and is not publicly available. We do not have consent from the individual concerned to the release of this information. Additionally, at the time that the work was commissioned and thereafter, there was no expectation on the part of Ms Susan Gunn that this information would be released. At all subsequent times both the individual concerned and the University have treated this information as confidential in nature.

#### *Section 43(2) exemption*

In regards the application of section 43(2), it is our belief that the release of the amount paid for the work noted in question 2 and the total expenditure for 2014/15 would, or would be likely to, prejudice the commercial interests of the artist, Ms Gunn. We should note that we have received direct evidence of this from Ms Gunn herself.

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. There is an active and long-standing market for the sale of commissioned artistic work generally, and to public and private institutions specifically.

The second criterion is whether the commercial activity is conducted in a competitive environment. It is clear that the competition for commissioned art works is a centuries old trade and that the competition to secure such commissions is as keen as ever. There is also competition effectively between artists themselves and galleries and cultural bodies which secure art works for future sale in terms of securing a market for art works.

The next criterion is whether the information is commercially sensitive. The worth of artistic works purchased is often considered highly confidential by artists, vendors, and collectors. In this particular instance, the art installation in question was brokered directly with the University and a commercial third party (who met a substantial part of the cost met through a donation) and therefore no commission or financial addition was added to the cost of the work. It was made for a relatively very modest price for the amount of work involved.

As many of Ms Gunn's works are sold through 3rd party galleries or cultural bodies who would expect a percentage of the final cost of any work, and increase the selling price of the work, the exact price of an un-brokered work is commercially very sensitive.

The next criterion goes to the prejudice itself; would there be damage to the Ms Gunn's reputation, business confidence or ability to compete? As noted above, Ms Gunn may sell work through 3rd party galleries and cultural bodies who receive a percentage of the final cost of any work and therefore the release of this information could be very damaging to her negotiation capacity and commercial interests in the future.

Ms Gunn has a number of works in public and private art collections around the world, some of which have been purchased, and some donated. This information is confidential. The ability of a reputable gallery to select her work to promote in the

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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)

future would be dependent on a commission being added, and, an undertaking on her behalf to declare all sales which may constitute a commission charge. Were this information were to be made public by way of revealing the price of un-brokered work it would prejudice her opportunity of furthering her art practice and commercial interests.

The release of the requested information would, in effect, be a mis-representation of the facts in that the payments received have been spread over the length of time it has taken to produce the commission and would present a misleading impression of her commercial capacity.

We also have to determine the likelihood of prejudice being caused by release of this information. Ms Gunn is very much of the opinion that other artists or galleries would use the information to her detriment in this highly competitive field. Galleries would use this information to lower the price paid to the artist. Other artists, knowing the un-brokered price of this work, would also be able to 'undersell' the work of Ms Gunn.

We believe that there is a plausible causal link between the disclosure of the information in question and the argued prejudice and therefore a reasonable likelihood of the prejudice occurring. We note that such information is considered confidential by many artists, galleries and collectors. Ms Gunn herself has a number of personal collectors who guard their privacy and art acquisitions vigorously. For these reasons, we feel that there is a likelihood of such harm occurring were the requested information to be released.

#### *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 contractors of all types, including artists, to compete on a level playing field and to ensure that there is fair competition for purchase of work. To disclose this information would prejudice Ms Gunn's competitive and commercial position, and it is difficult to see how this could be in the public interest.

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

You must appeal our response 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](#)<sup>4</sup> can be found on their website.

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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)

<sup>4</sup>[https://ico.org.uk/Global/contact\\_us](https://ico.org.uk/Global/contact_us)

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

## Response to Freedom of Information Act 2000 request (FOI\_15-137)

Please treat this email as a request under the Freedom of Information Act.

- 1) How much money has been spent on works of art for university buildings each year from 2010-2015?

Academic year	Cost
2009/10	£18,320.00
2010/11	£0.00
2011/12	£0.00
2012/13	£1,600.00
2013/14	£2,001.35
2014/15	<b>[Information exempted pursuant to s.40(2) &amp; s.43(2), Freedom of Information Act]</b>

The Sainsbury Centre for Visual Arts (SCVA) is the museum and gallery of the University of East Anglia. The SCVA is a public art museum situated on campus and while it does purchase works of art, it does so in its own right – that is, not specifically for the University community or for other University buildings.

As such, we are unsure whether SCVA purchases are relevant to your request. However we are happy to provide the following information on SCVA purchases:

Academic year	Cost
2009/10	£0.00
2010/11	£16,300.00
2011/12	£0.00
2012/13	£0.00
2013/14	£0.00
2014/15	£0.00

- 2) What was the most expensive work of art purchased for university buildings from 2010-2015? Who was the author of this work of art and how much did it cost?

The most expensive work of art purchased for UEA in the period 2010-2015 was a work commissioned in 2014 which was created by Susan Gunn.

**[Information exempted pursuant to s.40(2) & s.43(2), Freedom of Information Act]**

For the reasons noted in the letter above, it our position that the release of the cost of the work authored by Ms Gunn would contravene the provisions of the Data Protection Act 1998, and would, or would be likely to, prejudice the commercial interests of Ms Gunn.