Ein Cyf/Our Ref 002_Sullivan_Research Projects

08 February 2024

Prifysgol Wrecsam
Wrexham University

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Dear Ms Sullivan

Section 1 of the Freedom of Information Act 2000 (FOIA) places two duties on public authorities. Unless exemptions apply, the first duty at Section 1(1)(a) is to confirm or deny whether the information specified in the request is held. The second duty at Section 1(1)(b) is to disclose information that has been confirmed as being held.

Your request for information received on 8 January 2024 has now been considered and I can confirm that the University does hold the information that you have requested.

Any academic research collaborations that involve any staff members or any member of the active student body with companies or institutions who have stakes in the defence industry and arms trade companies.

Could you please provide me with all research projects with any connection to arms trade companies in the last five years. Connections can include sources of funding and/or collaborative research partnership on the research project.

Please can these be broken down by financial year, and categorise them accordingly:

- *Title and aim of research project* ***Exemption Applied – see rationale below***
- *Players (list of companies involved in the research project)* ***Exemption Applied – see rationale below***
- *Name of university department(s) involved (if applicable)* ***Glyndwr Innovations Ltd – Subsidiary Company of the University***
- *Source of funding for the research project (to be included the source of funding does not have to be an arms trade company)* ***Exemption Applied – see rationale below***
- *The total amount, in pounds sterling, that the university has received in research funding for this project in the last five financial years. Details should be broken down for this project year-by-year.* ***Exemption Applied – see rationale below***
- *Timescale of research project - start and end (exact day/month if applicable/available, otherwise by financial years)* ***Exemption Applied – see rationale below***

The University has contract agreements with 4 companies that would fall within the criteria described, however, the University will be applying exemptions on the information requested.

Where exemptions are relied upon, Section 17 of Freedom of Information Act requires that we provide the applicant with a notice which:

A) States that fact
B) Specifies the exemption(s) in question; and
C) State (if that would not otherwise be apparent) why the exemption applies

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Section 41 – Information provided in confidence
Section S43 – Commercial Interests

For information, applications made under the FOI Act are totally independent from any other process operated by a public authority and any disclosure of recorded information under this Act is deemed as a disclosure to the world and cannot be a disclosure of information to any single individual or company such as yourselves. This means that once information has been released under the Act it becomes a matter of public record and we have to make that information available to any member of the public who may wish to view it. This means that the University must consider the consequences of disclosure to the world at large, and not just the impact of providing the information to the applicant and as such must consider whether the information requested is suitable for disclosure to anyone and everyone.

Section 41 – Information provided in confidence

Section 41 (1) Information is exempt information if –

(a) It was obtained by the public authority from any other person (including another public authority), and.
(b) The disclosure of the information to the public (otherwise than under this Act) by the public authority holding it would constitute a breach of confidence actionable by that or any other person.

While section 41(1) of the FOIA is an absolute exemption, and therefore not subject to the public interest test, however, the university accepts that the common law duty of confidence contains an inherent public interest test. This test assumes that information should be withheld unless the public interest in disclosure outweighs the public interest in maintaining the duty of confidence. The university considers that the public interest in disclosure does not outweigh the maintaining duty of confidence in this instance. Each of the four companies rely upon our expertise in a particular field, those companies expect confidentiality when discussing or instructing to build a piece of equipment or apply research and any such disclosure would cause detriment on all parties concerned, whether that be in defence or trade secrets. To further expand on this point;

Section 41 (2)

In line with the decision reached in Coco v A N Clark (Engineers) Limited (1968) FSR415, a disclosure will constitute an actionable breach of confidence if it meets three criteria.

a) The information has the necessary quality of confidence.
b) The information was communicated in circumstances importing an obligation of confidence.
c) Unauthorized disclosure would cause a specific detriment to either the party which provided it or any other party.

The University is satisfied that the information has the necessary quality of confidence and is more than trivial and is not otherwise accessible.

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To summarise: The University has considered the public interest in both disclosing the information requested and in favour of maintaining the confidence, we have paid particular regard to:

(1) The wider public interest in preserving the principle of confidentiality, and
(2) The impact of disclosure on the interests of the confider.

Any disclosure of confidential information will undermine the principle of confidentiality and the relationship of trust between the University and the confiders of information. The university confiders may be discouraged from confiding in the university if they don't have a degree of certainty that trust in our negotiations and discussions and contracts would be respected. The university has reviewed each of its relationships and in particular the confiders and we are of the opinion that the weight not to disclose is as such that it would damage the confiders competitive position or our ability to compete, as it would undermine the confiders future negotiations with the university thereby negatively impacting on the confiders relationship with the university.

For these reasons outlined the university are unable to comply with your request.

In addition to the above exemption, the university also engages Section 43 the exemption of a commercial nature due to the overlap as to such information may include information that constitutes a trade secret.

Section S43 – Commercial Interests

The University has declined to provide you with the information requested under exemption 43, section (2) of the Freedom of Information Act, which states that:

2) Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it)

Under Section 2, information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person; in this instance the University considers that it would compromise the companies concerned, and in turn the University itself.

The Information Commissioner's guidance explains that organisations compete by offering something different to their rivals; this difference can include the information being sought in this request i.e. research projects, aims and objectives and sources of funding. The University has used its experience and research knowledge to develop its research capabilities which would be described as specialist and unique knowledge.

The University considers that the information requested is intrinsically sensitive to the business of the companies concerned: it is unique and is not in the public domain and could be beneficial to competitors and damaging to the companies concerned and the University.

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Placing the requested information into the public domain would reveal these trade secrets and if combined with other information available would provide a rival with an understanding which would afford them a distinct advantage with regards to any similar projects as it would provide details that would inform and influence them. This would have the ability to undermine any future business opportunities the companies concerned attempts to participate in; their future competitive edge would be jeopardised. In addition, the University is of the opinion that to release the information would jeopardise the University's future relationship with the providers, and this in turn would be likely to negatively affect any future negotiations the University participates in with them.

The Information Commissioner's guidance explains that very often, in a commercial environment, the timing of the disclosure will be of critical importance. The application of any exemption has to be considered in the circumstances that exist at the time the request is made, and circumstances (for example market conditions) will change over time, and through this passage of time information generally becomes less commercially sensitive. The University recognises the justification for this argument, however in this instance it is considered that a potential rival could use the information to their advantage, therefore the University believes that the information would be valuable commercially as it would give a rival an insight which would assist with informing and formulating their own research plans.

The University is satisfied that the information requested would be likely to prejudice the commercial interests of the companies concerned, and in turn the University, however the exemption can only be maintained if the University believes the public interest in withholding the information outweighs the public interest in disclosing it.

Please see details of the public interest test below.

The University recognises that the release of such information would facilitate University transparency and demonstrate the use of, and accountability of resources; therefore enabling the public to have an increased understanding of the University (and is therefore of benefit to the community), which in turn would generate confidence in the integrity of the procedures involved in decision making. Instances that strengthen the argument for release are situations where there is evidence or suspicion of wrongdoing (must be more than mere allegation – ie there must be a plausible basis for suspicion), however in this instance there is no wrongdoing (or suspicion). The release of raw information can also provide the public with details which would allow for scrutiny and removes the potential for spin and manipulation of facts.

The University however believes that there is also a strong public interest in ensuring the University is able to operate effectively and in a fair environment, and that there is a level playing field for all parties and that there is fair competition and opportunity for public sector contracts; as this in turn has an effect on the products/services available. The University has detailed in the paragraphs above how it considers that the release of the information requested would undermine this ability, and how it would detrimentally affect the University, by restricting purchasing and bargaining power.

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To summarise the public interest test: The University has considered all the relevant factors in the public interest test and has reached the conclusion that the benefit to the public in applying the exemption outweighs the public interest in releasing the information requested, as a result of the prejudices and losses that would potentially affect the University. The University considers that it is not in the public interest to do anything to undermine the competitive nature of the research projects, and the disclosure of key information, as has been requested, could have that affect.

Therefore in conclusion, the University has reached the decision that the release of the information requested would be likely to be prejudicial to the commercial interests of the companies concerned and the University, and that the public interest in withholding the information is greater than the public interest in releasing the information, and as such the information is being withheld under section 43 of the Freedom of Information Act.

If you are dissatisfied with the handling of your request or wish to request an internal review please contact the Freedom of Information Officer at *foi@wrexham.ac.uk* within 40 days of receiving the University's response.

A senior member of staff, who has not been involved with the request, will undertake an internal review to ensure that due process has been followed and to determine whether or not sound reasoning in line with the FOIA or EIR has been followed. You may raise a complaint where you believe we have:

- Failed to respond to your request within the time limits (normally 20 working days)
- Failed to tell you whether or not we hold the information
- Failed to provide the information you have requested
- Failed to explain the reasons for refusing a request
- Failed to correctly apply an exemption or exception

You will be informed of the outcome of the internal review within 40 working days, in line with the Information Commissioner's guidance. The Review will either uphold the original decision, provide additional explanation of the exemption/exception applied or release further information, if it is considered appropriate to do so.

You can also complain to the Information Commissioner at:

Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire, SK9 5AF www.ico.org.uk

Yours sincerely

Freedom of Information
Wrexham University