

Mrs [REDACTED]
c/o [REDACTED] Solicitors

25th January 2007

Dear Mrs [REDACTED]

I write with reference to the letter from your husband's solicitors dated 16 January 2007 which notified me that at the grievance appeal hearing on 15 November 2006 which you attended as Mr [REDACTED] chosen companion, you made a clandestine recording of all parts of the hearing including private deliberations of the University's Governors.

The University is advised that by making this unauthorised recording, you have acted as a "data controller" and in breach of the requirements of the Data Protection Act 1998 ("DPA"), which the University takes very seriously.

It appears to us that the processing of the personal data you obtained was neither fair nor lawful. Further, according to the requirements of the Data Protection Act 1998, you should have made readily available to those attending the appeal hearing certain information including your identity and the purpose or purposes for which the data was intended to be processed. You issued no such fair processing notice and as such the processing would be considered unfair. Giving notice to me after the event via Mr [REDACTED] is not sufficient.

As a result of the unfair and unlawful processing of the personal data of University staff and Governors at the appeal hearing, it is likely that those people will suffer substantial damage or distress which would be unwarranted, by virtue of your unlawful processing of their data. Therefore you are required to immediately cease processing that personal data under section 10 of the DPA. If you fail to do so, the University reserves its right to pursue this matter in the courts and with the Information Commissioner.

I would also take this opportunity to point out that compensation may be due to those whose personal data has been unlawfully processed in this way. The University will take all reasonable steps to protect the Governors and staff in attendance at the hearing and they will be informed of this together with their right to make any Subject Access Request to you. Again, the University reserves its right to pursue this matter in the courts and with the Information Commissioner.

Finally, as I have indicated to Mr [REDACTED], it is my understanding that as your processing of the personal data of Governors and staff at the hearing was not covered by an exemption under the DPA, you should have notified the Information Commissioner under clause 17 of that Act and your failure to do so amounted to a criminal offence under section 21(1).

I await hearing from you.

Yours faithfully

Donald Beaton
University Secretary

For the Attention of Mr [REDACTED]
[REDACTED] Solicitors

25th January 2007

Your reference: 7.DWT.MB.[REDACTED]117425.2

Dear Mr [REDACTED]

Mr [REDACTED] and Kingston University

I write with reference to your letter dated 16 January 2007.

At the outset, I must express my surprise and displeasure at reading the content of your letter informing me that Mrs [REDACTED], for whom you acted in relation to her own dispute with the University, made a clandestine recording of her husband's grievance appeal hearing on 15 November 2006 before University Governors. I note your assertion that neither you nor Mr [REDACTED] were aware of this. Clearly, should the issue of this clandestine recording come to be deliberated at any Employment Tribunal hearing you may both be called upon to give evidence, on oath, on this subject.

Whether or not you were aware of the recording at the time, the content of your letter makes clear that you are both now complicit in that unlawful action by attempting to use evidence which has been unlawfully obtained to seek to improve Mr [REDACTED] position.

I note, with some interest, the fact that two months have passed since the grievance appeal hearing and would ask you to confirm, if you were not aware of the recording at time, when both you and Mr [REDACTED] became aware of the existence of the tape recording. I find the fact that Mrs [REDACTED] elected to do this particularly shocking as she also brought a grievance which went through each stage of the University's grievance procedure, including an appeal to the Governors, and was herself fully aware of the private nature of those hearings and the fact that notes are taken of them and detailed findings provided.

I have also consulted our advisers in relation to this issue. I have been advised that in recording the Governor's appeal hearing, including private deliberations, the Governors' right to privacy under Article 8 Human Rights Act 1998 has been breached and on that basis, together with public policy considerations, the fact that the appeal panel gave full reasons (with findings) and that full notes were taken of the hearing, means that the evidence which has been unlawfully obtained is most unlikely to be ruled as admissible by the Employment Tribunal.

I am further advised that the action of obtaining a recording without consent in these circumstances would amount to unreasonable conduct which may be penalised in costs by the Employment Tribunal. I would take this opportunity to inform you that the University will not hesitate to make a costs application in this regard if it is appropriate to do so.

Further, I am informed that as the recording was made within the confines of the appeal meeting, which will allow those attending the meeting to be identified in the recording it amounts to "*personal data*" for the purposes of the Data Protection Act 1998. I am informed that the "*processing*" of that data, including by reason of the fact that the recording was unauthorised and undisclosed, was unfair to the Governors and staff in attendance at that hearing and as such any processing of that recording is in breach of data protection principles. On that basis, and in accordance with general discovery

obligations, please supply all copies of the recordings in your possession together with any transcripts thereof, by return.

The processing of this personal data is likely to cause the Governors and others present at the meeting substantial "damage or distress" which is unwarranted and for which compensation may be recoverable under Section 13 Data Protection Act 1998. We therefore require you and Mrs [REDACTED] to immediately cease processing such personal data under Section 10 Data Protection Act 1998. I attach a letter addressed to Mrs [REDACTED] c/o your firm as I do not have her current address and am aware that you also acted for her in Employment Tribunal litigation against the University last year. Please forward my letter to her promptly.

We are also informed that Mrs [REDACTED], as a data controller, should have been notified to the Information Commissioner and that her failure to be so notified is a criminal offence under Section 21(1) Data Protection Act 1998.

I will be notifying the individuals in attendance at the appeal hearing of these issues and of their right to access their personal data via a Subject Access Request.

As you are aware, the University has previously allowed Mr [REDACTED] to be represented at internal hearings by both yourself, as his solicitor and his wife. The University was not required to do this but was acting in good faith. The actions which have been taken and the content of your letter mean that the University can no longer admit Mrs [REDACTED] to any internal hearing, including Mr [REDACTED] appeal against his dismissal. Depending on your response to the issues raised in this letter, I am also currently considering whether it is appropriate for you to be permitted to attend that hearing. I am currently minded to recommend that, in future, Mr [REDACTED] will only be permitted to bring either a trade union representative or a colleague in accordance with the statutory requirements.

I await prompt receipt of the recording and transcript.

Yours faithfully

Donald Beaton
University Secretary

UNIVERSITY SECRETARY
Donald Beaton BA, MBA, DMS

KINGSTON
UNIVERSITY

RIVER HOUSE
53-57 High Street
Kingston upon Thames
Surrey KT1 1LQ

February 21, 2007

FAO Mr [REDACTED]
[REDACTED] Solicitors

22 FEB 2007

Telephone 020 8547 2000
Direct line 020 8547 7004
Facsimile 020 8547 7014
Email: D.Beaton@kingston.ac.uk

Your Ref: 7.DWT.MB [REDACTED] 117425.2

Dear Mr [REDACTED]

Mr [REDACTED]

Thank you for your e-mail of 5 February. I refer to your points in turn:

1. The University is somewhat surprised that you have been in a position to take instructions to send the e-mail dated 5 February, and yet have not been in a position to take instructions in relation to the letters of 25 January, particularly as we understand you still to be on the record as acting for Mr [REDACTED] in his Tribunal litigation, and have previously acted for his wife. Please confirm that you are still acting for him and take instructions and revert as a matter of urgency. As you are aware, the University takes the illegal and unauthorised recording of proceedings at the grievance hearing extremely seriously, and reserves its rights in this regard.
2. While the University is aware that your client now wishes to avoid contact with certain of his former colleagues, it is clearly preferable for the appeal hearing to take place in the presence of your client, to allow questions to be put to him, to allow him to respond to any matters raised, and particularly in light of his view that the hearing will be 'biased'. The University therefore proposes that the appeal hearing take place at a neutral venue within reasonable distance of the University to allow the appeal panel Governors to attend. The University believes that this reasonable step should alleviate any stress which might be caused to your client by his coming into contact with his former colleagues or attending University premises which was the concern expressed in previous correspondence.
3. Please find enclosed a copy of the Minutes of the Hearing.
4. With regard to your client's inability to access documents which are at present in the UK, this is with respect a logistical problem for your client. Presumably if your firm cannot be of assistance in this matter, Mr [REDACTED] has some contacts within the UK and ought to be able to arrange for the relevant papers to be located and forwarded to you or him in some way.
5. Given your statement that your client is unable to take part in a paper hearing until he has access to certain documents/is able to return to the UK, what do you suggest as a way forward in this matter? Presumably this inability to access documents/return also renders him unable to take part in the Employment Tribunal process?

February 21, 2007

6. The University's internal appeal procedure should be followed for your client's benefit. It is unfortunate that before the hearing has even taken place (whether on paper or otherwise), your client 'reserves his right.... that any subsequent appeal decision against him is biased'. The University would hope that Mr [REDACTED] approaches the hearing with the correct view that it is an entirely independent hearing by impartial governors.
7. The University is at somewhat of a loss to understand how your client can possibly be in a position to 'present evidence [emphasis added] that the appeal panel had a "closed mind" ' when that appeal hearing has yet to take place. Please respond. If your client has any specific concerns about the independent and impartial nature of the appeal panel then the University would prefer to address them before the hearing, so that your client can approach the appeal with an open mind.

The University has previously requested a transcript and copy of the recording made by Mrs [REDACTED]. There can be no reason not to immediately supply the same. Should both not be provided to the University by close of business on Wednesday 28 February, the University will have no option but to make an application to the Tribunal for specific disclosure of the same, to be dealt with at the pre-Hearing review listed for 8 March, and to seek the costs of so doing from your client.

The University is confident that an Order for Disclosure will be granted by the Tribunal and would take this opportunity to draw your attention to the recent decision of the EAT in Essombe v Nandos Chickenland Limited in which a claim was struck out when a Claimant failed to disclose a recording he had made of a disciplinary hearing. Further, the University reserves its right to draw the Tribunal's attention to this unreasonable conduct at the PHR, or later, and to make an application for strike out in accordance with Rule 18 (7) (c) Sch 1 Employment Tribunals (Constitution & Rules etc) Regs 2004, together with its costs.

The University further puts your client on notice that in light of the approach being taken to the appeal hearing by your client, it is currently considering requesting that the Tribunal only list the substantive hearing after the internal grievance procedure has been completed.

I await hearing from you in relation to the above as soon as you are able to take instructions.

Yours Sincerely



Donald Beaton
University Secretary

Mrs [REDACTED]
C/o [REDACTED] Solicitors

And by E-mail: [REDACTED]

6th March 2007

Dear Mrs [REDACTED]

I write with reference to my letter addressed to you care of [REDACTED] Solicitors dated 25 January 2007 in which you were asked, amongst other things, to cease processing the personal data you obtained by unlawfully recording all parts of your husband's grievance appeal hearing on 15 November 2006. You were specifically referred to the requirements of Section 10 Data Protection Act 1998 ("DPA").

Despite the notice sent to you on 25 January 2007 and subsequent correspondence with Messrs [REDACTED] in relation to the matter of the unlawful recording, you have failed to respond to us, as required by Section 10 DPA stating whether you intend to comply with that notice or giving reasons why not. You were required to do so within 21 days of receiving our notice. Further, neither you nor Messrs [REDACTED] have responded to our requests to deliver up the tape recording, any copies and the transcript.

In view of the potential implications for you of breaching the requirements of the DPA, as referred to in our letter of 25 January 2007, please now respond immediately by confirming that you have ceased processing the personal data and supply us with the recording, any copies and transcripts.

If we fail to hear from you, the University reserves its rights to make an application to the Court under Section 10(4) DPA 1998.

I await hearing from you.

Yours faithfully

Donald Beaton
University Secretary

Mr [REDACTED]
[REDACTED] Solicitors

For the Attention of Mr [REDACTED]

Also by Email

6th March 2007

Dear Mr [REDACTED]

Mr [REDACTED] and Kingston University

Your reference: 7.DWT.MB [REDACTED] 117425.2

I write with reference to the above matter and specifically the matter of the clandestine recording taken by Mrs [REDACTED] of Mr [REDACTED] grievance appeal hearing on 15 November 2006 before University Governors.

You will be aware that the University has written to you twice in relation to this matter, to which you have singularly failed to respond.

I enclose a letter addressed to Mrs [REDACTED] which I would ask that you forward to her promptly and confirm that you have done so.

I once again repeat my request that you take immediate steps to deliver up the tape, any copies and a transcript. The University intends to make an application for specific discovery at the Pre-Hearing Review/Case Management Discussion on 8 March 2007 at the Employment Tribunal and also reserves its position in relation to taking action under Sections 10 and 13 Data Protection Act 1998.

I await hearing from you.

Yours sincerely

Donald Beaton
University Secretary

Note: see above date, 06.03.07 for evidence of sending of this fax from the office of *Vice-Chancellor, Peter Scott*

obligations, please supply all copies of the recordings in your possession together with any transcripts thereof, by return.

The processing of this personal data is likely to cause the Governors and others present at the meeting substantial "damage or distress" which is unwarranted and for which compensation may be recoverable under Section 13 Data Protection Act 1998. We therefore require you and Mrs Fredrics to immediately cease processing such personal data under Section 10 Data Protection Act 1998. I attach a letter addressed to Mrs Fredrics c/o your firm as I do not have her current address and am aware that you also acted for her in Employment Tribunal litigation against the University last year. Please forward my letter to her promptly.

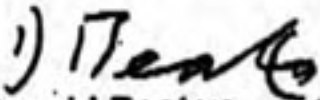
We are also informed that Mrs Fredrics, as a data controller, should have been notified to the Information Commissioner and that her failure to be so notified is a criminal offence under Section 21(1) Data Protection Act 1998.

I will be notifying the individuals in attendance at the appeal hearing of these issues and of their right to access their personal data via a Subject Access Request.

As you are aware, the University has previously allowed Mr Fredrics to be represented at internal hearings by both yourself, as his solicitor and his wife. The University was not required to do this but was acting in good faith. The actions which have been taken and the content of your letter mean that the University can no longer admit Mrs Fredrics to any internal hearing, including Mr Fredrics' appeal against his dismissal. Depending on your response to the issues raised in this letter, I am also currently considering whether it is appropriate for you to be permitted to attend that hearing. I am currently minded to recommend that, in future, Mr Fredrics will only be permitted to bring either a trade union representative or a colleague in accordance with the statutory requirements.

I await prompt receipt of the recording and transcript.

Yours faithfully


Donald Beaton
University Secretary