

By email only

1 April 2021

Dear [REDACTED]

RITM306673: Internal review of RITM0260877 - Agreements on the Confucius Institute

I refer to your email of 28th July 2020, wherein you requested a review of the University's response to an FOI request made on the 29th January 2020. A copy of the original request and the University's response are set out in appendices to this letter.

In your request for a review of the University's decision you stated that you thought it was important that an organisation discloses how it receives and spends public money from China and the UK and "it is unacceptable that especially that part of the agreement has been blacked out".

My review has considered whether the University correctly answered your freedom of information request under the Freedom of Information Act 2000 ("the Act"), as well as your above concern.

The University's first obligation under the section 1(a) of the Act, is to advise you whether the University does hold the information specified in your request. Following this review, I conclude that the University correctly stated it held the information.

The University provided the requested Agreements with the exception of five redactions; one of which was applied on page 11 (cited as page 9 in our original response) of Agreement B, as it was considered exempt from disclosure by virtue of [Section 43](#)(2) of the Act, entitled Commercial Interests.

Your request for a review specifically relates to this redaction and so I have particularly considered this in my review.

Our refusal notice did comply with section 17(1)(b), which provides that the University should state the exemption used in the refusal notice. The University stated that some of the information contained within the Agreements was exempt (and so redacted) by virtue of section 42(3) and 40(2) of the Act.

Upon further consultation with our Confucius Institute, the University concludes that to disclose the information redacted (the "start-up fund" amount), would undermine the University's capacity to effectively negotiate contractual agreements of this nature going forward. Indeed, the contractual obligations imposed by Agreement B are still current, and open at present to negotiation.

The four other redactions in both Agreements were cited as exempt from disclosure by virtue of [Section 40\(2\)](#) of the Act; these exemptions are upheld as these are the names of the signatories and are considered to be personal information.

I conclude that following this internal review the University did meet its Section 1 obligations under the Act, and your request for a review has not been upheld.

If you are not content with the outcome of this internal review, you have the right to apply directly to the Information Commissioner for a review of whether the University has met the requirements of the FOIA. The Information Commissioner can be contacted at:

Information Commissioner's Office,
Wycliffe House, Water Lane,
Wilmslow, Cheshire
SK9 5AF

Yours sincerely

foi

Appendix A

Original email from requester:

- Email received 29-01-2020 14:21:01
 - Email received
 - Subject: Freedom of Information request - Agreements on the Confucius Institute
 - From: request-639834-772fff8a@whatdotheyknow.com
 - To: foi@soton.ac.uk

Description:

Dear University of Southampton,

Under the Freedom of Information Act 2000, I request the following:

- Agreements and supplementary agreements with the Office of Chinese Language Council International (Hanban) and the Xiamen University on the establishment / continuation of the Confucius Institute at the University of Southampton

Yours faithfully,

[Redacted signature]

Original response from University:

By email only to request-639834-772fff8a@whatdotheyknow.com

22 July 2020

Dear [REDACTED],

Freedom of Information Act 2000

Request for information: response

Date of request: 29 January 2020

Due date: 26 February 2020

Ref: RITM0260877

We refer to your request for information under the Freedom of Information Act 2000 ("the Act").

Please accept our apologies for the delay in responding to your request.

Below is your question with the University's corresponding response.

Question:

Under the Freedom of Information Act 2000, I request the following: -

Agreements and supplementary agreements with the Office of Chinese Language Council International (Hanban) and the Xiamen University on the establishment / continuation of the Confucius Institute at the University of Southampton

Answer:

In accordance with [section 1\(a\)](#) of the Act we confirm that the University that the University holds information of the description specified in your request.

Please find the requested Agreements at **Annex 1**.

Annex 1 contains the following Agreements:

- Agreement A: Xiamen University Implementation
- Agreement B: Confucius Institute China & UoS Agreement

Please note redactions have been applied on page 4 of Agreement A, and page 9 of Agreement B, as this information is exempt from disclosure by virtue of [Section 40\(2\)](#) of the Act. The information requested constitutes an individual's personal data under [the Data Protection Act 2018](#).

[Section 40\(2\)](#) confers an absolute exemption.

Please note a redaction has been applied on page 4 of Agreement B, as this information is exempt from disclosure by virtue of [Section 43\(2\)](#) of the Act, entitled Commercial Interests.

As Section 43(2) is a qualified exemption, the University has considered the [public interest test](#):

Factors favouring disclosure

- Openness and Transparency: It is in the public interest that the University, as public authorities, is as open and transparent as possible in the way that we operate and the way in which we make decisions are made, and how the University spends public money.

Factors favouring non-disclosure

- Commercial Strategy: it is not in the public interest to disclose information that would undermine the University's capacity to effectively negotiate contractual agreements. It is important that contractual negotiations allow the University to secure its future sustainability and releasing current terms of contract would undermine the University's negotiating position by giving insight into its commercial strategy.

- Efficiency and effectiveness: It is not in the public interest to disclose information that would reduce the efficiency and effectiveness of the University by eroding its ability to negotiate with companies individually. The information requested contains data, which would give in light into a University activity that would be likely to prejudice the commercial interests of the University and other companies. To disclose the contract particulars into the public domain would be likely to affect its future commercial negotiating position. The University needs to maintain excellent working relationships with collaborators while successfully negotiating new contracts, enabling us to have competitive prospects in the higher education sector.

Given the above considerations, the University concludes that it is in the greater public interest not to disclose the information at this time.

If you do not feel that we have dealt with your request in accordance with the requirements of [Part I](#) of the Act, you may request a review. Your request for a review should specify in what respect you consider that the requirements of [Part I](#) have not been met. Please address your request to the Chief Operating Officer at the following address: foi@soton.ac.uk.

In accordance with section 5.3 of the [Code of Practice](#), a request for a review must sent within 40 working days of the date of this email. The University is not obliged to accept any requests for a review beyond 40 working days.

We will endeavour to respond to your request for a review within 20 working days of receipt.

The Information Commissioner is responsible for enforcing rights of access to information and the operation of the publication scheme. You may apply to the Information Commissioner in writing (FOI/EIR Complaints Resolution, Information Commissioner's Office, Wycliffe House, Water Lane, Wilmslow, Cheshire SK9 5AF) or [electronically](#) for a decision whether, in any specified respect, your request for information has been dealt with by the University in accordance with the requirements of [Part 1](#) of the Act. The Information Commissioner will not normally take action unless they are satisfied that the University's review procedure has been exhausted.

Yours sincerely,

foi

Freedom of Information Office

email: foi@soton.ac.uk

Ref:MSG9426197

ANNEX 1

FREEDOM OF INFORMATION ACT 2000
REF: REQUESTS FOR INFORMATION
INFORMATION PROVIDED BY THE UNIVERSITY OF SOUTHAMPTON
https://www.whattheyknow.com/body/university_of_southampton



Implementation Agreement to Cooperate in the Establishment of A Confucius Institute at the University of Southampton, United Kingdom

Party A: Xiamen University, the People's Republic of China

Party B: University of Southampton, United Kingdom

In order to enhance educational cooperation between China and the United Kingdom, to develop Chinese language ability in the United Kingdom, and to promote mutual understanding and friendship between people of the two countries, the two parties decide to jointly establish a Confucius Institute at the University of Southampton in Southampton, England, which has been authorized and approved by Han Ban, PRC. They have achieved the under-mentioned agreement after friendly consultation on a principle of equality and mutual benefit and on the basis of <Constitution and By-Laws of the Confucius Institutes> and agreement of the University of Southampton Confucius Institute signed between the University of Southampton and Han Ban.

I. Purposes and Forms of Cooperation

In order to train students in Chinese language and Chinese culture to help meet the requirements of United Kingdom society, to take full advantage of the existing and potential resources of both parties and to promote the development of education in Chinese language and Chinese culture in the United Kingdom, both parties shall cooperate in following aspects:

- A. Teaching Chinese language and Chinese culture to university students as well as the public.
- B. Providing Chinese language and culture training for the public, professional training for teachers of Chinese as a Foreign Language and administering examinations to certify teachers.
- C. Sponsoring exhibitions, meetings, publications, performances or competitions for the purpose of promoting the usage of Chinese language and promotion of Chinese culture.
- D. Conducting research on China and promoting scholarly exchanges between the United Kingdom and China.
- E. Organizing HSK tests and developing Chinese language examinations that meet local market needs.

F. Providing consulting services to those who are interested in studying in China.

II. Rights and Obligations of the Two Parties

1) Rights and Obligations of Party A

- A. Select representatives from Party A to be members of the Confucius Institute Board of University of Southampton and participate in the management of the Institute to ensure the implementation of the Confucius Institute constitution.
- B. Obtain the approval from the Chinese education administrative authority needed for certain cooperative projects.
- C. Select the administrative and teaching staff from Party A according to the requirements of the Confucius Institute headquarters and the work of Confucius Institute as well as applying to Han Ban for the salary and other relative costs of those who are selected.
- D. Offer consulting services to students sent by Party B to study at Xiamen University, as well as organize relevant teaching activities.

2) Rights and Obligations of Party B

- A. Select representatives from Party B to be members of the Confucius Institute Board of University of Southampton, participate in the management of the Institute and ensure the enforcement of <Constitution and By-Laws of the Confucius Institutes>.
- B. Obtain approval, where required, from relevant educational authorities in the United Kingdom.
- C. Provide classrooms, office rooms, basic teaching facilities and other infrastructure for the Institute.
- D. Select staff from Party B to participate in the management of the institute and cover their salary and other relative costs.

III. Methods of Management

The Directors of the University of Southampton Confucius Institute report to the leadership of the Institute Board. The Board consists of 7 representatives from the two parties, 3 of which are from Party A and 4 from Party B. The Institute Board consists of one chairman, vice-chairmen and members. Chairman and vice-chairmen are elected by the Board. The University of Southampton Confucius Institute has two directors (one from Party A, one from Party B) and several deputy directors. Directors of the Institute are nominated and appointed by the Institute Board while the deputy directors are nominated by the Directors of the Institute and appointed by the Institute Board. The number and proportion of vice-chairmen and deputy directors should be enough to represent both parties.

Both parties are committed to following the principle of high quality, regulated management and law-abiding operations and to truly safeguarding the honor and the standard of quality of higher education of both China and the United Kingdom.

IV. Financial Arrangements

Both parties shall bear the costs of applying for the approval of this project in their respective countries.

Both parties shall apply together to the Confucius Institute headquarters for funds as investment of Chinese side to cover the establishment and annual running costs of the Confucius Institute, University of Southampton; Party B also have to raise money to bear to costs according to the stipulated proportion(1:1).

The annual budget revenue (tuition fees and income from sponsor companies) shall be used to expand the Institute, raise teaching and research levels, and maintain the regular operation of the Institute.

The Institute shall produce an annual budget and final accounting report. The annual budget and final accounting should be verified by the Institute Board and approved by Han Ban and University of Southampton. Outlays of the money borne by the Chinese side should be managed according to Method of Financial Management of Chinese Side of Confucius Institutes issued by Confucius Institute headquarters.

V. Other matters

The Agreement shall be effective on the date when the two parties sign below. The Agreement shall have a period of validity of 5 years. If, during the 90 days before the end of the Agreement, neither party notifies the other in writing that it wishes to terminate the Agreement, then it will automatically be extended for another 5 years. If the Agreement between the University of Southampton and Han Ban is terminated, then this agreement will terminate automatically.

This Agreement is written in Chinese and in English. Each party shall keep one copy in Chinese and one copy in English of the signed Agreement. The Agreement, in both languages, shall have the same effect.

In the events of any dispute, the two parties should in the first instance try to resolve it between the parties concerned, failing which it shall be referred to the signatories of this agreement or their successors who will seek to resolve it through negotiations in good faith.

Other matters not settled by this Agreement shall be solved through friendly, cooperative negotiations between the two parties.

Party A: Xiamen University, the People's Republic of China

Party B: University of Southampton, United Kingdom

Signature of the legal representative
or authorized agent



Date: 14/06/2011

Signature of the legal representative
or authorized agent



Date: 25 May 2011

AGREEMENT BETWEEN
CONFUCIUS INSTITUTE HEADQUARTERS OF CHINA
AND
UNIVERSITY OF SOUTHAMPTON, UNITED KINGDOM
ON THE ESTABLISHMENT OF
CONFUCIUS INSTITUTE AT UNIVERSITY OF SOUTHAMPTON

In order to strengthen educational cooperation between China and the United Kingdom, support and promote the development of Chinese language education, and increase mutual understanding among people in China and in the United Kingdom, according to the *Constitution and By-laws of Confucius Institutes*, the Confucius Institute Headquarters of China ("the Headquarters") and University of Southampton of the United Kingdom, for the establishment of Confucius Institute at University of Southampton (the Institute), hereby agree as follows:

Article 1 Purpose

The purpose of this agreement is to identify the rights and responsibilities of the Headquarters and University of Southampton in the establishment and management of the Institute.

Article 2 Character

The Institute shall be a non-profit educational institution.

Article 3 Executive Institution

University of Southampton is desirous of collaborating with Xiamen University. The Headquarters will authorize and appoint Xiamen University to develop the Confucius Institute with University of Southampton. The Institute will be established and will operate within University of Southampton and University of Southampton and Xiamen University will sign a supplementary agreement on detailed matters of the cooperation. The supplementary agreement should be reviewed by the Headquarters before signing.

The Institute must be launched within one year after this agreement is signed.

Article 4 Scope of Activities

The Institute may undertake serve the following activities according to the Constitution and By-laws, and local circumstances:

1. Teaching Chinese language and providing Chinese language teaching resources;
2. Training Chinese language instructors;
3. Holding the HSK examination (Chinese Proficiency Test) and tests for the Certification of the Chinese Language Teachers;
4. Providing information and consultative services concerning China's education, culture, and so forth;
5. Conducting language and cultural exchange activities;
6. Promoting Chinese language and contemporary China studies in local

schools, including support for and professional development training of Chinese language teachers, curriculum development and implementation, and supporting links to, and the activities of the local Chinese cultural community.

7. Facilitating research and development of academic programmes and other academic collaboration and exchanges with relevant departments at Xiamen University which support the key objectives of the Institute.

8. Other activities with authorization and by appointment of the Headquarters.

Article 5 Organization

1. The Institute at University of Southampton shall adopt a Director Responsibility System under the leadership of the Board of Directors.

2. The Board of Directors will be formed with an equal number of members nominated from the University of Southampton and Xiamen University, and its duties include: formulating and amending the Constitution of the Institute; formulating development plans for the Institute; decision-making on the significant issues including teaching, research and management; fund raising; appointing and dismissing the director of the Institute; examining and approving the budget proposal and final financial accounts of the Institute; reporting to the two parties on the management status and significant issues.

3. University of Southampton shall appoint one director as the Director of the Institute and Xiamen University shall appoint one director as the Deputy Director of the Institute. The day to day operation of the Institute will be the responsibility of the Director and Deputy Director following

procedures established by the University of Southampton and in accordance with the Constitution and By-Laws of the Confucius Institute.

4. If the Headquarters wishes to make representations in relation to the teaching quality, it shall do so through the Board of Directors who shall review and give such representations serious consideration.

5. The Institute activities must be in accordance with the Constitution and By-laws, and also respect cultural custom, shall not contravene any laws and regulations, both in the United Kingdom and China

6. The Institute will draw up annual budget proposals and final financial accounts, which will form part of the consolidated accounts of the University of Southampton but will be prepared so that the finances of the Institute can be viewed separately and transparently. University of Southampton will be in charge of its management and operation. It should finally assume the sole responsibility for its profits or losses by charging language course fees and other programs.

Article 6 Obligations

The obligations of the Headquarters:

1. To authorize the use of the title "Confucius Institute", logos and institute emblems.
2. To provide teaching materials, coursewares and other books according to requirements, to authorize the use of online courses. To provide 3,000 volumes of Chinese books, teaching materials, and audio-visual materials at commencement.
3. To provide [REDACTED] start-up fund, and provide a set amount of annual funding according to needs.

4. To send numbers of Chinese instructors based on the requirements of teaching, and pay for their air fares and salaries.

The obligations of University of Southampton

1. To provide a fixed office place and appropriate sites for teaching and other activities of the Confucius Institute; equipped with office and teaching facilities, and shall take responsibility for the setting up, management and maintenance of the Institute in the University of Southampton.

2. To provide necessary administrative personnel (full time or part-time) and provide the related payment; to provide necessary working facilities and resources for the Chinese instructors.

3. To assist the Chinese staff with the visa application and residence permits.

4. To provide accounts to the Headquarters in respect of all sums received from the Headquarters, which show the operation of the finances of the Institute.

5. To provide a set amount of annual funding, which should not be less than the amount provided by the Headquarters, which funding may be accounted for by meeting the obligations in this agreement.

Article 7 Intellectual Property

1. The Headquarters exclusively owns the title of "The Confucius Institute", its related logo, and emblem as its exclusive intellectual property. The Headquarters grants the University of Southampton non-exclusive licence to use its intellectual property for the Term of this

agreement. University of Southampton agrees that it cannot continue applying or transfer the title, logo, and emblem in any form, either directly or indirectly, after this agreement has been terminated.

2. The Headquarters grants the Institute non-exclusive use of its copyrighted teaching materials and courseware.

3. In relation to these materials the University of Southampton will:

- a. respect the copyright of the aforementioned materials;
- b. promptly notify the Headquarters in writing of any unauthorized use of the title, logo, emblem or any other copyrighted materials of the Institute;
- c. not transfer to a third party any of the aforementioned copyrighted materials without written permission from the Headquarters;
- d. not use or transfer any of the aforementioned copyrighted materials of the Institute should this agreement expire or be terminated as per Articles 11 below;
- e. return copyrighted materials originating from the Headquarters to the Headquarters or its designated party upon the termination of this agreement. Furthermore, the Headquarters will reimburse the University of Southampton for any such copyrighted materials it may have purchased.

Article 8 Revision

With the consent of both parties, this Agreement may be varied during its implementation and any variations will be made in writing, both in

English and Chinese, and will take effect when signed by authorized representatives of the parties.

Article 9 Term

The Agreement shall be come into effect on the date when the two parties sign below. The Agreement shall have a period of 5-year validity from the date of signing. Either party, if it wishes to terminate the Agreement must notify the other in writing during the 90 days before the end of the Agreement, otherwise it will automatically be extended for another 5 years.

Article 10 Force Majeure

Parties hereto will be released from their obligations under this agreement in the event of a national emergency, war, prohibitive government regulation or any other cause beyond the control of the parties hereto that renders the performance of this agreement impossible. In the event of such circumstance, the party under the situation shall inform the other party in writing that the program may be delayed or terminated, and duly take the effective measures to mitigate the loss of the other party.

Article 11 Termination

This agreement shall be terminated in any of the following cases:

1. Either Party may terminate this agreement:

1.1. if any other Party shall be in material breach of any of its obligations under this Agreement which it does not remedy within one month of written notice of such breach; or

1.2 if any other Party enters into an arrangement with its creditors, has an administrator or receiver appointed, is unable to pay its debts as they fall due, is wound up or goes into liquidation or ceases to exist; or

1.3 forthwith if the Parties mutually agree that the Agreement is no longer beneficial; or

1.4 for any other reason on 6 months notice such notice to be given in writing in advance of the commencement of the academic year in respect of which it is to become effective..

2. In the event that the agreement is terminated other than under 1.1.1 and 1.1.2:

2.1 Both Parties will immediately inform all students participating in the programme that this agreement has been terminated and explain the consequences for the students.

2.2 Both Parties will use reasonable endeavours to ensure that students at that time participating in the programme will be allowed to complete their programme.

3. The termination of the agreement shall not affect other agreements, contracts and programmes already entered into between the two parties.

Article 12 Dispute Settlement

In the events of any dispute, the two parties should in the first instance try to resolve it between the staff concerned, failing which it shall be referred to the signatories of this Agreement or their successors who will seek to resolve the dispute in good faith.

Article 13 Agreement Language

This Agreement is written in Chinese and in English. Each party shall keep one copy in Chinese and one copy in English of the signed Agreement. The Agreement, in both languages, shall have the same effectiveness.

Article 14 Other Terms

Other matters not settled by this Agreement shall be solved through friendly, cooperative good faith negotiations between the two parties.

Confucius Institute



Date: 2011.5.25

University of Southampton



Date: 25. May 2011