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19th March 2019

Ms Éilis Fallon,
Committee Secretariat,
Committee of Public Accounts,
Leinster House,
Dublin, 2.

Ref PAC32-I-1352 (and previous correspondence Ref PAC32-I-1295)

Information sought by the Committee of Public Accounts (PAC) arising out of discussions at PAC meetings on January 24th and February 28th 2019

Dear Ms Fallon,

I write in response to your letter dated 5th March 2019 (PAC32-I-1352), which requests the following information:

1. A copy of emails exchanged between the then Vice-President and researcher in relation to the Memorandum sent by the Research Office of Waterford Institute of Technology in January 2010 (mentioned at paragraph 3.25 of the *Comptroller and Auditor General Special Report 104*);
2. A copy of the Memorandum sent by the Research Office of Waterford Institute of Technology in January 2010 (please provide a redacted version of the Memorandum if necessary); and
3. An information note in relation to the Institute's concerns regarding the published list of FeedHenry shareholders.

These information requests will be responded to in detail in this letter, but firstly the Institute wishes to comment on statements that were put on the public record at the PAC meeting of February 28th and requests that the record be corrected as follows:

1. It was stated: "If it is the case that with every item of information being sought, there is a legal impediment or legal advice is offered as to why we cannot get it, somebody with the authority to look at all of these memorandums and documents is necessary if the committee cannot get them".

The Institute's position is that the Comptroller and Auditor General (C&AG) has been provided with complete access to all of the referenced documentation, including the memo, and it engaged fully with the staff involved in the process at the time. This has resulted in a comprehensive independent report by the C&AG (*Special Report 104 - Development and Disposal of Intellectual Property in FeedHenry*).

2. It was also stated: "... somebody in the research office had written to Professor Donnelly, who was the vice president, raising concerns about the process and asking that the memorandum be circulated higher up. However, this was never done".

The Institute's position is that this last statement is factually incorrect. As the C&AG special report clearly highlights in sections 3.27 to 3.29, the issues raised in the memo were raised with the senior executive responsible for legal, financial and governance issues.

The author of the Memo asked that it should be forwarded to a number of people including a number of shareholders of a private commercial company as well as the appropriate senior executive responsible for addressing legal, financial and governance issues at the Institute. It is standard practice that if the Institute wishes to raise concerns with a third-party organisation that the communication includes documentary evidence supporting the concerns. Therefore, it was most appropriate that the VP of Research requested that such information should be provided in advance of the memo being sent or the issues being raised with either a third-party or a senior executive of the Institute. That would remain the position if such a situation was to arise today. Following his investigation through the series of meetings outlined in the C&AG report the senior executive was satisfied that the issues raised did not require further action.

It is our understanding that the senior executive took the opportunity to review the draft C&AG report and in response informed the C&AG that he fully reviewed the concerns raised and addressed any outstanding issues. Similar feedback was independently provided by a second member of staff to the C&AG which concurs with the comments provided by the senior executive.

3. It was further stated: "There has been an ongoing issue with transparency in dealing with this matter. That is one of the reasons the committee has looked into the process involved in the establishment of the companies".

The Institute would like to place on the record that it has cooperated fully with the HEA and the C&AG on their reviews. It has provided both organisations with access to all documents on record within the Institute irrespective of the contents of those documents. It has provided complete access to all members of staff and has responded to all queries in a professional and timely manner. The Institute, and members of the Institute, always acted in an open, professional and transparent way. There is no evidence of any lack of transparency in dealing with these matters and no such view was ever communicated to the Institute by any member of either investigating team.

With regard to the requests for information contained in your letter dated 5th March 2019 (PAC32-I-1352) these are addressed below:

Information Request 1:

With regard to the request for emails, any such documentation has already been provided with our letter dated 20th February 2019. We have no further emails to provide.

Information Request 2:

With regard to the "Memo", as outlined in our letter dated 20th February 2019, we reiterate that the Institute has received legal challenges to the release of the Memo. Subsequent to our previous letter, a third person, who is a current WIT employee, also challenged the release of the Memo on the same basis and also on the basis that the Institute has a duty of care to them. As the Institute

is duty-bound to protect itself against legal and financial exposure, and as it is of the opinion that providing even a redacted copy of the Memo would not provide such protection, we must respectfully decline to provide a copy of said Memo.

In addition, with reference to our previous comments regarding correcting the record of the PAC meeting held on the 28th of February, the Institute is also concerned about the more general point of the selection of individual documents out of context and without reference to the environment and actions taken before and after the creation of such correspondence. The C&AG Special Report 104 resulted from an independent, in-depth review of all aspects of the FeedHenry research, innovation and spinout process in the context of the evolving national and Institute IP management environment. This report is comprehensive and places all actions in context. The Institute has fully implemented the recommendations contained in this report.


Information Request 3:

With regard to FeedHenry shareholders, the Institute comprehensively addressed this point in our letter dated the 20th February 2019. In summary, the Institute was requested to provide information to the PAC on FeedHenry Limited shareholding / beneficial interests in 2017 and provided such information in a letter to the PAC dated 26th April 2017 by creating a shareholding / beneficiaries table for FeedHenry Limited from 2011 to 2014 based on CRO filings. The PAC published the letter dated 26th April 2017 at the following URL:

https://data.oireachtas.ie/ie/oireachtas/committee/dail/32/committee_of_public_accounts/submissions/2017/2017-05-04_correspondence-waterford-institute-of-technology-wit_en.pdf

Subsequently the Institute realised, through its engagement with the C&AG, that this table is not complete and, therefore, not fully accurate. The reasons for this are outlined in our letter of the 20th February 2019 and in summary they are: that it is currently impossible for WIT to create a full and accurate shareholding / beneficiaries table for FeedHenry Limited or any private company based solely on CRO data. The only organisation that can do this is the company FeedHenry Limited, the company's legal counsel or the acquiring company Red Hat Inc. This is not specific to FeedHenry Limited: it is the same for any private company that WIT or any other university, institute of technology or public body takes a shareholding in. Since 2016 Irish companies are required by law to hold a beneficial interest register and the Department of Finance is in the process of drafting legislation to create a beneficial interest database. In the future, once it is operational, such a database may be used by the PAC to obtain complete and accurate beneficial interests in companies. However, in the meantime it is only possible for the PAC to get accurate beneficial interest data on FeedHenry Limited by requesting this information directly from Red Hat Inc. Thus, WIT requests that the information previously supplied by us and subsequently published on the PAC website be removed from the official record as since then we have become aware that it is not complete or accurate.

Yours sincerely,


Professor Willie Donnelly
President