

FORM I

FDN

IN THE DISTRICT COURT OF SOUTH AUSTRALIA
ADMINISTRATIVE AND DISCIPLINARY DIVISION

IN THE MATTER OF AN APPEAL UNDER SECTION
OF THE ACT

15-1141 - -

Action No. : DCCIV -

BETWEEN:

TOM LONSDALE

Appellant(s)

-and-

UNIVERSITY of ADAMDS

Respondent

NOTICE OF APPEAL

Filed by Appellant(s),

TOM LONSDALE

[Name(s)]

Address:

PO Box 6096

WINDSOR D.C. Postcode 2756

Telephone:

02 4577 7061

Mobile:

0437 29 2800

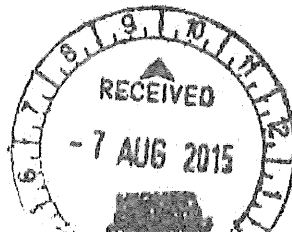
Facsimile:

02 4577 7019

Email:

tom@tawmeatybones.com

Date and time of filing :



TO THE RESPONDENT(s): ADAMSDS UNIVERSITY
 (office of Vice-Chancellor) [name]
 of SOUTH AUSTRALIA 5005
 [address]

The Appellant TOM HONSDALE [name] APPEALS to a Judge of the Administrative and Disciplinary Division in the District Court of South Australia against the order(s) of the Tribunal/Agency/ other decision maker OMBUDSMAN SA dated 10/7/15 [day][month][year]

PARTICULARS OF JUDGMENT

Date of judgment/order/decision: 10/7/15
 Tribunal/Agency appealed from: ADAMSDS UNIVERSITY
 Reference /File No. of the Tribunal/Agency appealed against

APPEALS OF RIGHT/BY PERMISSION

Permission to appeal not required.



1. ORDERS COMPLAINED OF [Set out a short description of the relevant judgment/order made by the Tribunal]
THE UNIVERSITY SAID PARTY FOUND
IN DEBT BY WAY OF DOCUMENTATION
IN RESPONSE TO FOI APPLICATION
ON DOCUMENTS THAT SAID WTS CONFIDENTIAL
OMBUDSMAN SA UPHOLD DECISION OF
UNIVERSITY

2. ORDERS SOUGHT [Please specify the orders you require from the court in successively numbered paragraphs]
IMPOSE REQUIREMENTS TO RE-VISIT 29/9/14 FOI
INQUIRY:
SUPPLY DETAILS OF RESEARCH FUNDS, SPENDING (HRS
ARRANGEMENTS AND CONTRACTS BETWEEN PFT-1000
CONTRACTS AND THE UNIVERSITY OF ADAMSDS,
ITS STAFF AND STUDENTS, WHERE POSSIBLE NAME
IN CONTRACTS:

(a) CAPITAL CONTRIBUTIONS FOR BUILDINGS, LABS, LIBRARY ETC
(b) CURRENT ACCOUNT RESEARCH SALARIES MATERIALS ETC

3. GROUNDS OF APPEAL: [Please provide reasons as to why you are appealing in successively numbered paragraphs]

1 THE FAUCITY of INFORMATION PROVIDED IS IN STARK CONTRAST WITH THE 500 DOCUMENTS PROVIDED BY MURDOCH UNIVERSITY

2 THE ONE DOCUMENT ATTACHED TO MY CONFIDENTIAL IS IN ALL PROBABILITY SIMILAR TO DOCUMENTS ALREADY IN THE PUBLIC DOMAIN

3 I WOULD BE VERY GRATEFUL TO KNOW WHAT DOCUMENT OR DOCUMENTS WITHHELD BRING THE BRIDGES of MYSELF CONDUCT IN DEFECT of VARIOUS ACTS AND STATUTES INCLUDING BUT NOT LIMITED TO?

ANIMAL WELFARE ACT, VIOLENCE AGAINST WOMEN ACT, TRUST IN ADMINISTRATIVE RESOLUTIONS, LAWS of OBLIGATION, DESCRIPTION AND METHOD, BENEFIT of CONTRACT, EDUCATION SERVICES, VOLUNTARIES STUDENTS ACT, TERTIARY EDUCATION, QUALITY AND STANDARDS AGENCY ACT.

4 THE UNIVERSITY of ADZAROF AND ITS JUNK PEST-FOOD PARTNERS SHOULD NOT USE REGULATIONS AND THE COURTS TO OBSCURE AND IMPIDE PUBLIC SCRUINING of THEIR MALFEASANCES



4. PERMISSION TO APPEAL

Permission to appeal not required.

5. EXTENSION OF TIME *[if applicable- provide reasons as to why this appeal is outside the specified time limit]*

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.....
.....
.....
.....
.....

TRANSMISSION OF DOCUMENTS *(if applicable)*

The Registrar of the *tribunal/agency/other decision maker* is requested:

- (a) to advise the Registrar of the District Court of the existence of the appeal and afford that Court access to any electronic file relating to this matter; and
- (b) to forward to the Registrar all hard copy material relevant to the appeal, which is not contained in such electronic file.

[Handwritten Signature]
.....
[appellants signature]

Date: *5/8/15*
.....



Note

The party or parties appealing must serve a copy of the notice of appeal on the Registrar or other proper officer of any other Court/tribunal/agency/other decision maker appealed from and the respondent within 2 business days after filing the notice of appeal, as required by rule 284(1).



THE UNIVERSITY
of ADELAIDE

PROFESSOR WARREN BEBBINGTON
VICE-CHANCELLOR AND PRESIDENT
THE UNIVERSITY OF ADELAIDE
SA 5005
AUSTRALIA
TELEPHONE +61 8 8313 5201
FACSIMILE +61 8 8313 4354
vice-chancellor@adelaide.edu.au
CRICOS Provider Number 00123M

Ref: 2014/10132

19 January 2015

Mr Thomas Lonsdale
PO Box 6096
Windsor Delivery Centre
NSW 2756

Dear Mr Lonsdale

Freedom of Information ("FOI") Internal Review

You have applied for internal review of the determination on your FOI request for documents relating to agreements entered into between the University of Adelaide and pet food companies. Specifically, you have asked for review of the decision to withhold access to certain documents, and you have queried whether the University has disclosed all documents within the scope of your request.

Review of refusal of access to Documents 8 and 9 on Document List

I have reviewed the determination regarding Documents 8 and 9 on the Document List supplied to you. I have determined that copies of these documents are to be released to you, subject to the following:

- Names and email addresses are to be redacted to avoid unreasonable disclosure of personal information (Schedule 1 clause 6 of the FOI Act)
- I uphold the determination to withhold access to the draft agreement attached to the email comprising Document 8. This draft agreement is marked as "confidential" and contains information that is of commercial value to Hill's Pet Food Pty Ltd. I regard this to be an exempt document under Schedule 1 clauses 7(1)(b) and 13(1)(a) of the FOI Act.

Existence of further documents

In processing your initial application, the University's FOI Officer contacted all potentially relevant areas of the University. These included the University's School of Animal and Veterinary Sciences; Animal Laboratory Services; Student Administrative Services; Research Branch and the Office of the Deputy Vice-Chancellor (Research). All areas other than the School of Veterinary and Animal Sciences confirmed that they do not have any documents within the scope of your request.

In undertaking this internal review, I have asked the School of Animal and Veterinary Sciences to undertake a thorough search of their records. Seventeen additional emails within the scope of your request have been produced by a staff member who was on leave at the time of your original request. I enclose copies of these emails (also with the redaction of names, email addresses and other details relating to the personal affairs of individuals).

I have no reason to believe that any other area of the University possesses any records within the scope of your request. If there have been any arrangements entered into between pet food companies and students or student groups, these would be matters between those parties and would not constitute University documents.

If you remain dissatisfied with this determination, you may apply to the South Australian Ombudsman for external review in accordance with s39 of the FOI Act.

Yours faithfully



PROFESSOR WARREN BEBBINGTON
Vice-Chancellor and President

Encl: Document list
Copies of released documents

FO

2014/10132 Internal Review – Document List

Documents under review

Document No	Document Description	Date	Determination
08	[Hills] Email exchange and draft agreement	5 Sept 2014	Release email Draft agreement remains exempt
09	[Hills] Email exchange	12 Sept 2014	Release

Additional documents

10	[Hills] Email exchange	1 Dec 2010	Release
11	[Hills] Email exchange	7 Jan 2011	Release
12	[Hills] Email exchange	10 Feb 2011	Release
13	[Hills] Email exchange	14 Feb 2011	Release
14	[Hills] Email exchange	18 Mar 2011	Release
15	[Hills] Email exchange	17 May 2011	Release
16	[Hills] Email exchange	23 June 2011	Release
17	[Hills] Email exchange	24 Oct 2011	Release
18	[Hills] Email exchange	4 Nov 2011	Release
19	[Hills] Email exchange	22 Nov 2011	Release
20	[Hills] Email exchange	3 Jan 2012	Release
21	[Hills] Email exchange	29 Feb 2012	Partial release One email redacted – personal affairs
22	[Hills] Email exchange	24 May 2012	Release
23	[Hills] Email exchange	30 Jan 2013	Release
24	[Hills] Email exchange	25 Feb 2013	Release
25	[Hills] Email exchange	9 Jul 2013	Release
26	[Hills] Email exchange	19 Aug 2014	Release



OmbudsmanSA

Enquiries: Ms Gaybrielle Cotton
Telephone: (08) 8226 8699
Ombudsman reference: 2015/00792
Agency reference: 2014/10132

Mr Tom Lonsdale
PO Box 6096
WINDSOR DC NSW 2756

Dear Mr Lonsdale

**Application for external review - *Freedom of Information Act 1991*
*Lonsdale and University of Adelaide***

I refer to previous correspondence about your application for an external review of a determination made by the University of Adelaide under the *Freedom of Information Act 1991*.

Please find enclosed a copy of the provisional determination and reasons. I have also provided a copy to the agency.

The views expressed in the provisional determination are tentative only, and are subject to receipt and consideration of submissions from all of the parties. These submissions will be taken into account before finalising the determination in this review.

Please provide your submissions to me in writing by 3 July 2015. I propose to finalise the determination after that date.

If you have no submissions to make, please let the Office know either by letter, email or telephone. If you do not contact the Office by 3 July 2015, I will assume that you have no comment to make.

Yours sincerely

Gaybrielle Cotton
LEGAL OFFICER

17 June 2015

Encl



OmbudsmanSA

Provisional Determination

External review - section 39 *Freedom of Information Act 1991*

Applicant	Mr Tom Lonsdale
Agency	University of Adelaide
Ombudsman reference	2015/00792
Agency reference	2014/10132
Provisional determination	The determination of the agency is confirmed.

REASONS

Application for access

1. By application under the *Freedom of Information Act 1991* (the FOI Act) the applicant requested access from the agency to:

Details of research funds, sponsorships, agreements and contracts between pet-food companies and the University of Adelaide, its staff and students.

Where possible please group the contributions into categories:

- a) Capital contributions for buildings, laboratories, library endowments etc
- b) Current account funding for research projects, lecturers salaries, textbooks, etc
- c) Contributions in kind including student excursions, guest lecturers, product supply, teaching materials, teaching aids, etc

Such agreements will for the most part be with the Veterinary Faculty. Other departments of the University may have ties with pet-food companies.

Please supply copies of correspondence, email messages and memoranda that relate to the arrangements entered into by individuals and the University.

Background

2. For ease of reference, the procedural steps relating to the application are set out in the appendix.

Jurisdiction

3. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.

Relevant law

4. A person has a legally enforceable right to be given access to an agency's documents in accordance with the FOI Act.¹

¹ *Freedom of Information Act 1991*, section 12.

Consideration

Document 8

16. The agency claims that the draft agreement contained within document 8 is exempt. The agency's determination provides that the draft agreement :

is denied under Schedule 1 Clause 7 regarding documents affecting the business affairs of a third party and Clause 9 (sic) regarding documents containing confidential material.

The information within [the draft agreement] contains identifying information which is of commercial value to and concerns the business and financial affairs of the company. The subject matter concerns a proposed agreement which if provided to third parties would substantially damage the value of the arrangement.

The information within the documents is also in draft form and incomplete and was provided on the basis that it would remain confidential.

17. In its internal review the agency upheld the determination to withhold access to the draft agreement. The agency determined that:

The draft agreement is marked as 'confidential' and contains information that is of commercial value to Hill's Pet Food Pty Ltd. I regard this to be an exempt document under Schedule 1 clauses 7(1)(b) and 13(1)(a) of the FOI Act.

18. I remind the agency of its obligations pursuant to section 23(2)(f) which makes it mandatory for an agency to provide reasons for a decision to refuse to grant access to a document.² Merely stating that a document has commercial value is not enough in and of itself to establish a claim for exemption pursuant to clause 7(1)(b). In particular, the agency has failed to address the requirement that disclosure of the information would, on balance, be contrary to the public interest.

19. On the information before me I am not satisfied that the draft agreement is exempt pursuant to clause 7(1)(b).

20. The agency also claims that the draft agreement is exempt pursuant to clause 13(1)(a), which requires establishing that disclosure of the information within the document would found an action for breach of confidence.

21. In the context of clause 13(1)(a) the term 'would' is synonymous with 'could'.³ It is well settled that 'matter which would found an action for breach of confidence' is information which could found an action for equitable breach of confidence.⁴

22. To establish an action for equitable breach of confidence a number of elements must be satisfied:

- the confider 'must be able to identify with specificity, and not merely in global terms, that which is said to the information in question'
- the confider must be able to show that the 'the information has the necessary quality of confidence (and is not for example, common or public knowledge)
- the confider must be able to show that 'the information was received ...in such circumstances as to import an obligation of confidence'
- 'there is actual or threatened misuse of this information'.⁵

² See 'An audit of state government departments' implementation of the *Freedom of Information Act 1991 (SA)*, May 2014, Part 7A, available at <http://www.ombudsman.sa.gov.au/wp-content/uploads/An-audit-of-state-government-departments-Implementation-of-the-Freedom-of-Information-Act-1991-SA1.pdf>.

³ *Bray and Smith v Workers Rehabilitation & Compensation Corporation* (1994) SASR 218 paragraph 31.

⁴ *Ekaton Corporation Pty Ltd v Chapman & Department of Health* [2010] SADC 150.

⁵ *Corrs Pavey Whiting & Byrne v Collector of Customs (Vic)* (1987) 74 ALR 428 at 437 as adopted by the District Court in *Ekaton Corporation Pty Ltd v Chapman & Department of Health* [2010] SADC 150.

Provisional determination

31. In light of my views above and subject to my receipt and consideration of submissions from the parties, I propose to confirm the agency's determination that the draft agreement attached to the email in document 8 is exempt.


Wayne Lines
SA OMBUDSMAN

17 June 2015

APPENDIX

Procedural steps

Date	Event
29 September 2014	The agency received the FOI application dated 29 September 2014.
18 November 2014	The agency determined the application.
13 December 2014	The agency received the internal review application dated 13 December 2014.
19 January 2015	The agency varied the determination.
3 February 2015	The Ombudsman received the applicant's request for external review.
16 February 2015	The Ombudsman advised the agency of the external review and requested submissions and documentation.
6 March 2015	The agency provided the Ombudsman with its submissions and documentation.



OmbudsmanSA

Enquiries: Ms Gaybrielle Cotton
Telephone: (08) 8226 8699
Ombudsman reference: 2015/00792
Agency reference: 2014/10132

Mr Tom Lonsdale
PO Box 6096
WINDSOR DC NSW 2756

Dear Mr Lonsdale

**External review - *Freedom of Information Act 1991*
*Lonsdale and University of Adelaide***

I refer to previous correspondence in relation to this review under section 39 of the *Freedom of Information Act 1991* (the FOI Act).

Please find enclosed a copy of the Ombudsman's determination and reasons. I have provided a copy to the agency.

If you are aggrieved by the determination, you may appeal to the District Court under section 40(2) of the FOI Act. The agency may also appeal against the determination under section 40(1) of the FOI Act.

These appeals should be commenced within 30 days after receiving notice of the determination.

If no appeals are commenced within the statutory time period, it will be up to the agency to give effect to the determination. If, however, an appeal is commenced, the agency should defer access to the information, pending the outcome of the appeal.

Yours sincerely

G Cotton

Gaybrielle Cotton
LEGAL OFFICER

10 July 2015

Encl

3 APPLICATIONS
SIRIA'S OFFICE
PROCESSED

SIRIA 17/7/15

\$154
CIBAU
PAY with OFFER



OmbudsmanSA

Determination

External review - section 39 *Freedom of Information Act 1991*

Applicant	Mr Tom Lonsdale
Agency	University of Adelaide
Ombudsman reference	2015/00792
Agency reference	2014/10132
Determination	The determination of the agency is confirmed.

REASONS

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Such agreements will for the most part be with the Veterinary Faculty. Other departments of the University may have ties with pet-food companies.

Please supply copies of correspondence, email messages and memoranda that relate to the arrangements entered into by individuals and the University.

Background

2. For ease of reference, procedural steps relating to the application and the external review are set out in the appendix.

Jurisdiction

3. This external review is within the jurisdiction of the Ombudsman as a relevant review authority under section 39 of the FOI Act.

Provisional determination

4. I provided my tentative view about the agency's determination to the parties, by my provisional determination dated 17 June 2015. I informed the parties that subject to my receipt and consideration of submissions from the parties I proposed to confirm the agency's determination.

Issues in this review

17. The issues to be determined in this matter are:
- whether the draft agreement within document 8 is an exempt document
 - whether the agency has conducted a sufficient search for information within the scope of the application.

Consideration

Document 8

18. The agency claims that the draft agreement contained within document 8 is exempt. The agency's determination provides that the draft agreement :

is denied under Schedule 1 Clause 7 regarding documents affecting the business affairs of a third party and Clause 9 (sic) regarding documents containing confidential material.

The information within [the draft agreement] contains identifying information which is of commercial value to and concerns the business and financial affairs of the company. The subject matter concerns a proposed arrangement which if provided to third parties would substantially damage the value of the arrangement.

The information within the documents is also in draft form and incomplete and was provided on the basis that it would remain confidential.

19. In its internal review the agency upheld the determination to withhold access to the draft agreement. The agency determined that:

This draft agreement is marked as 'confidential' and contains information that is of commercial value to Hill's Pet Food Pty Ltd. I regard this to be an exempt document under Schedule 1 clauses 7(1)(b) and 13(1)(a) of the FOI Act.

20. I remind the agency of its obligations pursuant to section 23(2)(f) which makes it mandatory for an agency to provide reasons for a decision to refuse to grant access to a document.² Merely stating that a document has commercial value is not enough in and of itself to establish a claim for exemption pursuant to clause 7(1)(b). In particular, the agency has failed to address the requirement that disclosure of the information would, on balance, be contrary to the public interest
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24. To establish an action for equitable breach of confidence a number of elements must be satisfied:

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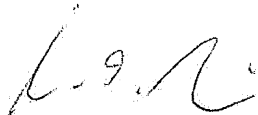
³ *Bray and Smith v Workers Rehabilitation & Compensation Corporation* (1994) SASR 218 paragraph 31.

⁴ *Ekaton Corporation Pty Ltd v Chapman & Department of Health* [2010] SADC 150.

32. The agency has provided me with copies of the emails which demonstrate the steps taken to locate documents within the scope of the application. Having viewed those emails I am satisfied that the agency has conducted reasonable searches for documents within the scope of the application.

Determination

33. In light of my views above, I confirm the agency's determination.



Wayne Lines
SA OMBUDSMAN

10 July 2015