

13 January 2014

Mr Thomas Lonsdale
PO Box 6096
Windsor DC NSW 2756
Delivery via email: tom@rawmeatybones.com

Dear Mr Lonsdale

D15/776 - INTERNAL REVIEW OF DECISION UNDER THE *RIGHT TO INFORMATION ACT 2009* (2014/18)

Your letter of 13 December 2014 requests internal review of the decision of the University's Right to Information and Privacy Coordinator on your application for access to documents under the *Right to Information Act 2009* (RTI Act). I confirm your application raises the following issues:

- (a) Review of the decision that the four (4) agreements responsive to your application are either exempt or the disclosure contrary to the public interest;
- (b) Review of the decision that the three unexecuted agreements are outside scope of your RTI application and should be considered and released under the RTI Act;
- (c) Sufficiency of search, in that additional documents should exist that were responsive to your RTI application.

As a delegated officer under section 30 of the RTI Act, I am authorised to deal with this internal review application.

SCOPE OF INTERNAL REVIEW

In carrying out this review, I am guided by section 80 of the RTI Act which requires the reviewer to make a new decision on the application as if the reviewable decision had not been made. However, I will limit my review to addressing the specific issues raised in your internal review application.

DECISION

I have decided on this date to:

- (a) affirm the original decision that the four (4) agreements are either exempt under section 8 of Schedule 3 of the RTI Act or the disclosure is contrary to the public interest under section 49 of the RTI Act;
- (b) affirm the original decision that the three agreements that had not been executed are outside scope of the RTI application;
- (c) consider additional documents that relate to the three of the four agreements in paragraph (a) as being within scope of your RTI application and decided to:
 - (i) refuse access 87 folios, comprising additional documents relating to two agreements, on the grounds that the documents are exempt under section 7 of Schedule 3 of the RTI Act;
 - (ii) refuse access to 14 folios, comprising additional documents relating to one of the agreements, on the grounds that the disclosure of the documents is contrary to the public interest under section 49 of the RTI Act.

REASONS FOR DECISION

See Schedule 1.

LIMITATIONS ON INTERNAL REVIEW PROCESS

Under section 83 of the RTI Act, I am required to make a decision on your internal review application within 20 business days after the internal review application is made and there is no provision in the RTI Act to extend this time period. As a consequence of your application being made on 13 December 2014, I was required to process it over the Christmas period where a portion of University staff are on leave. In addition, the University was closed from close of business on 24 December 2014 to 5 January 2015. Despite these limitations, I have attempted to undertake a thorough review of the decision in question.

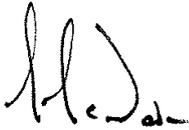
REVIEW

If you are dissatisfied with the results of this internal review, you may apply to the Information Commissioner for external review of my decision. The Information Commissioner's address is as follows:

Information Commissioner
Office of the Information Commissioner (QLD)
PO Box 10143
Adelaide Street
Brisbane QLD 4000

An application for external review must be in writing and must be received by the Information Commissioner within 20 business days from the date of this decision.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. McNarn', written in a cursive style.

Maurie McNarn, AO
Chief Operating Officer

SCHEDULE 1 – REASONS FOR DECISION

1. Sufficiency of search

Your internal review application states that you seek access to the seven (7) agreements identified as part of your application as well as additional documents. You also state that you received 500 documents from a university veterinary school in response to the same request. There are a number of parts to this aspect of your internal review application, which I will deal with separately.

1.1 Interpretation of the scope of original application

Your original application sought access to:

Documents relating to pet food company research funds, sponsorships, agreements and contracts between the University of Queensland Faculty of Veterinary Science, its veterinary clinic and student body.

Those pet food companies may be:

- *The Mars group of companies, including Royal Canin, Advance, Pedigree, Uncle Bens and Iams/Eukanuba*
- *The Colgate-Palmolive company Hill's*
- *The Nestle group of companies including Purina.*

Please provide documentation covering the past two years – or from further back if possible.

I have reviewed Mr Zgrajewski's decision to limit his search to current agreements between the University and the nominated pet food companies. In considering this aspect of your application, I am guided by the comments of the Information Commissioner in *Robbins and Brisbane North Regional Health Authority* (1994) 2 QAR 30 regarding the interpretation of access applications:

I indicated that the interpretation of an FOI access application is not necessarily to be approached in the same manner as the interpretation of a statute or legal document, and in cases where the terms of an FOI access application are ambiguous it will rarely be appropriate to apply legal construction techniques in preference to consulting with the author of the words to clarify the author's intended meaning and agree upon a more precise wording for the terms of the FOI access application.

Furthermore, in *Fennelly and Redland City Council* (2012), the Commissioner considered "access application should not be interpreted legalistically or narrowly." I consider Mr Zgrajewski erred in limiting the scope of your application to the executed agreements only and he ought to have included the documents associated with the relevant agreements, including associated documents on the relevant file. I will therefore consider these additional documents as part of the internal review process (see section 4.1.3 below as to whether the additional documents are exempt or their disclosure is contrary to the public interest under the RTI Act).

1.2 Are unsigned agreements within scope of the RTI application?

Your internal review application states, "I trust you will release all seven agreements that you mention together with all supporting documentation." In undertaking the internal review, I have reviewed Mr Zgrajewski's decision that unsigned agreements are outside scope of your RTI application. For the following reasons, I affirm this aspect of Mr Zgrajewski's decision and find that the unsigned agreements are outside scope of the application:

- Your access application sought access to "documents relating to pet food company research funds, sponsorships, agreements and contracts between the University of Queensland Faculty of Veterinary Science, its veterinary clinic and student body."
- The Macquarie Dictionary defines an agreement as "the act of coming to a mutual arrangement; the arrangement itself." Furthermore, the Macquarie Dictionary defines a contract as:

An agreement between two or more parties for the doing or not doing of some definite thing; an agreement enforceable by law.

- No mutual arrangement exists until an agreement or contract is signed and executed by both parties. In the present case, an unsigned agreement indicates that no mutual agreement was reached between the parties and accordingly, the unsigned agreements are outside scope of the RTI application.

1.3 Are there additional documents responsive to the RTI application?

In undertaking this review, additional searches have been undertaken for documents responsive to your RTI application. This includes:

- A review of the files relating to the four (4) agreements that were considered responsive to the RTI application; and
- Additional searches for documents responsive to your application by the University's Records and Archives Management Services; and
- Additional searches for documents responsive to your application by the School of Veterinary Science.

The results of these searches are summarised below:

- All documents on a file relating to a confidentiality agreement falls within scope of the RTI application. I will refer to these documents as those relating to Agreement 2, which comprises 30 folios in total.
- Documents relating to the amendment of one of the agreements is also within scope of the RTI application. I will refer to these documents as those relating to Agreement 3, which comprises 57 folios in total.
- The remaining documents on the files relating to the identified agreements contain information concern the administration of grants, internal processes relating to the grants, ethics approvals. I consider these types of documents are outside scope of your application on the grounds that they relate to the internal processes associated with the administration of funds/grants and not about the agreement between UQ and the relevant pet food company.
- A search of the University's records system by Records and Archives Management Services did not identify any additional documents responsive to your RTI application. This included a search on the nominated pet food companies and only identified files for the agreements identified by Mr Zgrajewski in his initial decision.
- An additional search was carried out in the School of Veterinary Science which identified an additional Grant Extension Agreement. This agreement relates to the grant agreement which Mr Zgrajewski refused access to on the grounds of the public interest in his original decision.

In considering sufficiency of search issues, the Information Commissioner in *PDE and The University of Queensland*, explained that to be satisfied that a document does not exist, an agency must rely on its particular knowledge and experience, having regard to various key factors including:

- the administrative arrangements of government
- the agency structure
- the agency's functions and responsibilities (particularly with respect to the legislation for which it has administrative responsibility and the other legal obligations that fall to it)
- the agency's practices and procedures (including but not exclusive to its information management approach); and
- other factors reasonably inferred from information supplied by the applicant including:
 - the nature and age of the requested document/s; and
 - the nature of the government activity the request relates to.

Following these additional searches, I am reasonably satisfied that no further documents exist and the University has satisfied its obligations under the RTI Act.

2. Information exempt under section 8 (breach of confidence) of Schedule 3 of the RTI Act

You have requested a review of the decision that three of the agreements responsive to the RTI application are exempt from disclosure under section 8 of Schedule 3 of the RTI Act on the grounds of confidentiality. I have reviewed this aspect of Mr Zgrajewski's decision and agree with his determination that the disclosure of the three agreements would give rise to an action for breach of confidence. Accordingly, I affirm the decision that these three agreements are exempt from disclosure under the RTI Act.

3. Information exempt under section 7 (legal professional privilege) of Schedule 3 of the RTI Act

Information falling within this exemption provision includes the additional documents identified on the files relating to Agreements 2 and 3, comprising 87 folios in total. These documents were located on legal office files and comprise requests for legal advice relating to the relevant agreement from the University's administration as well as the response to those requests.

Section 7 of Schedule 3 of the RTI Act states:

Information is exempt information if it would be privileged from production in a legal proceeding on the ground of legal professional privilege.

This exemption provision applies to confidential communications between a lawyer and client made for the dominant purpose of seeking or giving legal advice or professional legal assistance for use in existing or anticipated litigation¹. For information to attract legal professional privilege, the following elements must be established²:

- Confidential communications
- Dominant purpose test
- Professional relationship and independence

I have reviewed the relevant documents and they all comprise either a request for legal advice or a response to such request. I am satisfied that the three elements above can be properly satisfied in this case.

4. Information the disclosure of which is contrary to the public interest under section 49 of the RTI Act

You have requested a review of the decision that the disclosure of a funding agreement and subsequent acceptance of the funding by the granting body is contrary to the public interest under section 49 of the RTI Act. In his original decision, Mr Zgrajewski discussed at length the public interest and set out relevant factors favouring disclosure and non-disclosure.

I have reviewed the relevant documents and the application of the public interest test. I am of the view that the public interest test was properly applied to the documents in issue and that the disclosure of those documents is contrary to the public interest. I refer you to the original decision on the application of the public interest test.

I also note that additional searches in the School of Veterinary Science identified the Grant Extension Agreement (comprising 14 folios). This agreement extends the grant agreement discussed above. I consider the same public interest arguments apply to the extension agreement that applied to the original agreement. It is not necessary to restate the application of the public interest test again; rather I refer you to the original decision for information about its application.

¹ *Eso Australia Resources Limited v Commissioner of Taxation* (1999) 168 CLR 123

² *Hillier and Redland City Council* [2011] QICmr 22 at paragraph 49