
Right to Information and Privacy Office, Legal Office

RIGHT TO INFORMATION AND PRIVACY COORDINATOR
Anthony Zgrajewski

The University of Queensland
Brisbane QLD 4072 Australia
Facsimile (07) 3365 1058

(07) 3365 2571 a.zgrajewski@uq.edu.au

Our Ref: 2014/18

4 December 2014

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

Dear Mr Lonsdale

APPLICATION FOR ACCESS TO DOCUMENTS

I refer to your application dated 29 September 2014, received on 1 October 2014, which sought access to the following documents:

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

Your application was processed under the *Right to Information Act 2009 (RTI Act)*. As a delegated officer under section 30 of the RTI Act, I have made a decision on your application.

SCOPE OF APPLICATION

On 7 October 2014, you clarified the scope of your application so that it was limited to agreements, sponsorships etc, between the University and the following companies:

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

SEARCHES

Searches for documents responsive to your application were conducted in the following University organisational units:

- School of Veterinary Science
- Legal Office
- Office of the Deputy Vice-Chancellor (Research)
- Records and Archives Management Services

These searches identified seven agreements/sponsorships/contracts between the University and the nominated companies. I note that three of these have not been executed by the University and are therefore outside scope of your application. In addition, the University has a number of prizes that are supported by annual grants from the requested companies. While the University does not have formal agreements with the companies underpinning these prizes, information about the approved prizes is publicly available from

<http://www.uq.edu.au/senate/docs/Senate%20Rules/PrizesSectionOnly-21-08-14.pdf>. You can search this document for the company names listed above.

Therefore, the remaining four (4) applications are the only documents responsive to your application, comprising 52 folios (pages) in total.

DECISION

I have determined on this date to:

- (1) Refuse access to three of the agreements (folios 22-52), and associated documents, on the grounds that the documents are exempt from disclosure under schedule 3, section 8 of the RTI Act; and
- (2) Refuse access to one of the agreements (folio 1-21), and associated documents, on the grounds that the disclosure of the documents are contrary to the public interest under section 49 of the RTI Act.

However, I am also of the view that the documents exempt under schedule 3, section 8 of the RTI Act might also be withheld from disclosure under section 49 of the RTI Act. However, as I have decided that the contract is fully exempt under section 8 of Schedule 3 of the RTI Act, I am not required to further consider the application of section 49 of the RTI Act at this time.

SUMMARY OF REASONS FOR DECISION

See Schedule 1 of this letter.

FEES AND CHARGES

Application fee

I acknowledge receipt of the non-refundable application fee.

Processing Charges and Access Charges

Section 60(1) of the RTI Act provides that before access may be given to a document, the applicant must pay the applicable processing and access charge for the application. Please note that the *Right to Information Regulations 2009* prescribes the following processing and access charges:

- 5 Amount of processing charge—Act, s 56**
- (1) *The processing charge under section 56 of the Act for an access application for a document is—*
- (a) *if the agency or Minister spends no more than 5 hours processing the application—nil; or*
- ...

The time to process your application was less than 5 hours and accordingly, no processing charges apply to your application. Furthermore, there are no access charges payable for this application.

DISCLOSURE LOG

Unless the documents released under the RTI Act contain personal information of the applicant, the documents may be available to the public no sooner than 24 hours after you access the documents or expiration of the access period prescribed in section 54(2)(iii) and (iv) of the RTI Act. Information concerning the University's Disclosure Log is accessible from the Right to Information and Privacy Office website at: <http://www.uq.edu.au/rti/index.html?page=123032&pid=123032>

REVIEW

If you are dissatisfied with my decision, you may apply to the University for a review of the decision (internal review). An application for an internal review must be made in writing, and should be lodged within 20 business days from the date of this decision.

Alternatively, 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.

I may be contacted on 3365 2571 or a.zgrajewski@uq.edu.au if you have any queries or require further information.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'AZ', is positioned above the typed name.

Anthony Zgrajewski
Right to Information and Privacy Coordinator

SCHEDULE 1 – DETAILED REASONS FOR DECISION

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

Section 8 of Schedule 3 of the RTI Act provides:

- 8 Information disclosure of which would found action for breach of confidence**
- (1) Information is exempt information if its disclosure would found an action for breach of confidence.
- (2) However, deliberative process information is not exempt information under subsection (1) unless it consists of information communicated by an entity other than –
- (a) a person in the capacity of –
- (i) a Minister; or
- (ii) a member of the staff of, or a consultant to, a Minister; or
- (iii) an officer of an agency; or
- (b) the State or an agency.

The principle purpose of this exemption is to ensure the right of access under the RTI Act is not inconsistent with the remedy of breach of confidence. The provision requires the University to consider whether (*B and Brisbane North Regional Health Society* [1994] QICmr 1):

a hypothetical legal action in which there is a clearly identifiable plaintiff, possessed of appropriate standing to bring a suit to enforce an obligation of confidence said to be owed to that plaintiff, in respect of information in the possession or control of the agency or Minister faced with an application for access ...

To found an action for breach of confidence, the following five criteria must be satisfied in relation to the information (*B and Brisbane North Regional Health Society* [1994] QICmr 1):

- it must be specifically identified
- it must have the necessary quality of confidentiality
- it must have been communicated and received on the basis of a mutual understanding of confidence
- it must have been disclosed or threatened to be disclosed, without authority
- unauthorised disclosure of the information has or will cause detriment

In relation to the three agreements in question, I am satisfied that the first two elements can be readily established. The agreements are readily identifiable and have the necessary quality of confidentiality. Indeed, two of the agreements expressly define confidential information to include the terms of the agreement.

The third element requires consideration whether there is an obligation of confidence not to disclose the investment reports. In the present case, I consider the University is under a contractual obligation in all three instances not to disclose the agreements or associated documentation. I am satisfied the contractual term in each agreement either expressly or impliedly prescribes the agreement as 'confidential' and protects the information contained within the agreements.

The fourth and fifth element can equally be satisfied. Disclosing the information under the RTI Act would constitute a misuse of the confidential information without the authority of the other party. I also consider that disclosure of the information under the RTI Act would cause detriment to the parties in question.

I am of the view that the three agreements are exempt under section 8, Schedule 3 of the RTI Act.

2. Information the disclosure of which is contrary to the public interest

Section 47(3)(b) of the RTI Act provides that access to a document may be refused to the extent that the document comprises information the disclosure of which would, on balance, be contrary to the public interest under section 49 of the RTI Act. Section 49 of the RTI Act sets out the steps and factors (contained in Schedule 4) that Parliament considers appropriate when deciding whether disclosure would, on balance, be contrary to the public interest.

The "public interest" refers to considerations affecting the good order and functioning of the community and government affairs for the well-being of citizens. The "public interest" is usually treated separately from matters of purely private or personal interest. As a general rule, a public interest consideration is one that is available to all members or a substantial part of the community, however, in some circumstances public interest considerations can apply for the benefit of particular individuals (*OZH6SQ and Queensland Police Service*, 25 May 2012, paragraph 13).

The RTI Act identifies many factors that may be relevant to deciding the balance of the public interest and explains the steps that a decision-maker must take in deciding the public interest as follows:

- identify any irrelevant factors and disregard them
- identify any relevant public interest factors favouring disclosure and nondisclosure
- balance the relevant factors favouring disclosure and nondisclosure; and
- decide whether disclosure of the Information in Issue would, on balance, be contrary to the public interest.

Information subject to the public interest test includes the application for funding and the subsequent acceptance of that application from the granting body. This information is classified as business information of the University as well as information relating to research activities of the University. The scope of business affairs was considered in *Cockcroft v Attorney -General's Department and Australian Iron and Steel Pty Ltd* (1985) 12 ALD 462, where the Tribunal found that the phrase is "a comprehensive phrase intended to embody the totality of the money-making affairs of an organisation or an undertaking as distinct from its private or internal affairs". I consider the funding application and acceptance to fall within the business information definition.

In determining whether or not the disclosure of the documents would be contrary to the public interest, I have considered the public interest factors as set out in Schedule 4 of the RTI Act.

Irrelevant Factors

I have not taken into consideration any of the factors identified in Schedule 4, Part 1.

Public Interest Factors favouring disclosure

I have taken into account the following factors in favour of disclosure:

- disclosure of the information could reasonably be expected to promote open discussion of public affairs and enhance the Government's accountability (section 1, Part 2, Schedule 4); and
- disclosure of the information could reasonably be expected to contribute to positive and informed debate on important issues or matters of serious interest (section 2, Part 2, Schedule 4).

While there are strong public interest arguments to enhance the accountability of University decisions and transparency in its operations, the University publishes information about activities of UQ researchers. This information is publicly available from the University's website (<http://researchers.uq.edu.au/>) and includes advanced search functionality. Using the search tool, the public is able to search the University for key terms, including industry partners, and extract information about the particular research. As there is already an element of transparency and accountability in the funding of research, I consider the weight applied to this factor to be moderate.

Public Interest Factors favouring non-disclosure

I have taken into account the following factors favouring non-disclosure:

- disclosure of the information could reasonably be expected to prejudice the business affairs or research of an agency or person (section 15, Part 3, Schedule 4);
- disclosure of the information could reasonably be expected to prejudice the competitive commercial activities of an agency (section 17, Part 3, Schedule 4).

Public Interest Factors favouring nondisclosure because of public interest harm

There are two factors identified in Part 4, Schedule 4 of the RTI Act that raises public interest harm considerations. These are set out in section 7, which provides:

7. Disclosing trade secrets, business affairs or research

- (1) *Disclosure of the information could reasonably be expected to cause a public interest harm because*
- ...
- (c) *disclosure of the information –*
- (i) *would disclose information ... concerning the business, professional, commercial or financial affairs of an agency or another person; and*
- (ii) *could reasonably be expected to have an adverse effect on those affairs or the prejudice the future supply of information of this type to government.*
- ...
- (3) *Disclosure of the information could reasonably be expected to cause a public interest harm because disclosure –*
- (a) *would disclose the purpose or results of research, whether the research is yet to be started, has started but is unfinished, or is finished; and*
- (b) *could reasonably be expected to have an adverse effect on the agency or other person by, or on whose behalf, the research is intended to be, is being, or was, carried out.*

I consider the disclosure of the application for funding and the acceptance by the funding body fall within the business information and research information definitions. This is a consequence of the University's functions being to encourage study and research¹. I consider the disclosure of these documents would reasonably be expected to cause public interest harm because:

- (a) The disclosure would disclose information concerning the business affairs of the University and could reasonably be expected to have an adverse effect on the University's business – the funding application contains study objectives, working hypotheses, outcomes, investigation plan, budget information and ethical considerations; and
- (b) The disclosure would disclose the purpose of the research and disclosure would have an adverse effect on the conduct of that research.

Balance of Public Interest

Concepts of accountability and transparency do not require the disclosure of all information held by agencies. I acknowledge there are moderate public interest arguments favouring disclosure of information about the University's research activities. This reflects the importance of open and transparent government and decision-making.

However, the University has detailed systems to ensure research is conducted in an ethical manner, is communicated to the community and where appropriate to the wider general community. This is underpinned by the Responsible Conduct of Research Policy, which is based on the Australian Code for the Responsible Conduct of Research. The University has also implemented procedures to ensure ethical conduct of research, including animal and human ethics committees. Furthermore, the University has implemented an Open Access for UQ Research Outputs Policy that sets out the requirements for researchers to make publications arising out of research openly available to the public. Collectively, these systems import an element of rigour in the research process and ensure transparency in university research through the promotion of open access to research publications.

In considering the factors favouring non-disclosure, I consider there are equally important countervailing arguments relating to the protection of certain aspects of the University's business and research. The disclosure of research applications would have a significant impact on the research and the broader business operations of the University.

¹ The functions of the University as set out in section 5 of the *University of Queensland Act 1998*.

The University operates in a competitive environment; research funding is generally available through competitive grant schemes only and the University is in direct competition with other universities and research institutes for research funding. I am of the view that the University's research and business affairs would be unreasonably affected by disclosing the information in issue and to do so would enable a competitor to replicate the unique research methodology and then use that methodology in other projects.

In balancing the public interest, I am of the view that the scales tip in favour of non-disclosure of the information in issue on the grounds that the documents comprise information that relates to the research and business affairs of the University and the disclosure could reasonably be expected to have an adverse effect on those affairs. The disclosure of the documents are therefore contrary to the public interest under section 49 of the RTI Act.