

Delivered-To: lonsdale@mail.summit.net.au
From: "Kern, Michael" <michael.kern@jcu.edu.au>
To: "tom@rawmeatybones.com" <tom@rawmeatybones.com>
CC: "Kern, Michael" <michael.kern@jcu.edu.au>
Subject: RIGHT TO INFORMATION (RTI) REQUEST INTERNAL REVIEW
NOTICE OF DECISION DATED 2 JANUARY 2015
Date: Sun, 4 Jan 2015 03:56:23 +0000
X-OriginatorOrg: jcu.edu.au

2 January 2015

Dr T Lonsdale
PO Box 6096
Windsor Delivery Centre
NSW 2756

Dear Dr Lonsdale

RIGHT TO INFORMATION (RTI) REQUEST – INTERNAL REVIEW – NOTICE OF DECISION
DATED 2 JANUARY 2015

I refer to your emailed letter of 7 December 2014 and received by me on 8 December requesting an internal review of the University's initial decision made on 21 November 2014 in respect of your Right to Information (RTI) application received by the University on 7 October 2014. The deadline for the Internal Review decision, taking into account the closure of the University during the period 25 December 2014 through to 1 January 2015 inclusive, is 12 January 2015. I provide the following advice to you on the outcome of my internal review decision under the *Right to Information Act 2009* (Qld) (RTI Act).

The Request

Your RTI request sought the following:

"details of research funds, sponsorship, agreements and contracts between pet-food companies and the James Cook University, its staff and students"

Original Decision

The original decision has found no documents matching your request but in the course of considering the headings under which you sought to have the information requested reported back to you, the decision maker had identified a document which fell within one of these headings. The decision maker however, it would appear, has refused access to the document under section 47 of the RTI Act as follows:

- 47(3)(a) – access to a document has been refused on the basis that the document comprises exempt information under section 48 including where such disclosure would found an action for breach of confidence under section 8 of Schedule 3
- 47(3)(b) – access to a document has also been refused on the basis that if the information requested were disclosed it would, on balance, be contrary to the public interest under section 49 (sect 49(3)(f)) after due consideration of the factors in Schedule 4 used when deciding whether a public interest favours disclosure or non-disclosure.

The Decision

It is my view that the RTI decision maker has made the correct decision refused access to the document under section 47 of the RTI Act as follows:

- 47(3)(a) – access to a document has been refused on the basis that the document comprises exempt information under section 48 including where such disclosure would found an action for breach of confidence under section 8 of Schedule 3
- 47(3)(b) – access to a document has also been refused on the basis that if the information requested were disclosed it would, on balance, be contrary to the public interest under section 49 (sect 49(3)(f)) after due consideration of the factors in Schedule 4 used when deciding whether a public interest favours disclosure or non-disclosure.

Reasons for the Decision

I have reached this decision after satisfying myself that the information in question was confidential and was supplied on a confidential basis to JCU for use by JCU and the University was, and remains, under a mutually accepted obligation of confidence and that as the disclosure of this information would found an action for breach of confidence the information is regarded as exempt information. In addition, I have further satisfied myself that on balance there is greater weight in favour on non-disclosure in the public interest.

There is a fundamental question to be asked and that is whether or not the teaching materials identified are in fact a record of JCU as defined under the Public Records Act 2002. Under that Act a Record is defined as “recorded information created or received by an entity in the transaction of business or the conduct of affairs that provides evidence of the business or affairs.....”. It could be argued that the document in question, which is owned by a third party and which has not been acquired by the University, has not been received by JCU and that the confidential and commercially sensitive information has merely been placed on a web page so as to be accessible by the third party presenter and enrolled students under very strict, clearly marked and mutually accepted confidentiality obligations.

Establishing the confidentiality obligations between the third party and the University and its students.

In respect of Section 48 (1), access to a document is to be given unless disclosure would, on balance, be contrary to the public interest as it contains exempt information. Schedule 3 sets out the type of information that the Queensland parliament has considered would, on balance be contrary to the public interest including in Section 8 – Information disclosure of which would find an action for beach of confidence.

In assessing whether or not the information provided to JCU was provided by the owner under an understanding of confidentiality that may impact on disclosure under the RTI Act I have considered the:

- nature of the relationship between JCU and the owner of the Proprietary Materials
- nature and sensitivity of the information in question
- circumstances of the communication

I have received written advice from the Head of Veterinary Clinical Studies at JCU, who arranged for the third party to teach “unbranded” clinical nutrition to 1st and 4th year students, that the PowerPoint presentation delivered by staff of the third party (the owner and creator legally and for the purposes of the Copyright Act and Intellectual Property ownership considerations), and the information contained therein, belonged to the third party and was not to be copied to any other third party without the express permission of the owner. He has further advised that the owner kindly trusts JCU and leaves the PowerPoint document on JCU's servers for the exclusive benefit of JCU students being taught.

I have consulted with the Third Party, the owner of the Proprietary Materials (materials delivered by the owner as part of instruction within a JCU Veterinary Course) and have received written advice from the owner of the document confirming the above arrangements and more specifically strongly objecting to the disclosure of the Proprietary Materials on the grounds that:

- a. the Proprietary Materials were made available on a confidential basis and any disclosure would:
 - i. constitute a breach of that confidence
 - ii. prejudice the owner's business affairs
 - iii. not be in the public interest
- b. the Proprietary Materials, developed by the owner at a significant cost, have commercial value to the owner and concerns the owner's intellectual property as it discloses key nutritional information concerning animal diets, treatments, medical issues and other important matters
- c. the owner undertakes lengthy precautions to ensure that the Proprietary Materials remain confidential, including written (refer below) and verbal statements and warnings about non-disclosure, and do not fall into the hands of competitors as if this

occurred the commercial value would be destroyed and there would be a detriment to the owner and their business affairs would be materially prejudiced because competitors would be able to promote similar tuition through various mediums rendering their Proprietary Materials useless, giving competitors a commercial advantage.

IMPORTANT NOTICE – CONFIDENTIALITY

All material presented and distributed is confidential

Not to be copied / re-distributed without permission

Confidential-do not copy, edit or distribute (as a footer)

- d. through its overarching confidentiality arrangements through its sponsorship agreement, the owner has sought to ensure that the proprietary Materials are protected and not disclosed
- e. any disclosure of the Proprietary Materials would likely result in the diminishment of the arrangement between JCU and the owner and more specifically would prejudice the supply of future information to JCU used in the teaching of students at JCU

It is understood that the mere placement of the abovementioned “confidentiality” notice by itself is insufficient to impose an obligation of confidence as although the notice shows a clear intention that the document is intended to be treated confidentially, it must be established that the information was actually confidential in character or was communicated in circumstances importing the obligation of confidence.

The above advice I have received from both the Head of the Program who established the arrangements with the owner of the Proprietary Materials and the owner, I am satisfied that:

- the obligation of confidence was clearly communicated and understood by both parties and honoured by JCU
- there were mutual expectations that the information was to be treated in confidence as evidenced through a common implicit understanding that the confidentiality of the information contained in the Proprietary Materials would be preserved by JCU

Public Interest Considerations (Schedule 4)

I note in your letter requesting an internal review you have not put forward any new arguments or evidence for consideration to assist me in identifying any relevant factors that might favour disclosure in the public interest.

. I now set out the factors considered in determining that you should not be given access to the document.

Part 1 - No factors have been used in deciding the public interest that are irrelevant in the circumstances.

Part 2 - The following factors in favour of disclosure in the public interest are not relevant to this request as the information has not been requested to:

- Promote open discussion of public affairs and enhance government accountability
- Assist in contributing to informed on important issues or matters of serious issue debate
- Inform community about government’s operations
- Ensure effective oversight of public funds spending
- Allow or assist enquiry into possible deficiencies in JCU’s administration of conduct
- Reveal or substantiate JCU’s engagement in negligent, improper or unlawful conduct

- Reveal your personal information
- Advance your fair treatment in dealings with JCU
- Assist you in revealing the reason for or background information in relation to a JCU decision
- Assisting in protecting the environment, reveal environmental or health risks, maintain peace and order assist in the administration of justice enforcement of criminal law, contribute to innovation or facilitate research

Part 3 - The following factors not favouring disclosure in the public interest are relevant to this request as the disclosure of the information would:

- Prejudice the private, business, professional, commercial or financial affairs of entities
- Prejudice trade secrets, business affairs or research of an agency or agency
- Disclosure of the information is prohibited by an Act (Copyright Act)

Part 4 – The following factors favouring non-disclosure in the public interest because of public interest harm in disclosure are relevant:

- Sect 7 – disclosing trade secrets, business affairs or research
 - o (1) (a) disclosure of the information would disclose trade secrets of another person or would disclose non-trade secret information that has a commercial value and disclosure could be expected to destroy or diminish such commercial value of the information.

You have stated your view that “...all sources of information be readily accessed and thus be verifiable.” and that “All scientific results and all educational material, within a public framework, should be available for scrutiny.”

You have also acknowledged that the information in question is subject to copyright and you have queried “...*the copyright owner must surely be keen for full disclosure to the students and through the students to their future clients and the public at large?*” I can confirm that the owner of the copyright has strongly objected to the disclosure of their information.

The University remains committed to the aim of the RTI Act to make more information available, provide equal access to information across all sectors of the community, and provide appropriate protection for individuals' privacy.

Review Rights

If you are dissatisfied with the internal review decision I have made, you can apply for an external review.

If applying for external review, the application must be made to the Information Commissioner within 20 business days from the date stated on the decision notice.

An application can be lodged with the Office of the Information Commissioner in one of the following ways:

In person: Level 8, 160 Mary St., Brisbane
 Post: PO Box 10143, Adelaide Street, Brisbane, Qld 4000
 Fax: 07 3405 1122
 Email: administration@oic.qld.gov.au
 Online: www.oic.qld.gov.au

Yours sincerely,

Michael Kern
 University Secretary
 Internal Review Officer
 Office of the Chief of Staff

James Cook University, 1 James Cook Drive
Townsville QLD 4811 AUSTRALIA

T 07 4781 4115 | T (INT'L) +61 7 4781 4115 | M 0417 725 651
E michael.kern@jcu.edu.au | W jcu.edu.au

Location: Building 001, Ken Back Chancellery; Room 119A JCU CRICOS Provider Code: 00117J



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