

## NOTICE OF DECISION

### FREEDOM OF INFORMATION ACT 1992

Applicant: Mr. Tom Lonsdale  
Reference No: 02 10 003 131  
Decision Maker: Mr. Alexander Bellotti  
Assistant Freedom of Information Coordinator  
Date of Decision: 05-12-2014

#### Background:

1. On 01 October 2014 a letter was received from Mr. Lonsdale requesting access to information held by Murdoch University regarding:

*Details of research funds, sponsorships, agreements and contracts between put foods companies and Murdoch University, its staff and students.*

2. In making this request Mr. Lonsdale sought that these contributions be grouped into the following 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.*

3. An email of acknowledgment was sent on 07 October 2014. In this acknowledgement Mr. Lonsdale was informed that as the documents sought were of a non-personal nature a fee of \$30 would be applicable. Additionally Mr. Lonsdale was also notified that the request was extremely broad and whether the scope could be refined to documents created in the 2012-2014 period held by the following people:

*a. Ms. Ellaine Hislop, Executive officer, Vet Trust*

*b. Professor Peter Irwin, Principle College of Vet Medicine*

*c. Mr. Dominic O'Sullivan, Director Vet Hospital*

*d. Professor David Hampson, School Dean, Veterinary and Life Sciences*

*e. Ms. Veronica Armstrong, Office Manager Murdoch University Student Guild*

4. Mr. Lonsdale confirmed that this was acceptable in an email dated 7 October 2014. It should be noted that due to the nature of Mr. Lonsdale's request an extension was sought via email on <insert date>, with Mr Lonsdale agreeing to the extension via an email dated <insert date>

#### Charges:

5. As Mr. Lonsdale's application was for information of a non-personal nature a fee of \$30 was applicable before the search could be undertaken. The payment of this fee

was made on 01 October 2014, with Ms. Janis Wittber, FOI CoOrdinaotr notifying Mr. Lonsdale of receipt that day.

### **Searches:**

6. Contact has been made with the persons listed in paragraph 3 seeking copies of any documents containing the information requested by you in paragraph 2 above. These persons have conducted the necessary searches and have signed an FOI checklist advising that they have, in accordance with your request, searched all paperwork, emails and other electronic files they have access too.
7. However it should be noted that we did not receive any documents from Veronica Armstrong, as the Murdoch University Student Guild did not have any documents of the kind specified in your request.
8. In my examination of the documents received by the parties listed in paragraph 3 it should be noted that some of the persons listed had access to the same records. Consequently, any duplicate documents that Mr. Lonsdale may receive are intentional.
9. I have considered the extent of these searches in reaching my decision.

### **Exemptions & Notice of Decision:**

#### **The Facts**

10. In my examination of the documents received, I have observed that in some instances the documents contain personal information about an individual or individuals other than those employed by the University and those parts of the documents are, in accordance with Clause 3 of Schedule 1 of the *Freedom of Information Act 1992 (WA)* (the Act), *prima facie* exempt.
11. Additionally some of the requested documents contain confidential information that has a commercial value to a person; and could reasonably be expected to destroy or diminish that commercial value, adversely affect the business affairs of that person, and prejudice the future supply of that information to Murdoch University. Consequently those parts of the document are, in accordance with Clause 4(2) 4(3) and 8 of Schedule 1 of the Act, exempt
12. Pursuant with the Act I consulted with third parties (whose personal and commercial information was contained in the documents) in order to obtain their views regarding the release of this information, and the application of the exemptions in Clause 3, 4(2), 4(3) and 8 of Schedule 1 of the Act.
13. Concerns were raised by the third parties concerning the potential release of both personal information, and commercial information, discussed and obtained in confidence.
14. In making my decision concerning the release of the requested documents, I have considered the submissions made by these third parties, as well as, the options for release following the redaction of the exempt parts.

### **Exemption Clause 3, Schedule 1:**

15. Clause 3 of Schedule 1 to the *Freedom of Information Act* provides:

*“Personal information*

- (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*
- (2) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal personal information about the applicant.*
- (3) *Matter is not exempt under subclause (1) merely because its disclosure would reveal, in relation to a person who is or has been an officer of an agency, prescribed details relating to –*
  - (a) *the person; or*
  - (b) *the person’s position or functions as an officer; or*
  - (c) *things done by the person in the course of performing functions as an officer.*
- (4) *Matter is not exempt matter under subclause (1) merely because its disclosure would reveal, in relation to a person who performs, or has performed, services for an agency under a contract for services, prescribed details relating to –*
  - (a) *the person; or*
  - (b) *the contract; or*
  - (c) *things done by the person in performing services under the contract.*
- (5) *Matter is not exempt matter under subclause (1) if the applicant provides evidence establishing that the individual concerned consents to the disclosure of the matter to the applicant.*
- (6) *Matter is not exempt matter under subclause (1) if its disclosure would, on balance, be in the public interest.”*

16. Furthermore, the glossary to the *Freedom of Information Act* defines “personal information” as information or an opinion, whether true or not, about an individual, whether living or dead -

- (a) *whose identity is apparent or can reasonably be ascertained from the information or opinion; or*
- (b) *who can be identified by reference to an identification number or other identifying particular such as a finger print, retina print or body sample.*

18. The Regulations provide that the ‘prescribed details’ of an officer of the agency are:

- (a) *the person’s name; or*
- (b) *any qualifications held by the person relevant to the person’s position in the agency; or*
- (c) *the position held by the person in the agency; or*
- (d) *the functions and duties of the person, as described in any job description document for the position held by the person; or*
- (e) *anything done by the person in the course of performing or purporting to perform the person’s functions or duties as an officer as described in any job description document for the position held by the person.*

19. I am of the opinion that the information on individuals contained in document:
20. 2.1A, 3.1, 3.2, 3.3A, 3.4, 3.7, 3.8A, 3.9A, 3.11, 3.15, 3.16, 3.17A, 3.18, 3.19, 3.20, 3.20A, 3.22, 3.25, 3.26, 3.27, 3.28, 3.28A, 3.29, 3.30, 3.31, 3.33, 3.35A, 3.38A, 3.39, 3.45, 3.46, 3.47A, 3.48, 3.49, 3.50, 3.51, 3.52, 3.54A, 3.55, 3.57, 3.58, 3.59A, 3.60, 3.61, 3.62, 3.63, 3.64, 3.64A, 3.64B, 3.65, 3.66A, 3.68, 3.70, 3.71, 3.72, 3.73, 3.74, 3.75, 3.75A, 3.76A, 3.77, 3.77A, 3.79A, 3.86, 3.88, 3.89, 3.91, 3.92, 3.93, 3.94, 3.95, 3.96, 3.97A, 3.99, 3.101, 3.102, 3.103, 3.104A, 3.105, 3.107A, 3.110, 3.111A, 3.112A, 3.114, 3.115, 3.117A, 3.117B, 3.117C, 3.119A, 3.120, 3.120A, 3.121, 3.121A, 3.121B, 3.123A, 3.124B, 3.125A, 3.127, 3.128, 3.129, 3.130, 3.132, 3.133, 3.134, 3.135, 3.136, 3.137, 3.139, 3.140, 3.141, 3.142, 3.143, 3.144, 3.145, 3.146, 3.147, 3.148, 3.149, 3.150, 3.151, 3.152, 3.153, 3.154, 3.155, 3.156, 3.157, 3.158, 3.159, 3.160, 3.161, 3.162, 3.163, 3.164, 3.165, 3.166, 3.167, 3.168, 3.169, 3.170, 3.171, 3.173, 3.174, 3.175, 3.176, 3.177, 3.178, 3.180, 3.181, 3.182, 3.183, 3.184, 3.187, 3.189, 3.190, 3.192, 3.193, 3.194, 3.196, 3.197, 3.198, 3.199, 3.200, 3.201, 3.203, 3.204, 3.205, 3.206, 3.207, 4.2, 4.3, 4.4, 4.5, 4.6, 4.7, 4.8, 4.9, 4.10, 4.12, 4.13, 6.3, 6.4, 6.5A, 6.6 constitutes personal information relating to a third party and therefore may be exempt from disclosure subject to the test outlined below.
21. The exemption afforded by Clause 3 will not apply to exempt personal information if it can be established that the individual concerned consents to the disclosure of their personal information.
22. I have been advised by the relevant third parties that they do not consent to the release of their personal information, and I have given this refusal consideration in the exercise of my discretion.
23. Further to the above and with respect to the personal information of Third Parties, the exemption afforded by Clause 3 is limited by the application of a public interest test to the exempt matter. In considering the application of the exemption I have considered the public interest factors both in favour and against the disclosure of the documents or parts of the documents. In relation to the factors favouring disclosure I believe the general public interest in access to information under Section 3 of the Freedom of Information Act is relevant.
24. In relation to the factors against disclosure it would appear that the following are relevant:
- The public interest in protecting the privacy of individuals; and
  - The public interest where the release of the document would breach a person's privacy.
25. In relation to these relevant factors the Information Commissioner had stated:
- In FOI legislation, consideration of the public interest requires the application of a balancing test so that any number of relevant public interests may be weighted one against the other. When an exemption in the FOI Act is limited by a public interest test in my view that that involves the exercise of a judgement as to where the balance lies (Re C and the Department for Community Development)*
26. In exercising my discretion, I have given due consideration to both the objectives of the Act and the public interest. I have decided that those matters favouring non-disclosure of the information of Third Parties carries more weight than those favouring disclosure. Accordingly, all the documents listed above will

be provided to the applicant with the personal information of third parties redacted.

**Exemption Clause 4(2) and 4(3), Schedule 1:**

27. Clause 4(2) and 4(3) of Schedule 1 of the Act provides:

(2) Matter is exempt matter if its disclosure –

- (a) Would reveal information (other than trade secrets) that has a commercial value to a person; and
- (b) Could reasonably be expected to destroy or diminish that commercial value.

(3) Matter is exempt matter if its disclosure –

- (a) Would reveal information (other than trade secrets or information referred to in subclause(2) about the business, professional, commercial or financial affairs of a person; and
- (b) Could reasonably be expected to have an adverse effect on those affairs or to prejudice the future supply of information of that kind to the Government or to an agency.

28. In the exercise of my discretion (in accordance with the objects and intent of the Act) I am of the opinion that the following documents: 1.8, 1.9, 2.1A, 2.6, 2.8, 2.9, 3.18, 3.25A, 3.26, 3.27, 3.33, 3.34A, 3.35A, 3.40A, 3.42A, 3.46A, 3.52, 3.53A, 3.60A, 3.68, 3.78A, 3.93, 3.100A, 3.211, 4.11, 6.1A. Contain commercially sensitive information whose value would be destroyed and/or diminished if disclosed. Consequently these documents are exempt as per Clause 4(2), Schedule 1 of the Act, and shall release them with the exempted material expunged.

29. Additionally and in the alternative, I believe the documents in paragraph 27 contain information concerning the business affairs of a third party, which if revealed could reasonably be expected to have an adverse effect on those affairs or prejudice the future supply of such information to Murdoch University. Accordingly, I find the documents in paragraph 27 capable of exemption under Clause 4(3) of the Act, and shall release them with the exempted material expunged.

30. For reasons outlined above at both 27 and 28, I find document 2.126A and 3.212 wholly exempt under the Act and shall not be provided to the applicant either in whole or part. While consideration was given to release following the redaction of exempted material, it was found that the redaction of the exempted materials would render the document meaningless to the applicant.

**Exemption Clause 8(2), Schedule 1:**

31. Clause 8 of Schedule 1 of the Act provides:

(2) Matter is an exempt matter if its disclosure–

- (a) Would reveal information of a confidential nature obtained in confidence; and
- (b) Could reasonably be expected to prejudice the future supply of information of that kind to the government or to an agency.

(4) Matter is not exempt matter under subclause (2) if its disclosure would, on balance, be in the public interest.

32. Having considered the above and having noted and weighted the public interest I am of the opinion that information contained in documents 1.8, 1.9, 2.1A, 2.6, 2.8, 2.9, 3.18, 3.25A, 3.26, 3.27, 3.33 3.34A, 3.35A, 3.40A, 3.42A, 3.46A, 3.52, 3.53A, 3.60A, 3.68, 3.78A, 3.93, 3.100A, 3.211, 4.11, 5.1A. would reveal confidential information which if disclosed would prejudice the future supply of information to Murdoch University. Consequently the documents being exempt under Clause 8(2) Schedule 1 shall be released with the exempted material expunged.
33. For the reasons outlined above at 31, I also find that documents 2.126A and 3.212 are wholly exempt under the Act and shall not be provided to the applicant, in whole or in part. While consideration was given to release following the redaction of exempted material, it was found that the redaction of the exempted materials would render the document meaningless to the applicant.

**Right of Review: Internal Review Rights:**

34. If you are not satisfied with this decision, you have a right to apply for an internal review.
35. An application for internal review must be lodged with this agency within 30 days after being given this written notice of decision, and must -
- be in writing;
  - provide particulars of the decision to be reviewed; and
  - give an address in Australia.
36. There is no lodgement fee for an application for internal review and there are no charges for dealing with an internal review request.
37. If an application for internal review is received, it will not be dealt with by the person who made the initial decision, or by any person who is subordinate to the original decision maker. The outcome for an application for internal review may result in confirmation, variation or reversal of the initial decision under review. You will be advised of the outcome within 15 days. The address for lodgement of an internal review request is:

University Secretary  
University Secretary Office  
Murdoch University  
South Street  
Murdoch WA 6150

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