

**IN THE CIVIL AND ADMINISTRATIVE TRIBUNAL
Administrative and Equal Opportunity Division**

File Number: 1510239

Tom Lonsdale
Applicant

AND

The University of Sydney
Respondent

RESPONDENT'S SUBMISSIONS

The University of Sydney respectfully submits that the Tribunal should affirm the University's review decision, dated 2 February 2015, in accordance with paragraph 63(3)(a) of the *Administrative Decisions Review Act 1997* ('**the ADR Act**').

Issues to be determined

2. The following issues arise for determination:
 - a) What are the public interest considerations in favour of disclosure?
 - b) What are the conclusive presumptions against disclosure?
 - c) What are the public interest considerations against disclosure?
 - d) Is there an overriding public interest against disclosure? (Do the public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure?)
 - e) Should the Tribunal affirm, vary or set aside the University's review decision?
3. In summary, the University submits that the Tribunal should affirm the University's review decision, dated 2 February 2015, because:
 - a) there is a conclusive presumption against disclosure of information that would be privileged from production in legal proceedings on the ground of client legal privilege (legal professional privilege);

- b) the public interest considerations in favour of disclosure of the information sought by the Applicant are, on balance, outweighed by those against disclosure; and
- c) there is an overriding public interest against disclosure of the information sought by the Applicant.

Background

4. On 29 September 2014, the Applicant filed an application for access to documents under the *Government Information (Public Access) Act 2009* ('the GIPA Act'): **Perks [8] and OAP 1.**

5. The Applicant's request was expressed as follows:

'Please supply details of research funds, scholarships, agreements and contracts between pet food companies and the University of Sydney, 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, lecturer salaries, textbooks etc;*
- c) *Contributions in kind including student excursions, guest lectures, product supply, teaching materials, teaching aids, etc.*

Such agreements will for the most part be with the Veterinary Faculty and Centre for Veterinary Education. 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.'

6. On 11 November 2014, the University gave the Applicant notice of its decision under the GIPA Act. The University decided that some of the information was already available to the Applicant, because sponsorship by pet-food companies of events held by the Faculty of Veterinary Science is acknowledged in the public material relating to that event: **Perks [10] and [11] and OAP 2 and 3.**

7. After consulting with Royal Canin Australia and Hill's Pet Nutrition Pty Ltd, the University decided to refuse to provide access to the other information requested by the Applicant, due to an overriding public interest against its disclosure: **Perks [11] and OAP 2.**

8. On 2 December 2014, the Applicant filed an application for internal review of the University's decision: **Perks [13] and OAP 4.**

9. On 2 February 2015, the University gave the Applicant notice of its review decision. After consulting again with Royal Canin and Hill's Pet Nutrition, the University decided to

release some of the information that had not previously been released. The University decided to refuse to provide access to other information requested by the Applicant, due to an overriding public interest against its disclosure: **Perks [14] and OAP 5**.

10. The Applicant subsequently sought a review by the NSW Information Commissioner. The Office of the Information Commissioner was satisfied that that the University's decision was justified, and made no recommendations against the decision: **Perks [15] and OAP 6**.

Relevant provisions of the GIPA Act

11. In accordance with section 5 of the GIPA Act, there is a presumption in favour of the disclosure of government information unless there is an overriding public interest against disclosure. Pursuant to subsection 9(1) of the GIPA Act, a person who makes an access application for government information has a legally enforceable right to be provided with access to the information in accordance with Part 4 of the GIPA Act, unless there is an overriding public interest against disclosure. Pursuant to section 13 of the GIPA Act, there will only be an overriding public interest against disclosure if there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.
12. It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1 of GIPA. Relevantly, clause 5 of Schedule 1 states:

Legal professional privilege

- (1) It is to be conclusively presumed that there is an overriding public interest against disclosure of information that would be privileged from production in legal proceedings on the ground of client legal privilege (legal professional privilege), unless the person in whose favour the privilege exists has waived the privilege.
 - (2) If an access application is made to an agency in whose favour legal professional privilege exists in all or some of the government information to which access is sought, the agency is required to consider whether it would be appropriate for the agency to waive that privilege before the agency refuses to provide access to government information on the basis of this clause.
 - (3) A decision that an agency makes under subclause (2) is not a reviewable decision under Part 5.
13. The public interest considerations listed in the table to section 14 of the GIPA Act are the only other considerations that may be taken into account as public interest considerations

against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information.

14. The table in section 14 of the GIPA Act relevantly provides:

1 Responsible and effective government

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):

- (a) prejudice collective Ministerial responsibility,*
- (b) prejudice Ministerial responsibility to Parliament,*
- (c) prejudice relations with, or the obtaining of confidential information from, another government,*
- (d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,*
- (e) reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency,*
- (f) prejudice the effective exercise by an agency of the agency's functions,*
- (g) found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence,*
- (h) prejudice the conduct, effectiveness or integrity of any audit, test, investigation or review conducted by or on behalf of an agency by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).*

3 Individual rights, judicial processes and natural justice

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) reveal an individual's personal information, ...*

4 Business interests of agencies and other persons

There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:

- (a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,*
- (b) reveal commercial-in-confidence provisions of a government contract,*
- (c) diminish the competitive commercial value of any information to any person,*
- (d) prejudice any person's legitimate business, commercial, professional or financial interests,*

- (e) *prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).*
15. A determination as to whether there is an overriding public interest against disclosure of government information is to be made in accordance with the principles set out in section 15 of the GIPA Act:
- (a) *Agencies must exercise their functions so as to promote the object of this Act.*
 - (b) *Agencies must have regard to any relevant guidelines issued by the Information Commissioner.*
 - (c) *The fact that disclosure of information might cause embarrassment to, or a loss of confidence in, the Government is irrelevant and must not be taken into account.*
 - (d) *The fact that disclosure of information might be misinterpreted or misunderstood by any person is irrelevant and must not be taken into account.*
 - (e) *In the case of disclosure in response to an access application, it is relevant to consider that disclosure cannot be made subject to any conditions on the use or disclosure of information.*
16. In assessing the weight to be given to the factors listed in clause 4 of the table to section 14 of the GIPA Act, the Tribunal is entitled to take into account the personal factors of the applicant set out in section 55(1) of the GIPA Act (the personal factors of the application):
- (a) the applicant's identity and relationship with any other person,
 - (b) the applicant's motives for making the access application,
 - (c) any other factors particular to the applicant.
17. A decision to provide access or to refuse to provide access to information in response to an access application is a reviewable decision under section 80(d) of the GIPA Act.
18. A decision that information applied for is already available to the Applicant is a reviewable decision under section 80(f) of the GIPA Act.

Relevant provisions of the ADR Act

19. Pursuant to section 63 of the ADR Act, when determining an application for an administrative review of a reviewable decision the Tribunal is to decide what the 'correct and preferable' decision is having regard to the material then before it, including any relevant factual material and any applicable written or unwritten law. The Tribunal may decide to:
- (a) affirm the reviewable decision,
 - (b) vary the reviewable decision,

- (c) set aside the reviewable decision and made a decision in substitution for the reviewable decision it set aside, or
- (d) set aside the reviewable decision and remit the matter for consideration by the administrator in accordance with any directions or recommendations of the Tribunal.

The public interest considerations in favour of disclosure

- 20. The general public interest in favour of disclosure is a factor that must be taken into account (subsection 12(1) of the GIPA Act).
- 21. The University is accountable to the public for, among other things, the provision of services and facilities to the public and the expenditure of public monies. The University recognises that the GIPA Act is one means of facilitating and furthering that accountability. The University accepts that there is a public interest in disclosing information that facilitates public scrutiny of and promotes transparency in University decision-making, including in respect of sponsorship arrangements with private companies.

The conclusive presumption against disclosure

- 22. It is to be conclusively presumed that there is an overriding public interest against disclosure of information that would be privileged from production in legal proceedings on the ground of client legal privilege (legal professional privilege), unless the University has waived the privilege (subclause 5(1) of Schedule 1 of the GIPA Act).
- 23. Client legal professional privilege arises from a lawyer/client relationship and applies to 'confidential communications' between the lawyer (as legal advisor) and the client where the dominant purpose of the communication is either to enable the legal advisor to give or the client to receive legal advice; or to be used in pending or contemplated proceedings.¹
- 24. The privilege extends to advice that is of a non-legal character where that non-legal advice is connected to the giving of legal advice or for contemplated or pending litigation and to copies of documents that are not privileged where the copy is made for the dominant purpose of obtaining legal advice or for use in pending or contemplated litigation.²

¹ See *Esso Australia Resources Ltd v Commissioner of Taxation* [1999] HCA 67; (1999) 201 CLR 49 as affirmed in *Daniels Corp International Pty Limited v Australia Competition & Consumer Commissioner* [2002] HCA 49; (2002) 213 CLR 543.

² See *Australian Federal Police v Propend Finance Pty Ltd* (1997) 188 CLR 501 at 509, 550, 597.

25. The privilege applies to confidential communications between government agencies and their salaried legal officers provided they have the necessary degree of independence.³
26. The privilege applies to confidential communications between universities and their salaried legal officers provided they have the necessary degree of independence.⁴
27. The University submits that this conclusive presumption applies to the documents from the legal file 2012/15434 (marked 11-23 of the schedule of documents attached to the review decision), excluding the signed memoranda of understanding attached to document 23 (which are copies of documents 3 and 4), for the following reasons:
- a) the documents were prepared for the dominant purpose of providing or receiving legal advice: **Perks [17]-[20]**;
 - b) the legal advice was provided by an independent in-house lawyer from the University's Office of General Counsel who holds a current NSW Legal Practising Certificate (Ms Migliorini), and by an external lawyer who holds a current NSW Legal Practising Certificate (Ms Cosentino): **Perks [7]**; and
 - c) the University has not waived privilege in the documents: **Perks [21]**.

The public interest considerations against disclosure

1(f) – Could the disclosure reasonably be expected to prejudice the effective exercise by the University of its functions?

28. To demonstrate that this is a relevant consideration, the University must establish that:
- a) the information is confidential;
 - b) the information facilitates the effective exercise of its functions; and
 - c) disclosure of the information could reasonably be expected to prejudice the effective exercise by the University of its functions.
29. The Applicant has sought information about 'research funds, scholarships, agreements and contracts between pet food companies and the University of Sydney, its staff and students'. The University has identified and withheld a number of documents relating to sponsorship arrangements with Royal Canin and Hill's Pet Nutrition.

³ See *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54 at 62 and 73.

⁴ See *AQJ v University of New South Wales* [2013] NSWADT 306 at [157]; *Hargreaves v University of New England* [2013] NSWADT 233 at [27]; *SL v University of Sydney* [2011] NSWADT 65 at [26].

Is the information confidential?

30. The documents withheld by the University were provided or created in confidence, and contain confidential information about sponsorship arrangements:

a) The memoranda of understanding between the University of Sydney and each of Royal Canin and Hill's Pet Nutrition include an express confidentiality clause, which states:

4.1 Public Statements

The parties agree not to make any public statement about the existence, or terms of, the Agreement, except as required to do so by law or where the party has obtained the prior written consent of the other party to do so. [...]

4.2 Use of Confidential Information

Unless a party obtains the prior written approval of the other party to disclose Confidential Information, each party must:

- (a) maintain the secrecy of the other's Confidential Information;*
- (b) not use the other's Confidential Information except as required for the performance of this MOU;*
- (c) not disclose the other's Confidential Information to any other person other than employees or advisers who need to know it in order to perform that party's obligations under this MOU ('Representatives'); and*
- (d) use reasonable endeavours to ensure that its Representatives comply with (a), (b) and (c).*

4.3 Required by law

Each party may disclose the other's Confidential Information if required by law but, if possible, it must inform the other party first and use reasonable endeavours to limit the terms of that disclosure as reasonably requested.

4.4 Confidential Information Definition

In this clause 4, 'Confidential Information' means all information or data that is exchanged between the parties for the purposes of this MOU before, on or after the effective date of this MOU relating to the operations, business, research and technology of the disclosing party excluding information which is:

- (a) *publicly available or subsequently becomes publicly available other than in breach of this MOU;*
- (b) *lawfully known to the other party on a non-confidential basis before being disclosed by the party that owned the confidential information; or*
- (c) *rightly acquired from a third party who is not in breach of an agreement to keep such information confidential.*

- b) The information contained in the withheld documents constitutes 'Confidential Information' as defined in the memoranda of understanding, including:
 - i. sponsorship packages and levels, including sponsorship benefits;
 - ii. sponsorship fees;
 - iii. sponsorship rights; and
 - iv. company policy.
- c) The written and email correspondence concerning the memoranda of understanding was prepared with the expectation of confidentiality. This is evidenced by correspondence from Hill's Pet Nutrition:

- i. In its letter dated 11 November 2014 (at OAP7), Hill's Pet Nutrition wrote:

The information within the documents were also provided on the basis that the information would remain confidential.

- ii. In its letter dated 8 January 2015 (at OAP 8), Hill's Pet Nutrition wrote:

The Redacted Information discloses the nature of the sponsorship arrangement between Hill's and the University which is commercially valuable to Hill's and concerns Hill's business and commercial interest (for completeness we also note that it is understood that the Redacted Information is confidential, protected by an obligation of confidence).

- 31. The invoices contain confidential details of sponsorship fees agreed in the memoranda of understanding.
- 32. The information is not publicly available: **Perks [25]**.

Does the information facilitate the effective exercise of the University's functions?

33. In accordance with section 6 of the *University of Sydney Act 1989* (NSW), the object of the University is 'the promotion, within the limits of the University's resources, of scholarship, research, free inquiry, the interaction of research and teaching, and academic excellence'. One of the principal functions of the University, for the promotion of its object, is 'the provision of courses of study or instruction across a range of fields, and the carrying out of research, to meet the needs of the community'.
34. In order to carry out its principal functions in the Faculty of Veterinary Sciences, the University runs a number of conferences and orientation events, designed to prepare students for their final year clinical placements, encourage student engagement with the veterinary profession, and prepare them for graduation. The University does not receive government funding to facilitate functions of this nature, and relies on sponsorship arrangements, negotiated with private companies from year to year.

Could disclosure of the information reasonably be expected to prejudice the effective exercise by the University of its functions?

35. The words 'could reasonably be expected' are to be given their ordinary meaning. They 'require a judgment to be made by the decision-maker as to whether it is reasonable, as distinct from something that is irrational, absurd or ridiculous', to expect that disclosure would have the relevant effect.⁵
36. The University submits that disclosure of the withheld information would have an adverse effect on its current sponsorship arrangements, because the sponsors' confidential information and the terms of the sponsorship agreements would be revealed to other commercial entities. This would impact on the Faculty of Veterinary Science's ability to negotiate future sponsorship arrangements, because:
- a) current and potential sponsors would lose confidence in the University's ability to meet its confidentiality obligations; and
 - b) the University would lose its ability to negotiate on individual terms with potential sponsors, who would have access to information about the commercial terms of existing sponsorship arrangements, including sponsorship fees and benefits.

⁵ See *Attorney-General's Department v Cockcroft* (1986) 10 FCR 180; *Nature Conservation Council of NSW v Department of Trade and Investment Regional Infrastructure and Services* [2012] NSWADT 195 at [146]; *Salmon v Department of Justice (Corrective Services New South Wales)* [2014] NSWCATAD 160 at [45].

37. Loss of sponsorship funding would prejudice the Faculty of Veterinary Science's ability to run conferences and orientation events for students, thereby prejudicing the effective exercise by the University of its functions.

1(g) - Could the disclosure reasonably be expected to found an action against the University for breach of confidence or otherwise result in the disclosure of information provided to the University in confidence?

38. To demonstrate that this is a relevant consideration, the University must establish that:
- a) the information is confidential;
 - b) disclosure of the information could reasonably be expected to:
 - i. found an action against the University for breach of confidence; or
 - ii. otherwise result in the disclosure of the information provided to the University in confidence.

Is the information confidential?

39. The University relies on paragraphs [30] - [32] above.

Could disclosure of the information reasonably be expected to found an action against the University for breach of confidence or otherwise result in the disclosure of information provided to the University in confidence?

40. The University submits that, due to its express written undertakings to Hills Pet Nutrition and Royal Canin to keep the existence and terms of the sponsorship agreements confidential, and not to disclose Confidential Information (including sponsorship fees and benefits), disclosure of the withheld information could reasonably be expected to
- i. found an action against the University for breach of confidence; or
 - ii. otherwise result in the disclosure of information provided to the University in confidence.

3(a) - Could the disclosure reasonably be expected to reveal an individual's personal information?

41. The word 'reveal' is defined in clause 1 of Schedule 4 of the GIPA Act as follows:

reveal information means to disclose information that has not already been publicly disclosed (otherwise than by unlawful disclosure).

42. 'Personal information' is defined in sub-clause 4(1) of Schedule 4 of the GIPA Act as:

information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual (whether living or dead) whose identity is apparent or can reasonably be ascertained from the information or opinion.

43. 'Personal information' does not include 'information about an individual (comprising the individual's name and non-personal contact details) that reveals nothing more than the fact that the person was engaged in the exercise of public functions' (paragraph 4(3)(a) of Schedule 4 of the GIPA Act).

44. The withheld information includes the names of individual employees of Royal Canin and Hill's Pet Nutrition. Those employees are not engaged in the exercise of public functions, and their names constitute 'personal information' as defined. The University submits that disclosure of their names could reasonably be expected to reveal several individuals' personal information.

4(b) - Could the disclosure reasonably be expected to reveal commercial in confidence provisions of a government contract?

45. The term 'commercial-in-confidence' is defined in clause 1 of Schedule 4 of the GIPA Act as follows:

commercial-in-confidence provisions of a contract means any provisions of the contract that disclose:

- (a) the contractor's financing arrangements, or*
- (b) the contractor's cost structure or profit margins, or*
- (c) the contractor's full base case financial model, or*
- (d) any intellectual property in which the contractor has an interest, or*
- (e) any matter the disclosure of which would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.*

46. The term 'government contract' is defined in clause 1 of Schedule 4 of the GIPA Act as follows:

government contract means any of the following contracts between an agency and a private sector entity:

- (a) a contract under which a party agrees to undertake a specific project (such as a construction, infrastructure or property development project),*

- (b) a contract under which a party agrees to provide specific goods or services (such as information technology services), other than a contract of employment,
- (c) a contract under which a party agrees to transfer real property to another party to the contract,
- (d) a lease of real property.

Do the agreements constitute government contracts?

47. The agreements between the University of Sydney and each of Royal Canin and Hill's Pet Nutrition are contracts under which Royal Canin and Hill's Pet Nutrition agree to provide the sponsorship fee in exchange for the sponsorship benefits, and so fall within paragraph (b) of the definition of 'government contract'.⁶

48. The sponsorship benefits are clearly and specifically articulated in the agreements.

Do the contracts contain commercial-in-confidence provisions, the disclosure of which could reasonably be expected to reveal commercial in confidence provisions?

49. The University submits that the agreements contain details of matters the disclosure of which would place Royal Canin and Hill's Pet Nutrition at a substantial commercial disadvantage in relation to other potential contractors in the future, for the purposes of paragraph (e) of the definition of 'commercial-in-confidence'. For example, the agreements contain details of sponsorship fees and sponsorship benefits.

50. It is not necessary for the University to show that disclosure of those details would certainly result in a disadvantage, or that if it did result in a commercial disadvantage that it would be a substantial disadvantage. It is only necessary that there be a possibility that both might occur.⁷

51. In its letter dated 8 January 2015, Hill's Pet Nutrition relevantly wrote:

[T]he Redacted Information discloses the whether or not certain events are subject to exclusivity and reveals its (sic) plans and strategies of Hill's in relation to its sponsorship arrangements. This information can be identified on both pages of the letter dated 5 March 2014

[REDACTED]

⁶ See, for example, *Federal Commissioner of Taxation v Stone* [2005] HCA 21; (2005) 222 CLR 289 at 303 [49], 304 [52] (Gleeson CJ, Gummow, Hayne and Heydon JJ).

⁷ See *Nature Conservation Council of NSW v Department of Trade and Investment, Regional Infrastructure and Services* [2012] NSWADT 195 at [158].

[REDACTED] This information is integral to Hill's business given it forms a significant part of our marketing and promotional strategy.

The Schedule (which contain the commercial terms) to the terms and conditions was privately negotiated and agreed, not by public tender. Hill's has a number of sponsorship arrangements with other universities [REDACTED] [REDACTED] which are confidential and the disclosure of the terms of one arrangement would have an adverse effect on another arrangement. For example, counterparties would be able to seek terms similar to that obtained by the University.

Revealing the commercial terms of the Hill's sponsorship arrangement would effectively mean that any concessions or favourable terms that Hill's has provided to the University would be available to another university or third party in another bargain (such as whether Hill's sought exclusivity for a particular event and the corresponding price that it paid for those rights). Should this information be revealed to any other party it may also provide an opportunity for a pet food competitor to adopt a more advantageous sponsorship strategy to Hill's and offer terms which are more favourable.

For example, the tax invoices and the Schedule disclose the dollar amounts Hill's pays for certain sponsorship rights which could be used by a third party to outbid Hill's for the same rights or promote a bidding war. Additionally, the Schedule discloses the marketing strategy of Hill's. A third party pet food competitor could, for example, discern which areas Hill's markets and sponsors its products and use this information to unfairly develop a competing strategy (without investing and conducting their own research). Ultimately, third party competitors would obtain a commercial advantage which would prejudice Hill's.

Should the terms be made public the value of the commercial bargain that Hill's has struck with the University would be diminished. Disclosure would devalue the sponsorship arrangement and in the long term Hill's would need to reconsider the value of the arrangement under its sponsorship arrangements with the University. Furthermore Hill's ability to negotiate any sponsorship arrangement in the future with the University or any other university would be prejudiced.

52. The University notes that the Administrative Decisions Tribunal has previously given significant weight to the protection of sensitive commercial information belonging to private entities in their dealings with government, and has recognised that there is a significant public interest in protecting that information.⁸

⁸ See *Australians for Sustainable Development Inc v Barangaroo Delivery Authority* [2013] NSWADT 252.

4(d) - Could the disclosure reasonably be expected to prejudice any person's legitimate business, commercial, professional or financial interests?

53. The withheld information, which relates to commercial sponsorship arrangements between the University and each of Royal Canin and Hill's Pet Nutrition, concerns their business, commercial and financial interests.
54. In order to satisfy the second element of this consideration, the University must establish that those interests could reasonably be expected to suffer prejudice if the information is disclosed. It is not necessary for the University to establish that the disclosure would certainly result in prejudice to Royal Canin and Hill's Pet Nutrition's business. It is only necessary that there is a possibility that it might occur.⁹
55. The word 'prejudice' has been found in cases decided under Freedom of Information legislation to have its ordinary meaning; 'to cause detriment or disadvantage'¹⁰ or 'impede or derogate from'.¹¹ This interpretation is equally applicable in the context of the GIPA Act¹².
56. The University submits that the disclosure of the withheld documents could reasonably be expected to prejudice the legitimate business, commercial, or financial interests of Royal Canin and Hill's Pet Nutrition. The University relies on the content of the withheld documents, and on the letter from Hill's Pet Nutrition dated 8 January 2015.

Is there an overriding public interest against disclosure? (Do the public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure?)

Documents marked 11-23 (from Legal File 2012/15434)

57. The University submits that, on the basis of the conclusive presumption in clause 5 of Schedule 1 of GIPA, there is an overriding public interest against disclosure of the privileged information contained in the documents marked 11-23 in the University's schedule of documents (from the legal file 2012/15434), excluding the signed memoranda of understanding attached to document 23, which are copies of documents 3 and 4, and to which the arguments made below in respect of documents 3 and 4 apply.

⁹ See *Nature Conservation Council of NSW v Department of Trade and Investment, Regional Infrastructure and Services* [2012] NSWADT 195 at [195].

¹⁰ See *Re: Maher and the Attorney General's Department (No 2)* (1986) 4 AAR 266.

¹¹ See *Sobh v Victoria Police* (1994) 1 VR 41.

¹² See *Nature Conservation Council of NSW v Department of Trade and Investment, Regional Infrastructure and Services* [2012] NSWADT 195 at [189].

Documents marked 1-10

58. The University acknowledges that there is a public interest in disclosing information that facilitates public scrutiny of and promotes transparency in University sponsorship arrangements, as well as the general public interest in favour of disclosure.

59. However, the University submits that disclosure of the information sought by the Applicant and marked 1-10 in the University's schedule of documents could reasonably be expected to have one or more of the following effects listed in the table to section 14 of the GIPA Act:

- 1(f) - prejudice the effective exercise by the University of its functions;
- 1(g) - found an action against the University for breach of confidence or otherwise result in the disclosure of information provided to the University in confidence;
- 3(a) - reveal an individual's personal information;
- 4(b) - reveal commercial in confidence provisions of a government contract;
- 4(d) - prejudice any person's legitimate business, commercial, professional or financial interests.

60. Accordingly, these public interest considerations must be taken into account when assessing whether there is an overriding public interest against disclosure.

61. Further, pursuant to section 55 of the GIPA Act (see in particular sub-sections (1) and (3)), in assessing the weight to be given to the factors listed in clause 4 of the table to section 14 of the GIPA Act, the Tribunal is entitled to take the personal factors of the application into account, including the applicant's motives for making the access application. The University notes that the Applicant has a commercial interest in promoting a raw food diet for pets, and that he has published two books on the subject. Those books are available for purchase on the Internet, including on Amazon and eBooks: **Perks [26] and OAP 9**.

62. The University submits that the public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure of the information sought by the Applicant. In particular, the University submits that none of the public interest factors outweigh the public interest in:

- a) the University being able to negotiate commercial sponsorship agreements for funding to facilitate the running of conferences and orientation events for students; and
 - b) the University upholding its undertaking to Royal Canin and Hill's Pet Nutrition to observe confidentiality, thereby protecting the business, commercial and financial interests of its sponsors.
63. On that basis, the public interest factors against disclosure outweigh those in favour of disclosure, so there is an overriding public interest against disclosure of the information in the documents marked 1-10 of the University's schedule of documents.

Should the Tribunal affirm, vary or set aside the University's review decision?

64. The University respectfully submits that the Tribunal should affirm the University's review decision, dated 2 February 2015.

Brenda Tronson
Barrister
Level 22 Chambers

Sarah Heesom
Solicitor for the Respondent

Date: 14 July 2015