

# Government Information (Public Access) Act 2009

## NOTICE OF DECISION

Applicant:	<b>Dr Tom Lonsdale</b>
File Ref:	<b>2014/7112</b>
Decision-maker:	<b>Mr Alex Maitland, Group Secretary</b>
Date of decision:	<b>11 November 2014</b>

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## 1. Summary of access application

On 1 October 2014, we received your access application under the *Government Information (Public Access) Act 2009* (GIPA Act). Your request was expressed as follows:

*"Please supply details of research funds, sponsorships, 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 lecturers, 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."*

I have understood the scope of your application to be for information concerning the Faculty of Veterinary Science (the Faculty), effective at the date of your application.

On 16 October 2014, the Manager Archives and Records Management Services notified you that the period for dealing with your application would be extended in order to consult with third parties.

## 2. Decision

I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to decide your access application.

### 2.1 Reviewable Decision

I have decided :

- under section 58(1)(c) that some of the information is already available to you;
- under section 58(1)(d) to refuse to provide access to some of the information because there is an overriding public interest against its disclosure.

These decisions are reviewable under sections 80(d) and 80(f) of the GIPA Act.

In this Notice of Decision I will explain my reasons. To meet the requirements of section 61 of the GIPA Act, I need to tell you:

- (a) the reasons for my decision and the findings on any important questions of fact underlying those reasons, and
- (b) the general nature and format of the records containing the information you asked for, with reference to the relevant public interest considerations against disclosure (see the attached Schedule of Documents).

### **3. Searches for information**

Under the GIPA Act, we must conduct reasonable searches for the government information you asked for in your application. A search was made of the University's records to find any information that falls within the scope of your application. The descriptions of the resulting registered files and documents were then examined for relevance to your application. One legal advice file, 2012/15434 was identified as being relevant. In addition, enquiries were made with the Faculty of Veterinary Science. The Faculty confirmed there was no paid research in the faculty funded by pet food manufacturers. Other records relating to your application were retrieved from relevant members of staff in the Faculty of Veterinary Science.

Sponsorship by pet food companies of events held by the Faculty of Veterinary Science is acknowledged in the published material relating to that event. The relevant pet food companies are Hill's Pet Nutrition and Royal Canin. The Faculty's website is freely available to the public, and contains information concerning sponsorship.

Two examples of publically available information are the 2014 Partners in Veterinary Education Conference held in July 2014:

<http://sydney.edu.au/vetscience/partners/conference/index.shtml>

and the web pages concerning the University Veterinary Teaching Hospital:

[http://sydney.edu.au/vetscience/veterinary\\_services/sydney/about\\_us/index.shtml](http://sydney.edu.au/vetscience/veterinary_services/sydney/about_us/index.shtml)

You may wish to undertake a further search of the Faculty public website to identify events where sponsorship has been provided by pet the pet food companies. Searching for "Hills" or "Royal Canin" in the search box at the top right of the website will provide details:

<http://sydney.edu.au/vetscience/>

As noted above, I have decided under section 58(1)(c) that this information is already available to you.

### **4. The public interest test**

Under section 9(1) of the GIPA Act, you have a legally enforceable right to access the information you asked for, unless there is an overriding public interest against its disclosure.

Further, under section 5 of the GIPA Act, there is a presumption in favour of disclosing government information unless there is an overriding public interest against its disclosure.

To decide whether or not there is an overriding public interest against disclosure of the information you asked for, I applied the public interest test, which is set out in section 13 of the GIPA Act.

I applied the public interest test by:

- (a) identifying any public interest considerations in favour of disclosure;
- (b) identifying any relevant public interest considerations against disclosure;  
and
- (c) deciding where the balance between them lies.

I did this in the way required by section 15 of the GIPA Act, which is:

- (a) in a way that promotes the objects of the GIPA Act;
- (b) with regard to any relevant guidelines issued by the Information Commissioner.
- (c) without taking into account the fact that disclosure of information may cause embarrassment to, or a loss of confidence in, the Government (as that fact is irrelevant);
- (d) without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant); and
- (e) with regard to the fact that disclosure cannot be made subject to any conditions on the use or disclosure of information.

#### **4.1 Public interest considerations in favour of disclosure**

Under section 12(1) of the GIPA Act, there is a general public interest in favour of disclosing government information. Section 12(2) of the GIPA Act sets out some examples of other public interest considerations in favour of disclosure. However, I am not limited to those considerations in deciding your application.

In my view the following public interest considerations in favour of disclosure apply when considering the documents in issue:

- The general public interest in favour of disclosure of government information.
- The public interest in knowing the about University relationships with commercial organisations.

#### **4.2 Personal factors of the application**

I can also take into account any personal factors of your application, under section 55 of the GIPA Act. I am not aware of any personal factors which are relevant to your request for access to information.

### 4.3 Public interest considerations against disclosure

When applying the public interest test, the only public interest considerations against disclosure that I can take into account are those set out in the table to section 14 of the GIPA Act. To show that they are relevant to the information you asked for, I need to consider whether they could reasonably be expected to have the effect outlined in the table.

The phrase "could reasonably be expected to" requires explanation as it is central to the considerations in the table to section 14. I have had regard to the following cases:

*Flack v Commissioner of Police, New South Wales Police* [2011] NSWADT 28 and *Attorney General's Department v Cockcroft* (1986) 10 FCR 180. In that case, Bowen CJ and Beaumont J explained that the words

"...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 those who would otherwise supply information of the prescribed kind to the agency would decline to do so if the document in question were disclosed under the Act. It is undesirable to attempt any paraphrase of these words. In particular it is undesirable to consider the operation of the provision in terms of probabilities or possibilities or the like." [190]

Hayne J pointed out in *McKinnon v Secretary, Department of Treasury* [2006] HCA 45 that:

"...when their Honours said, as they did, that the words required 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 certain consequences, they are not to be understood as having used the latter expression as a paraphrase of the former. Rather, they are to be understood, and have since been understood, as doing no more than drawing an emphatic comparison. To do more would have been, as their Honours correctly said, "to place an unwarranted gloss upon the relatively plain words of the Act". And the same approach should be taken to the expression "reasonable grounds" when it is used in s 58(5) of the Act." [61]

I am therefore of the view that the words "could reasonably be expected to" are to be given their ordinary meaning.

#### 4.3.1 Conclusive presumption against disclosure – clause 5 of Schedule 1 of the GIPA Act

A number of the documents containing information in the scope of your application are of a kind covered by Schedule 1 of the GIPA Act. Section 14(1) of the GIPA Act states:

"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."

Clause 5 of Schedule 1 of the GIPA Act is as follows:

"5 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) An agency in whose favour legal professional privilege exists 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.”

The information identified in the Schedule of Documents as being subject to Schedule 1 clause 5 are confidential communications between University officers and legal staff of the University’s Office of General Counsel for the sole or dominant purpose of the provision of legal advice and attract a claim of legal professional privilege. The University’s legal staff involved were Ms K Migliorini, Solicitor and Ms C Cosentino, Consultant Solicitor. Both held NSW solicitor’s practicing certificates at the time of providing advice and their duties for the University included the provision of legal advice.

As required by the GIPA Act, I have given consideration to whether it would be appropriate for the University to waive its privilege. Given the commercial nature of the circumstances I do not consider that it would be appropriate to waive privilege.

#### **4.3.2 Other public interest considerations against disclosure**

##### **4.3.2 (a) Responsible and effective government**

Clause 1(g) of the Table at section 14 relevantly provides:

“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):

- (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.

##### **4.3.2 (b) Business interests of agencies and other persons**

Clauses 4(b) and 4(d) of the Table at section 14 relevantly provide:

“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:

- b) Reveal commercial-in-confidence provisions of a government contract,
- d) Prejudice any person’s legitimate business, commercial, professional or financial interests.”

#### **4.4 Consultation**

The information that you asked for includes information that is the commercial information of other organisations. The University was therefore required, under section 54 of the GIPA Act, to consult with those organisations.

#### **4.5 Balancing the public interest test**

I have considered the relevant public interest considerations in favour of and against disclosure of the information you requested. On balancing the considerations I find that the public interest lies in not releasing some of the information to you. That information falls under clause 5 of Schedule 1 of the GIPA Act and also under the considerations from the Table at section 14 of the GIPA Act set out in 4.3.2(a) and 4.3.2(b) of this notice.

The University is funded through many avenues and engages with the wider community, including the commercial sector, on many levels including sponsorship to support its activities.

Fundamental to my consideration of where the public interest lies is a balancing of the public need to be informed of University relationships with commercial organisations with the University's need for sponsorship, and maintenance of the University as a desirable business partner for the commercial sector.

The public is informed through the University's website of sponsorships with pet food companies and in this way I consider that the public interest in disclosing information about commercial relationships has been met.

The majority of the documents which fall within your request were provided in confidence and deal with sensitive information concerning confidential agreements. Some of the documents are agreements and also contain explicit clauses relating to confidentiality. Although confidentiality is not explicitly stated in all of the documents, nonetheless the documents were created, or provided in the expectation of confidentiality, and all have been treated confidentially by the University. Disclosure of confidential agreements and related correspondence could adversely impact on relationships with sponsors and disadvantage the University in future negotiations for sponsorship, by revealing confidential business arrangements. Release of the information could reasonably be expected to diminish confidence in the University as a business partner and this might lead to loss of sponsorship which would impact on the University's capacity to carry out some of its activities. For these reasons I find that the public interest lies in not releasing some of the information to you.

### **5 Access**

Access to the information is provided in the form of pdf copies of the relevant documents. A Schedule of Documents has been attached identifying the material which has been withheld in reliance on Clause 5 of Schedule 1 of the GIPA Act and clauses 1(g), 4(b) and 4(d) of the Table in section 14 of the GIPA Act.

## 6 Disclosure log

If information that would be of interest to other members of the public is released in response to a formal access application, an agency must record certain details about the application in its 'disclosure log' (under sections 25 and 26 of the GIPA Act). I have decided that the information would be of interest to other members of the public and will therefore record the following details in our disclosure log, which is publicly available on our website:

- the date on which your access application was decided (that is, the date of this notice of decision)
- a description of the information that will be released to you
- whether that information is or will be available to other members of the public, and
- if so, how it can be accessed.

This decision is reviewable under section 80(m) of the GIPA Act (see part 7 of this notice for information about your review rights).

## 7 Review rights

If you disagree with any of the decisions in this notice that are reviewable, you may seek a review under Part 5 of the GIPA Act. Before you do so, I encourage you to contact Mr Robinson to discuss your concerns. His contact details are set out below.

You have three review options:

- internal review by another officer of this agency, who is no less senior than me
- external review by the Information Commissioner, or
- external review by the NSW Civil and Administrative Tribunal (NCAT).

You have 20 working days from the date of this Notice to apply for an internal review. If you would prefer to have the decision reviewed externally, you have 40 working days from the date of this Notice to apply for a review by the Information Commissioner or the NCAT.

To assist you, I have enclosed a fact sheet published by the Information and Privacy Commission (IPC), entitled *Your review rights under the GIPA Act*. You will also find some useful information and frequently asked questions on the IPC's website:

[www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au).

You can also contact the IPC on freecall 1800 IPC NSW (1800 472 679).



## 8 Further information

If you have any questions about this notice or would like any further information, please contact Mr Tim Robinson on 9351 4263.

A handwritten signature in black ink that reads "A Maitland". The signature is written in a cursive style with a large initial 'A' and a long, sweeping tail.

Alex Maitland  
Group Secretary

Schedule of Documents

Description of record that contains the information	No of Pages	Document Released	Relevant public interest consideration(s) against disclosure
Registered file 2012/14347 ADMINISTRATION & SUPPORT - Legal matters - Advice		No	Schedule 1 Clause 5
Email correspondence, Agreements,	59	No	Business interests of agencies and other persons – clauses 4(b) and 4(d) of the Table in section 14  Responsible and effective government - clause 1 (g) of the Table in section 14