

# Government Information (Public Access) Act 2009

## NOTICE OF DECISION

Applicant:	Dr Tom Lonsdale
File Ref:	2018/1631
Decision-maker:	Mr David Pacey, Secretary to Senate
Date of decision:	24 April 2018

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## Notice of Decision for Internal review

### 1. Background

On 22 March 2018 the University's Group Secretary made a decision ("the initial decision") in relation to your 5 February 2018 request under the *Government Information (Public Access) Act 2009* ("the GIPA Act") for access to information ("the initial application"). The initial application was as follows:

*"Please provide for the 12 months to 28 February 2018:*

- All email and other correspondence, minutes, documents and records between Centre for Veterinary Education (CVE) and Professor Jill Maddison, Professor David Church, Royal Canin and Hill's.*
- All sponsorship agreements and contracts, including monetary amounts, between the CVE and Royal Canin and Hill's in respect of 19- 23 February 2018 Internal Medicine Conference and associated advertising and marketing arrangements.*
- All agreements, undertakings and contracts, including monetary amounts, between CVE and Professor Jill Maddison and Professor David Church in respect of 19 - 23 February Internal Medicine Conference."*

The initial decision was:

- to provide access to some of the information;
- that some of the information was already available to you; and
- to refuse to provide access to some of the information on the grounds of an overriding public interest against its disclosure.

On 9 April 2018 the University received your application fee for an internal review of the initial decision. I have treated the information released to you as a result of the initial decision as not being in the scope of this internal review. This internal review is a new decision on the information that was not released to you.

### 2. Decision

I am authorised by the principal officer, for the purposes of section 9(3) of the GIPA Act, to make this decision.

I have decided:

- under section 58(1)(a) of the GIPA Act, to provide access to some information which has not previously been released by the University. I have decided to release in part documents 4, 5 and 6, listed in the Schedule of Documents;
- under section 58(1)(c) of the GIPA Act, that some of the information is already available to you; and
- under section 58(1)(d) of the GIPA Act, to refuse to provide you with access to some of the information sought because there is an overriding public interest against its disclosure.

These are reviewable decisions. Please see part 7 of this Notice for information concerning your review rights.

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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 requested, with reference to the relevant public interest considerations against disclosure.

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

Under the GIPA Act reasonable searches must be made for the information requested. I am satisfied that the searches already undertaken were reasonable and used the most efficient means to locate the relevant information. In making the initial decision, enquiries were made with the Sydney School of Veterinary Science and a search was undertaken of the University's recordkeeping system, using relevant names and terms.

For the purposes of this review decision, new enquiries were made with the former Dean of the School of Veterinary Science whose appointment as Dean fell partially within the period covered by your application. No additional information was located. I also confirmed with the School of Veterinary Science that there were no additional documents falling within the scope of your application.

The information that is the subject of this decision is contained in the documents listed in the attached Schedule of Documents. These have been re-examined and two documents which had previously been withheld in full or in part (documents 3 and 12) have now been determined to be outside the scope of your initial application. These documents are dated 17 January 2017 and January 2017 respectively, and are outside the time period covered by the initial application.

#### **3.1 Information already available to you.**

Documents 21 and 23 comprise correspondence between the Centre for Veterinary Education and Professors Church and Maddison. The attachments to documents 21 and 23 are listed in the Schedule as "Attach21-1" to "Attach21-5" and "Attach23-1" to "Attach23-4". These are available for purchase through the Centre for Veterinary Education website at <https://www.cve.edu.au/vetbookshop/problem-solving-internal-medicine-conference>. Accordingly, I have decided under s59(1)(c) that these documents are already available to you.

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

Under section 9(1) of the GIPA Act, applicants have a legally enforceable right to access the information sought, 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.

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To decide whether or not there is an overriding public interest against disclosure of the information you requested, 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:

- (1) in a way that promotes the objects of the GIPA Act;
- (2) with regard to any relevant guidelines issued by the Information Commissioner;
- (3) 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);
- (4) without taking into account the fact that disclosure of information might be misinterpreted or misunderstood by any person (as that fact is irrelevant);  
and
- (5) 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**

The public interest considerations in favour of disclosure which may be relevant to the information to which you seek access are:

- The general public interest in favour of disclosure of government information.
- The public interest in the disclosure of information about the University's sponsorship arrangements with private companies.

#### **4.1.1 Personal Factors of the application**

Under section 55 of the GIPA Act I can also take into account any personal factors of your application. I have not identified any personal factors relevant to this application beyond those set out in the initial application.

### **4.2 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

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the Table. I give the words "could reasonably be expected to" their ordinary meaning, that is reasonable, not irrational, absurd or ridiculous.

The following are the relevant considerations.

### 4.2.1 Responsible and effective government

#### ***"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):*

...

*(d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,*

...

*(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,*

..."

Some of the information was provided to the University in confidence. The documents include correspondence about sponsorship agreement negotiations, and contain information concerning confidential agreements or other confidential information. The documents were created, or provided with the expectation of confidentiality, and the University has treated them accordingly. Disclosure of this information could reasonably be expected to have an adverse impact on relationships with sponsors and disadvantage the University in future negotiations for sponsorship by revealing confidential business arrangements. Disclosure of the information could also reasonably be expected to diminish confidence in the University as a business partner leading to loss of sponsorship, or adversely affect business relationships which would prejudice the University's capacity to carry out some of its activities.

### 4.2.2 Individual rights, judicial processes and natural justice

Clauses 3(a) and 3(b) of the Table at section 14 of the GIPA Act state:

#### ***"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:*

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- (a) reveal an individual's personal information,*
  - (b) contravene an information protection principle under the Privacy and Personal Information Protection Act 1998 or a Health Privacy Principle under the Health Records and Information Privacy Act 2002*
- ..."

There is a distinction between consideration 3(a) and 3(b), stemming from differing definitions of personal information in the GIPA Act and the *Privacy and Personal Information Protection Act 1998* ("the PPIP Act").

The GIPA Act defines personal information in Schedule 4 \ broadly, as follows:

### **4 Personal information**

*"(1) In this Act, personal information means 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.*

*(2) Personal information includes such things as an individual's fingerprints, retina prints, body samples or genetic characteristics.*

*(3) Personal information does not include any of the following:*

*(a) information about an individual who has been dead for more than 30 years,*

*(b) 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,*

*(c) information about an individual that is of a class, or is contained in a document of a class, prescribed by the regulations for the purposes of this subclause."*

The PPIP Act definition has a number of exemptions to what it defines as personal information. As none of the exemptions are relevant to your application, the considerations in 3(a) and (b) of the Table at section 14 are both relevant.

Sections 18 and 19 of the PPIP Act contain the information protection principles, which regulate disclosure of personal information by the University. Section 18 states:

### **18 Limits on disclosure of personal information**

*"(1) A public sector agency that holds personal information must not disclose the information to a person (other than the individual to whom*

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*the information relates) or other body, whether or not such other person or body is a public sector agency, unless:*

*(a) the disclosure is directly related to the purpose for which the information was collected, and the agency disclosing the information has no reason to believe that the individual concerned would object to the disclosure, or*

*(b) the individual concerned is reasonably likely to have been aware, or has been made aware in accordance with section 10, that information of that kind is usually disclosed to that other person or body, or*

*(c) the agency believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the individual concerned or another person.*

*(2) If personal information is disclosed in accordance with subsection (1) to a person or body that is a public sector agency, that agency must not use or disclose the information for a purpose other than the purpose for which the information was given to it."*

The documents listed in the Schedule contain personal information about a number of people, including opinions regarding possible presenters, personal identifying information such as signatures, and information concerning personal activities not related to the School of Veterinary Science. Disclosure of this information could reasonably be expected to reveal a person's information or contravene an information protection principle.

### 4.2.3 Business interests of agencies and other persons

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

***"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:*

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

Some of the information is contained in agreements and/or relates to confidential business and financial matters of concern to organisations or individuals other than the University. Some of those matters are not finalised. Disclosure of that information could reasonably be expected to prejudice the legitimate business commercial or financial interests of those organisations by diminishing the



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commercial value of that information, which could disadvantage them in their commercial operations.

### 4.3 Consultation

Some of the information is of the type which requires consultation under section 54 of the GIPA Act. Having regard to the recent consultation undertaken in response to the initial application, I have not consulted again with the affected third parties.

### 4.4 Balancing the public interest test

The object of the GIPA Act is to be achieved by authorising and encouraging proactive release of information, providing an enforceable right of access and restricting access to government information only where there is an overriding public interest against disclosure. In accordance with section 13, there is an overriding public interest against disclosure of information for the purposes of the GIPA Act if (and only if) there are public interest considerations against disclosure and, on balance, those considerations outweigh the public interest considerations in favour of disclosure.

The factors that weigh in favour of disclosure of the information are set out in part 4.1 of this Notice. The public interest considerations against disclosure of the information are in part 4.2 of this Notice. I have formed the view that disclosure of some of the information could reasonably be expected to have one or more of the relevant effects listed in the Table at section 14 of the GIPA Act. Accordingly, it is appropriate to take these public interest considerations into account when assessing whether there is an overriding public interest against disclosure.

The decision of the NSW Civil and Administrative Tribunal in *Lonsdale v University of Sydney* [2016] NSWCATAD 176 ("the NCAT decision") is relevant to this matter. That decision dealt with your access application to the University dated 29 September 2014, seeking information similar to that covered by your initial application which is the subject of this review.

The NCAT decision included consideration of the applicability of clause 4(d) to the information you sought. That clause deals with the reasonable expectation of prejudice to the University's legitimate business, commercial or financial interests resulting from the disclosure of information. I have been guided by the NCAT decision in my balancing of the public interests for and against disclosure of the information you have sought. I agree with Senior Member McAteer's finding, at [100], that: "...significant weight should attach to this consideration so as to override the general presumption in favour of disclosure."

Some information contained in the documents listed in the Schedule is the personal information of other people, such as presenters at Continuing Veterinary Education courses, or concerns the business interests of others, such as companies who sponsor events at the University or employees of those sponsors. Disclosure of this information could reasonably be expected to adversely impact on the relationship of those persons with the University and to adversely affect the University's ability to



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engage with persons and bodies outside the University. In particular, the disclosure of information regarding sponsorship amounts or conditions could reasonably be expected to prejudice the sponsors' business and commercial interests as it would make available to their competitors otherwise confidential commercial information.

The release of confidential business information would diminish confidence in the University as a trusted partner, prejudicing the University's capacity to effectively exercise some of its functions in relation to engagement with industry. I am satisfied that the information came in to being and was used by the University on the understanding that it was confidential. My view is in accordance with the decision of the NCAT in *Alexander v University of Sydney and anor* [2008] NSWADT 214 at [26] that in order to satisfy the element of confidentiality:

" ... it is not necessary to show that there was an express obligation or understanding that the information was given in confidence. It is sufficient for this to be implied from the circumstances in which the information was obtained or given."

The University obtains financial and other support through many avenues and engages with the wider community, including industry, for sponsorship to support its functions. Fundamental to my consideration of where the public interest lies is a balancing of the public need to be informed of the University's relationships with industry, on the one hand, with the University's need for sponsorship and it maintaining its status as a desirable business partner for industry, on the other. The public is informed through the University's website of sponsorships and other relationships with industry in general, and with pet food companies in particular. I consider that the public interest in information about the University's commercial relationships has been satisfied in this way.

Taking into account all the factors, I have decided that the public interest considerations against disclosure outweigh the public interest considerations in favour of disclosure of some of the information falling within the scope of your initial application. In particular, the public interest factors in favour of disclosure (whether taken individually or cumulatively) do not outweigh the public interest in:

- the University upholding its obligation to maintain the confidentiality of information provided to it on a confidential basis;
- the University protecting the rights of third parties to the privacy of their personal information;
- the University complying with the requirements of the PPIP Act; and
- the University protecting the legitimate business, commercial, professional or financial interests of third parties.

On that basis, I have decided that the public interest factors against disclosure outweigh those in favour of disclosure of some of the information, and therefore that

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there is an overriding public interest against disclosure of that information, as specified in the Schedule of Documents.

### 5. Access

A copy of the information not previously provided to you and a Schedule of Documents is attached.

Document 10 in the Schedule of Documents is still subject to the appeal rights of a third party who objected to disclosure and accordingly a copy cannot be provided until those appeal rights are exhausted.

Doc 1, Attach1-3 in the Schedule of Documents which has been released in full cannot be copied because of the requirements of the *Commonwealth Copyright Act 1968*. I have therefore decided in accordance with section 72(1)(a) of the GIPA Act to provide you with access to the information by providing a reasonable opportunity for you to inspect these records. You may arrange a suitable time to do this by contacting Mr Tim Robinson on 9351 4263. Your entitlement to access this information will lapse at the end of 6 months.

### 6. Charges

There are no charges additional to the application fee for this internal review.

### 7. Review rights

If you are dissatisfied with the decisions in this Notice, you may seek a review. 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 further information and frequently asked questions on the IPC's website: [www.ipc.nsw.gov.au](http://www.ipc.nsw.gov.au).

If you wish, 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.



.....  
David Pacey  
Secretary to Senate

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### Schedule of documents

Includes relevant public interest considerations against disclosure for documents not released or released in part

Doc No	Attachments	Date	Time	From	To	Subject	Decision
DOC1		15-Jul-17	2:58:00 PM	D Gallegos	D Church, J Maddison & others	CVE Internal Medicine Conference	Withhold in part [cl 3(a), 3(b) & 4(d) of table at s 14]
DOC1	Attach 1-1					Draft program	Provide access
DOC1	Attach 1-2					Simple chapter template	Provide access
DOC1	Attach 1-3					Chapter example	Provide access - But item in copyright - access to be provided by provision of opportunity to read in University
DOC1	Attach 1-4					Disclose	Provide access
DOC1	Attach 1-5					PowerPoint	Provide access
DOC2		5-Feb-18	10:11:26 AM	J Moon	T Brittain	D Church, J Maddison accommodation	Withhold in part [cl 3(a), 3(b) & 4(d) of table at s 14]
DOC3		17-Jan-17	4:58:54 PM	H White	D Church, J Maddison	2018 Conference	Out of Scope
DOC4		24-Mar-17	12:20:32 PM	H White	D Church, J Maddison	Conference Feb 2018	Withhold in part [cl 1(d), 1(e) & 1(f) of table at s 14]
DOC5		2-May-17	11:06:03 AM	H White	J Maddison	Re Draft program Sydney Feb 2018	Withhold in part [cl 1(d), 1(e) & 1(f) of table at s 14]
DOC5	Attach 5-1					Draft program Sydney Feb 2018	Withhold in part [cl 1(d), 1(e) & 1(f) of table at s 14]
DOC6		28-Jul-17	10:19:17 AM	H White	J Maddison	Speaker information	Withhold in part [cl 1(d), 1(e) & 1(f) of table at s 14]
DOC7		7-Aug-17	1:18:50 PM	Hills	I Borovic	2018 CVE Events	Withhold [cl 1(d), 1(e), 1(f) & 4(d) of table at s 14]

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DOC8		8-Nov-17	2:40:06 AM	I Borovic	Hills	2018 Sponsorship	Withhold [cl 1(d), 1(e), 1(f) & 4(d) of table at s 14]
DOC9		16-Oct-17	3:28:36 PM	I Borovic	Royal Canin	Meeting	Withhold [cl 1(d), 1(e), 1(f) & 4(d) of table at s 14]
DOC10		13-Dec-17	2:33:48 PM	I Borovic	Royal Canin	CVE ad	Withhold in part [cl 3(a), 3(b) of table at s14]
DOC11		28-Sep-17	2:19:00 PM	D Gallegos	J Maddison	CVE Internal Medicine Conference	Withhold in part [cl 3(a), 3(b) & 4(d) of table at s 14]
DOC12		14-Feb-17				Hills signed sponsorship 2017	Out of Scope
DOC13		10-Nov-17				Hills signed sponsorship 2018	Withhold [cl 1(d), 1(e), 1(f) & 4(d) of table at s 14]
DOC14						Hills sponsorship 2018 breakdown	Withhold [cl 1(d), 1(e), 1(f) & 4(d) of table at s 14]
DOC15		30-Sep-17				Royal Canin signed sponsorship 2018	Withhold [cl 1(d), 1(e), 1(f) & 4(d) of table at s 14]
DOC16						Royal Canin sponsorship 2018 breakdown	Withhold [cl 1(d), 1(e), 1(f) & 4(d) of table at s 14]
DOC17		18-Oct-17	9:09:52 PM	J Maddison	T Brittain	CVE now has online polling	Withhold in part [cl 1(e), 1(f) & 4(d) of table at s 14]
DOC18		19-Oct-17	11:12:00 AM	T Brittain	J Maddison	Re flights for conference	Withhold in part [cl 1(e), 1(f) & 4(d) of table at s 14]
DOC19		11-Dec-17	8:41:00 AM	T Brittain	J Maddison	Can we invite vet nurses	Withhold in part [cl 3(a), 3(b) of table at s14]
DOC20		18-Dec-17	9:11:00 AM	T Brittain	J Maddison, D Church & others	Metoo online polling	Provide access [part redacted because duplicated]
DOC21		6-Jan-18	3:57:08 AM	J Maddison	T Brittain	Internal Medicine Conference	Withhold in part [cl 3(a), 3(b) of table at s14]
DOC21	Attach21-1					Assessing the patient with vomiting ...	Already available [s 59(1)(c)]
DOC21	Attach21-2					Assessing the patient with weight loss	Already available [s 59(1)(c)]
DOC21	Attach21-3					Clinical reasoning ...	Already available [s 59(1)(c)]

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DOC21	Attach21-4						Problem based approach to anaemic ...	Already available [s 59(1)(c)]
DOC21	Attach21-5						Problem based approach to bleeding ...	Already available [s 59(1)(c)]
DOC22		17-Jan-18	7:26:07 AM	J Maddison	T Brittain		Accommodation	Withhold in part [ci 3(a), 3(b) & 4(d) of table at s 14]
DOC23		21-Jan-18	9:15:42 AM	D Church	T Brittain		CVE Notes	Withhold in part [ci 3(a), 3(b) of table at s14]
DOC23	Attach23-1						Calcium disorders	Already available [s 59(1)(c)]
DOC23	Attach23-2						Logical approach to coughing ...	Already available [s 59(1)(c)]
DOC23	Attach23-3						Diabetes mellitus	Already available [s 59(1)(c)]
DOC23	Attach23-4						Logical approach to Polydipsia...	Already available [s 59(1)(c)]
DOC24		1-Jan-18					D Church - Agreement for services	Withhold in part [ci 1(d), 1(e), 1(f), 3(a), 3(b), 4(b), 4(c) & 4(d) of table at s 14]
DOC25		3-Jan-18					J Maddison - Signed agreement for services	Withhold in part [ci 1(d), 1(e), 1(f), 3(a), 3(b), 4(b), 4(c) & 4(d) of table at s 14]