

Government Information (Public Access) Act 2009

NOTICE OF DECISION

Applicant:	Dr Tom Lonsdale
File Ref:	2015/6200
Decision-maker:	Mr Alex Maitland, Group Secretary
Date of decision:	2 November 2015

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1. Summary of access application

On 1 October 2015, we received your access application under the *Government Information (Public Access) Act 2009* (GIPA Act). Your request was expressed as follows:

“Please find enclosed specimen letter as hand delivered to the Senate Office and addressed individually to the Chancellor, Vice-Chancellor and each other member of the Senate and one copy for the Senate Office, being 24 letters in all.

Please supply all University records relating to the content and to the physical whereabouts of the 24 letters, the enclosures and books.

The records may include, but not be limited to, minutes of meetings, emails, annotations, letters and memoranda.

The records may include, but not be limited to, communications between the Senate Office, Vice-Chancellor, Chancellor, Senate Members and members of the Veterinary Faculty and University lawyers.”

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.

I have decided:

- under section 58(1)(a) to provide access to the information sought in your access application;
- under section 58(1)(c) that some of the information is already available to you.

These decisions are reviewable under sections 80(d) and 80(e) 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 system to find any information that falls within the scope of your application. The descriptions of the resulting documents were then examined for relevance to your application.

Two documents were identified as being relevant. These documents are emails from the Vice-Chancellor's Office dated 23 July 2010 and 6 August 2010.

In addition, enquiries were made with the University's Secretary to Senate. The Executive Officer to the Senate undertook a search of the Senate Agendas and Minutes for August and September 2010 and of the "For Fellows" only website. No relevant records were identified in the Senate Agendas and Minutes. The Executive Officer to the Senate has confirmed that on 29 July 2010 a copy of your letter dated 21 July 2010 and the Dean's response to your letter dated 27 July 2010 were placed on the "For Fellows" only website.

Please note, that I have decided under section 58(1)(c) that documents to or from you, is information already available to you. Accordingly further copies of such information have not been provided.

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 how the University deals with unsolicited correspondence

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. The material referred to in this application was provided by you to the University and this would be relevant to your request for access to information about how the University dealt with the material.

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.

I did not identify any public interest considerations which in my view could reasonably be expected to have any of the effects identified in the Table in section 14 of the GIPA Act.

4.4 Consultation

No consultation was required, under section 54 of the GIPA Act.

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 releasing the documents 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 documents which have been released.

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). However, the University is

not required to include in its disclosure log "...personal information about the applicant..." and so details of your application will not be included in the University's disclosure log.

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.

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.



Alex Maitland
Group Secretary

Schedule of Documents

Description of record that contains the information	Date	No of Pages	Document Released	Relevant public interest consideration(s) against disclosure
Email Ms Kathy Dodd to Dean of the Faculty of Veterinary Science. To avoid duplication of material already held by the applicant, only the first page of the attachment has been included.	23 July 2010	2	Yes	N/A
Email Ms Kathy Dodd to Ms Lis Bergmann. To avoid duplication of material already held by the applicant, the attachment has not been included.	6 August 2010	1	Yes	N/A