

Government Information (Public Access) Act 2009

NOTICE OF DECISION

Applicant:	Dr Tom Lonsdale
File Ref:	2014/8813
Decision-maker:	David Pacey, Secretary to Senate, The University of Sydney
Date of decision:	2 February 2015

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1. Background

On 11 November 2014 the University of Sydney made a decision in relation to your request under the *Government Information (Public Access) Act 2009* ('the GIPA Act') for access to information ('the initial decision'). Your request was for "details of research funds, sponsorships, agreements and contracts between pet food companies and the University of Sydney, its staff and students" and "copies of correspondence, email messages and memoranda that relate to the arrangements entered into by individuals and the University."

The initial decision was to refuse access to the information you sought. Access was refused to some information on the grounds of an overriding public interest against disclosure, and to other information on the basis that the information was already available to you. A copy of the initial decision is attached.

On 5 December 2014 you requested the University conduct an internal review of the initial decision.

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 s58(1)(a) of the GIPA Act, to release some of the information that has not previously been released by the University.

I have decided, under s58(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 decisions are reviewable decisions. Please see part 7 of this Notice for information concerning your review rights.

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 (see the attached Schedule of Documents).

3. Searches for information

Under the GIPA Act, reasonable searches must be made for the information requested. I note that you have previously been advised of the two pet food companies with whom the Faculty of Veterinary Science has sponsorship arrangements, namely Hill's Pet Nutrition Pty Ltd and Royal Canin.

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In addition to the enquiries made in dealing with the initial application, enquiries have been made with the University's Research Analytics and Compliance Manager and no research funding from pet food manufacturers identified.

Some information identifying sponsors of events and activities by pet food companies is made available through the University's website. This information is freely available to the public. Accordingly, I have not included that information again in this decision.

The records that are the subject of this decision are those in the attached Schedule of Documents.

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.

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:

- (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

I rely on the public interest considerations in favour of disclosure set out in part 4.1 of the initial decision. I note your role as a veterinary practitioner, however, I have not identified any personal factors which should be taken into consideration regarding this application.

4.2 Public interest considerations against disclosure

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

Some of the information you requested is contained in confidential email exchanges between University staff members that were sent for the dominant purpose of obtaining or providing legal advice. Documents of this nature are 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.”

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

I have given consideration to whether it would be appropriate for the University to waive its privilege. Having regard to the content and the nature of the communications, I have decided it would not be appropriate to waive privilege.

4.2.2 Other 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 in section 14 of the GIPA Act.

I consider the relevant clauses of the Table to be:

Clause 1(g) which relevantly provides as follows:

“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):

1(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”

and

Clauses 4(b) and (d) which relevantly provide as follows:

“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

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interests.”

The University has sponsorship relationships, with 2 pet food organisations. The details of those relationship arrangements are contained in Memoranda of Understanding, having been determined through private negotiation. A majority of documents within the scope of your application contain sensitive information concerning the negotiations and were created on a basis of confidentiality.

The confidential nature of these communications and agreements is made explicit in the general terms of the Memoranda of Understanding which describe mutual obligations of confidentiality. The final arrangements set out in the Schedule to the Memoranda of Understanding include commercially sensitive information such as financial commitments.

To release details of the negotiations, and the final arrangements would be a breach of the confidentiality and trust that sponsors place in the University when participating in negotiations and entering into agreements. Disclosure of confidential internal communications, communications with sponsors and commercially sensitive information would have an adverse effect on the capacity of the University to manage current sponsorships, and negotiate future sponsorships, as the sponsors’ commercial information would be revealed to other commercial entities, operating within the same competitive environment. This disclosure would most likely disadvantage the sponsors by diminishing the value of the negotiated commercial arrangements. This would have the effect that current and potential future sponsors, would most likely be disinclined to have sponsorship dealings with the University which would adversely impact on the University.

The University publically acknowledges sponsors at events and through its website, in accordance with agreements entered into and accordingly I consider the public interest in understanding the sources of funding for University activities is met.

Minor parts of some of the documents covered by your application contain information about other individuals. That information is the names, signatures and contact details of third parties and are outside the scope of this application.

4.3 Consultation

I have consulted again with the organisations whose business information is concerned with the application.

4.4 Balancing the public interest test

I have considered the public interest considerations in favour of and against disclosure of the information you sought. I note the agreements with the pet food companies are not of the kind required to be made publically available under GIPA, and that even if they were of that kind, matters which are commercial in confidence are not required to be made public.

On balance, I find that the public interest lies in not providing access to commercially sensitive information concerning agreement negotiations and the final arrangements entered into by the University with pet food companies.

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5. Access

Access to the released information is provided in the form of pdf copies of the relevant documents. In accordance with section 74 of the GIPA Act, the documents have been redacted to remove information in respect of which there is an overriding public interest against disclosure or which is personal identifying information not relevant to the application.

6. Charges

There is no charge for this internal review.

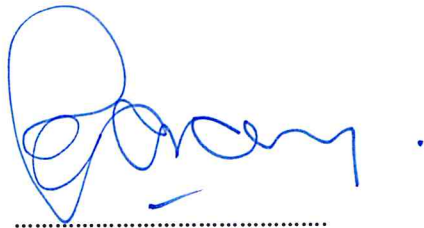
7. Review rights

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.

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 6391.



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David Pacey

Secretary to Senate

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Schedule of Documents

Doc	No of Pages	Description of Record that contains the Information	Release	Relevant public interest consideration(s) against disclosure
1	3	Letter: 5 March 2014 Ms Ines Borovic, Marketing and Sales Manager, Centre for Veterinary Science to Hill's Pet Nutrition Pty Ltd	Withhold	Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)
2	8 pages	Invoices to Hill's Pet Nutrition and Royal Canin, July and Sept 2013	Release in Part	Business interests of agencies and other persons - clauses 4(b) and (d)
3	10 pages	Memorandum of Understanding Sponsorship: University of Sydney and Royal Canin 2013	Release in part	Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)
4	11 pages	Memorandum of Understanding Sponsorship: University of Sydney and Hill's Pet Nutrition Pty Ltd 2013	Release in part	Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)

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5	2 pages	Email: 29 April 2013 10:09 Royal Canin to Mr K Merchant, Business Manager Veterinary Clinical Services, Ms R Taylor, Dean Faculty of Veterinary Science	Withhold	Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)
6	5 pages	Email: 7 March 2013 6:26 Mr K Merchant, Business Manager Veterinary Clinical Services to Ms R Taylor, Dean Faculty of Veterinary Science	Withhold	Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)
7	3 pages	Email: 7 March 2013 10:53 Mr K Merchant, Business Manager Veterinary Clinical Services to Ms R Taylor, Dean Faculty of Veterinary Science	Release in part	Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)
8	5 pages	Email: 7 March 2013 2:27 Ms S Matthew, Lecturer, Faculty of Veterinary Science to Mr K Merchant, Business Manager Veterinary Clinical Services cc Ms S Matthew, Lecturer, Faculty of Veterinary, Mr P Higgins, Lecturer, Faculty of Veterinary Science, Ms R Taylor, Dean Faculty of Veterinary Science	Release in part	Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)

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9	6 pages	Email: 22 February 2013 Mr K Merchant, Business Manager Veterinary Clinical Services to Royal Canin cc Ms R Taylor, Dean Faculty of Veterinary Science, Ms S Matthew, Lecturer, Faculty of Veterinary, Ms C Ritchard, Hospital Manager, University Veterinary Teaching Hospital, Camden	Withhold	Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)
10	5 pages	Email: 5:22 26 November 2012 Ms R Taylor, Dean Faculty of Veterinary Science to Hill's Pet Nutrition Pty Ltd	Withhold	Schedule 1 Clause 5 Responsible and effective government - clause 1(g) Business interests of agencies and other persons - clauses 4(b) and (d)
Documents from Legal File 2012/15434				
11	8 pages	Email: 5 November 2012 12.14 Ms K Migliorini to Ms C Cosentino	Withhold	Schedule 1 Clause 5
12	2 pages	File Note	Withhold	Schedule 1 Clause 5
13	8 pages	Email: 13 November 2012 12.52 Ms R Taylor, Dean Faculty of Veterinary Science to Ms C Cosentino	Withhold	Schedule 1 Clause 5
14	2	Email: 5 November 2012 3.43 Ms K Migliorini to Ms C Cosentino cc Ms O Perks	Withhold	Schedule 1 Clause 5

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	pages			
15	2 pages	Email: 7 November 2012 12.15 Ms R Taylor, Dean Faculty of Veterinary Science to Ms K Migliorini cc Ms C Cosentino	Withhold	Schedule 1 Clause 5
16	3 pages	File Note 12 November 2012	Withhold	Schedule 1 Clause 5
17	8 pages	Email: 13 November 2012 12.52 Ms R Taylor, Dean Faculty of Veterinary Science to Ms C Cosentino	Withhold	Schedule 1 Clause 5
18	14 pages	Email: 19 November 2012 1.28 Ms C Cosentino to Ms R Taylor, Dean Faculty of Veterinary Science	Withhold	Schedule 1 Clause 5
19	8 pages	Email: 20 November 2012 5.49 Ms R Taylor, Dean Faculty of Veterinary Science to Ms C Cosentino	Withhold	Schedule 1 Clause 5
20	22 pages	Email: 21 November 2012 11.19 Ms C Cosentino to Ms R Taylor, Dean Faculty of Veterinary Science	Withhold	Schedule 1 Clause 5
21	12 pages	Email: 21 March 2013 12.42 Mr K Merchant, Business Manager Veterinary Clinical Services to Ms C Cosentino cc R Taylor Dean Faculty of Veterinary Science	Withhold	Schedule 1 Clause 5
22	13 pages	Draft Memorandum of Understanding	Withhold	Schedule 1 Clause 5
23	25 pages	Email: 30 August 2013 10.17 Mr K Merchant, Business Manager Veterinary Clinical Services to Ms C Cosentino cc Vetsci Assistant, Grace Lei Zhang, Natascha Koepsel, Senior Project Officer, Faculty of Veterinary Science, Colleen Ritchard, Hospital Manager, University Veterinary Teaching Hospital, Camden, Joanne Moon, Veterinary Hospitals Finance Officer	Withhold	Schedule 1 Clause 5