

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

File Number: 1510239

**Tom Lonsdale
Applicant**

AND

**The University of Sydney
Respondent**

APPLICANT'S SUBMISSIONS

1.)

On 29 September 2014 I lodged a FOI (GIPA) Enquiry: Pet food company involvement with University of Sydney. In a review decision dated 2 February 2015, the University made a limited disclosure.

Under s 5 of the *Government Information (Public Access) Act 2009* (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) this is a legally enforceable right unless there is an overriding public interest against disclosure.

I submit that the Respondent has failed to sufficiently demonstrate an overriding public interest against disclosure. A number of factors bear on this failure. Conspicuously, the Respondent resorts to convoluted legal mumbo jumbo which serves to distract and obscure but does not address the fundamental rights of the public to know what its government agencies are doing.

The Respondent gives undue weight and makes much of the fact certain documents are marked 'confidential'. However the GIPA Act provides for the release of information, notwithstanding that information may be marked 'confidential'. That release of the documents risks embarrassment to the University and the government is immaterial as the GIPA Act specifically disallows considerations that release of documents may cause embarrassment or a loss of confidence in a government institution.

I submit that there is an overriding public interest, within the definition as set out in GIPA, in obtaining the information as requested in the 29 September 2014 letter. Namely, that the public ought to be made aware (through the release of relevant documentation) of any commercial agreements between the Sydney University and Pet Food manufacturers as these agreements may and likely do impact on the scientific integrity and educational objectivity of course material and teaching methods.

2.)

Issues to be determined

1. Identify the range and extent of documentation that the University possesses and to which it denies public access.
2. Assess the merits or lack thereof of the University's refusal to provide access.
3. Affirm, vary or set aside the University and Information Commissioner's review decisions.

3.)

Guiding Principles (GIPA)

The Government Information (Public Access) Act 2009 (GIPA Act)

The GIPA Act establishes a proactive, more open approach to gaining access to government information in New South Wales (NSW). The objects of the GIPA Act are to maintain and advance a system of responsible and representative democratic Government that is open, accountable, fair and effective.

The GIPA Act:

- authorises and encourages the proactive release of information by NSW public sector agencies
- gives members of the public a legally enforceable right to access government information
- ensures that access to government information is restricted only when there is an overriding public interest against releasing that information.

The GIPA Act applies to all NSW government agencies, and also extends to Ministers and their staff, local councils, state-owned corporations, courts in their non-judicial functions, and to certain public authorities, such as universities.

The guiding principle of the GIPA Act is public interest. It is generally presumed that all government agencies will disclose or release information, unless there is an overriding public interest against doing so. Under the GIPA Act it is compulsory for agencies to provide information about their structure, functions and policies, and agencies are encouraged to proactively and informally release as much other information as possible.

An access application (also known as a formal application) should only need to be lodged as a last resort. Where access applications are needed, the GIPA Act outlines the process that applicants and agencies should follow, as well as the options for reviewing decisions about an access application. (<http://www.ipc.nsw.gov.au/gipa-act#>)

Commentary/rebuttal of Respondent's Submission

4.)

The Respondent sets out what it considered to be 'Relevant provisions of the GIPA Act' and then addresses those provisions.

The respondent sets out section 15 of the GIPA provisions:

- (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.

(TL) Clearly the University 'must exercise its functions so as to promote the object of this Act' as set out in the Guiding Principles (GIPA).

Disclosure of the information sought will most likely cause embarrassment to and loss of confidence in the University and possibly other Government Agencies. However, the public interest is paramount. In the interests of good government it is axiomatic that unpalatable or embarrassing truths need to be aired in order for proper discourse and resolution of actual or perceived failings.

5.)

The Respondent listed '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.

(TL) I suggest that much of what constitutes University veterinary services and facilities amounts to an elaborate intellectual, scientific and commercial fraud.

The University has a large, but undisclosed budget made up, I am led to believe, mostly from taxpayer funds and tuition fees. However, the junk pet-food industry contributes relatively small amounts of cash by comparison, but nevertheless controls the entire curriculum through all years of the educational syllabus and all aspects of the so-called scientific endeavour.

Internal criticism is all but banned and there's a general chill on discussion for fear of retribution.

Public money is used to brainwash trainee vets who then brainwash the community leading to massive excess expenditure on junk pet-food products and endless needless trips to the vet. This represents a classical, elaborate, enormous case of privatising the profits whilst socialising the costs. The unethical, illegal flow-on effects offend against the basic tenets of the GIPA Act and likely provisions of the following:

- *University of Sydney Act 1989*
- Sydney University Charter of Academic Freedom
- *Prevention of Cruelty to Animals Act*
- *Veterinary Practice Act*
- Truth in Advertising regulations.
- Laws of obligation
- Deception and fraud
- Breach of contract
- *Education Services for Overseas Students Act 2000*
- *Tertiary Education Quality and Standards Agency Act 2011*

The Respondent lists what it considers are the public interest considerations against disclosure.

6.)

The Respondent at item 14 lists the table in section 14 the GIPA Act:

There is a public interest against disclosure of information if disclosure of the information could reasonably be expected to *inter alia*:

(f) prejudice the effective exercise by the University of its functions?

(TL) Categorically NO. The University is caught in a degrading downward spiral of incompetence and corruption unbecoming a tertiary educational institution of any grade or standing. Only by opening up the full extent of the junk pet-food fraud will proper remedial action be possible. Plainly disclosure will ultimately enhance the effective exercise by the University of its functions.

7.)

The Respondent states at point 28 in respect to **The public interest considerations against disclosure**:

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

To demonstrate that this (1(f)) is a relevant consideration, the University must establish that:

a) the information is confidential;

(TL) The University may be able to point to signed documents bearing the word ‘confidential’. However if those documents, at heart, are for the purpose of obscuring or advancing malfeasance and maladministration then claims for confidentiality have no legitimacy and should therefore be ignored.

8.)

b) the information facilitates the effective exercise of its functions; and

(TL) Junk pet-food information, deals, contracts and obligations are antithetical to any and all exercise of University functions. The information does not and cannot ‘facilitate the effective exercise of University functions’. To suggest otherwise is to attempt a complete inversion of the truth.

9.)

c) disclosure of the information could reasonably be expected to prejudice the effective exercise by the University of its functions.

(TL) Effective, honest exercise of the University’s functions can only be achieved by complete disclosure of all past dealings with junk pet-food companies. It is impossible for the University to claim shady dealings *assist* with the exercise of University functions.

10.)

The Respondent states at point 30:

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

...

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.

(TL) I suggest that to withhold disclosure is contrary to the provisions of several acts and regulations. The University should not in any way ‘endeavour to limit the terms of the disclosure’ and thus potentiate and prolong the harm done.

11.)

Respondent’s point 32:

The information is not publicly available: Perks [25]

(TL) I suspect that much of the information or close variants of the information is available, in particular as a result of the Murdoch University disclosure of 500 documents. The Respondent’s solicitor will likely know the detail, having been a regular visitor to my website.

12.)

The Respondent writes at point 33:

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

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'.

(TL) It is outrageous to begin to suggest that secret deals with junk pet-food companies could possibly assist with the objects of the University. Provisions of *University of Sydney Act 1989 (NSW)* are:

Section (2) The University has the following principal functions for the promotion of its object:

- (a) the provision of facilities for education and research of university standard,
- (b) the encouragement of the dissemination, advancement, development and application of knowledge informed by free inquiry,
- (c) 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,
- (d) the participation in public discourse,
- (e) the conferring of degrees, including those of Bachelor, Master and Doctor, and the awarding of diplomas, certificates and other awards,
- (f) the provision of teaching and learning that engage with advanced knowledge and inquiry,
- (g) the development of governance, procedural rules, admission policies, financial arrangements and quality assurance processes that are underpinned by the values and goals referred to in the functions set out in this subsection, and that are sufficient to ensure the integrity of the University's academic programs.

(TL) All those objects (a) to (g) are, whether to a lesser or greater extent, compromised by virtue of the University's secret dealings with junk pet-food companies.

- (a) involvement with junk pet-food diminishes or destroys the educational and research environment bringing the University into contempt.
- (b) with the dead hand of the junk pet-food monster, there can be no free inquiry nor encouragement, dissemination, advancement and development of useful knowledge to combat the epidemic of junk pet-food induced diseases as currently prevails.
- (c) the dead hand of the junk pet-food monster ensures that the needs of the community are trashed, the community's animals are rendered sick and dying.
- (d) public discourse is variously avoided, derailed or banned by an incompetent and I suggest corrupt regime.

- (f) junk pet-food dominated thinking retards knowledge and inquiry with ongoing severe ill-health of animals and serious breach of contract with students and the wider community.
- (g) junk pet-food mass poisoning of pets destroys the integrity of the University's academic programs.

13.)

University of Sydney Act 1989 (NSW)16 Functions of Senate

(1A) The Senate:

(a) acts for and on behalf of the University in the exercise of the University's functions, and

(b) has the control and management of the affairs and concerns of the University, and

(c) may act in all matters concerning the University in such manner as appears to the Senate to be best calculated to promote the object and interests of the University.

(1B) Without limiting the functions of the Senate under subsection (1A), the Senate is, in controlling and managing the affairs and concerns of the University:

(a) to monitor the performance of the Vice-Chancellor, and

(b) to oversee the University's performance, and

(c) to oversee the academic activities of the University, and

(d) to approve the University's mission, strategic direction, annual budget and business plan, and

(e) to oversee risk management and risk assessment across the University (including, if necessary, taking reasonable steps to obtain independent audit reports of entities in which the University has an interest but which it does not control or with which it has entered into a joint venture), and

(f) to approve and monitor systems of control and accountability for the University (including in relation to controlled entities within the meaning of section 16A), and

(g) to approve significant University commercial activities (within the meaning of section 26A), and

(h) to establish policies and procedural principles for the University consistent with legal requirements and community expectations, and

(i) to ensure that the University's grievance procedures, and information concerning any rights of appeal or review conferred by or under any Act, are published in a form that is readily accessible to the public, and

(j) to regularly review its own performance (in light of its functions and obligations imposed by or under this or any other Act), and

(k) to adopt a statement of its primary responsibilities, and

(l) to make available for Fellows a program of induction and of development relevant to their role as a Fellow.

(TL) Clearly there have been serious lapses of judgement. Many of the listed Senate functions have been traduced. In particular serious questions hang over the performance of the Vice-Chancellor.

Risk management, risk assessment and systems for control and accountability appear to be corrupted or absent.

14.)

University of Sydney Act 1989 (NSW) 26B Guidelines for commercial activities

- (1) The Senate must by resolution determine, and must maintain, Guidelines requiring specified processes and procedures to be followed in connection with University commercial activities.
- (2) The Senate may by resolution amend or replace the Guidelines from time to time.
- (3) Without limitation, the Guidelines may contain provision for or with respect to the following in connection with University commercial activities:
 - (a) requiring feasibility and due diligence assessment,
 - (b) requiring the identification of appropriate governance and administrative arrangements (including as to legal structures and audit requirements),
 - (c) requiring the undertaking of risk assessment and risk management measures,
 - (d) regulating and imposing requirements concerning the delegation by the Senate of any of its functions under this Act in connection with University commercial activities,
 - (e) declaring a specified activity to be a University commercial activity for the purposes of paragraph (b) of the definition of that expression in section 26A,
 - (f) establishing a protocol regarding the rights and responsibilities of members of the Senate in relation to commercialisation, with a view to avoiding real or apparent conflicts of interest.
- (4) The Senate must ensure that the Guidelines are complied with.

(TL) Clearly with junk pet-food influence across all aspects of the veterinary curriculum, it appears that the Senate has failed in respect to due diligence, appropriate governance, administrative arrangements (including legal structures and audit requirements), risk assessment and risk management.

15.)

Respondent at point 58 refers to Documents marked 1-10 (**(TL)** *presumably suppressed documents?*).

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.

(TL) Scrutiny and transparency are vital to the tertiary educational, scientific and research agenda. The University would be well advised to give more than lip service.

16.)

Respondent refers at point 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.

(TL) From these remarks we can deduce that the University understands the paramount need for all veterinarians to promote a raw food diet for domestic carnivores just as it's a commercial imperative for zoo veterinarians to promote a raw food diet for captive wild carnivores. That the University knows about and perhaps has read *Raw Meaty Bones: Promote Health and Work Wonders: Feed your dog raw meaty bones*, must be considered a good thing.

If the University is implying some improper bias on my part, then my miniscule income from raw food and book sales pales into insignificance when compared with the junk pet-food dealing, book publishing, propaganda peddling University. At least one Vet School staff member was a long time Mars junk food representative and then subsequently a Nestlé junk food representative.

In any event, as will be shown in the Affidavit accompanying this submission, raw food is essential for carnivores. Since raw food is easily the best, most gentle, most effective medicine available, we should look forward to the day when every vet employs the best medicine as a first line preventative and treatment option. Books advising veterinarians how to overcome University brainwashing programs are essential, as are books advising pet owners how to escape the clutches of brainwashed vets.

Some regulations, conventions and Acts having a bearing on the University involvement with junk pet-food makers.

17.)

The University of Sydney, Charter of Academic Freedom

The University of Sydney declares its commitment to free enquiry as necessary to the conduct of a democratic society and to the quest for intellectual, moral and material advance in the human condition.

The University of Sydney affirms its institutional right and responsibility, and the rights and responsibilities of each of its individual scholars, to pursue knowledge for its own sake, wherever the pursuit might lead. The University further supports the responsible transmission of that knowledge so gained, openly within the academy and into the community at large, in conformity with the law and the policies and obligations of the University

The University of Sydney, consistent with the principles enunciated in its mission and policies, undertakes to promote and support:

- the free, and responsible pursuit of knowledge through research in accordance with the highest ethical, professional and legal standards
- the dissemination of the outcomes of research, in teaching, as publications and creative works, and in media discourse
- principled and informed discussion of all aspects of knowledge and culture

This Charter of Academic Freedom is endorsed by the Senate and Academic Board of The University of Sydney.

(TL) Nothing principled or informed about the junk pet-food scam.

18.)

Prevention of Cruelty to Animals Act 1979

8 Animals to be provided with food, drink or shelter

(1) A person in charge of an animal shall not fail to provide the animal with food, drink or shelter, or any of them, which, in each case, is proper and sufficient and which it is reasonably practicable in the circumstances for the person to provide.

(TL) Junk food fed on rare occasions may be considered ‘proper and sufficient’. Promoting junk food for exclusive feeding every day for life appears to be most improper and certainly not sufficient.

19.)

Veterinary Practitioners Code of Professional Conduct

1 Basic principles of professional conduct

The basic principles of professional conduct for a veterinary practitioner are:

(a) a primary concern for the welfare of animals

(TL) Junk food devastation of the health of animals seems to be in direct conflict with ‘a primary concern for the welfare’.

20.)

Misleading and Deceptive Conduct in Australian Consumer Law

An advertisement will be compliant with advertising laws if it meets the test of truthfulness and does not attempt to hide or not disclose important information which would otherwise assist the prospective purchaser to make an informed choice.

(TL) No junk pet-food ad or University junk pet-food display meets the criteria. All advertisements obscure the lasting disease implications. Most carry overblown claims such as 'complete' or 'balanced' or 'promoting health' when the very opposite is the case.

21.)

Consumers' rights & obligations

The Australian Consumer Law requires businesses to provide consumer guarantees for most consumer goods and services they sell.

a.) Consumer guarantees applying to goods

Businesses that sell goods guarantee that those goods:

- are of acceptable quality - the goods must be safe, lasting, have no faults, look acceptable and do all the things someone would normally expect them to do
- are fit for any purpose that the consumer made known to the business before buying (either expressly or by implication), or the purpose for which the business said it would be fit for

b.) Consumer guarantees applying to services

Businesses that supply services guarantee that those services will be:

- provided with due care and skill
- fit for any specified purpose (express or implied)

(TL) Junk pet-food fails the goods guarantee test. University veterinary services that fail to mention the devastating effects of junk food would appear to breach the guarantees applying to services.

22.)

Abuse of position of trust

This is when someone abuses their position of authority or trust against another person for personal or financial gain, or to cause loss to another.

(TL) The University owes a fiduciary duty to its students, clients, patients and the wider community.

Students who are repeatedly, relentlessly inculcated with false and harmful information as a result of secret junk pet-food deals will likely, once the harm becomes known, seek redress.

Clients set up to buy junk food and then to buy vet services based on junk pet food are set up for repeated visits to the vet for minor, not so minor and major ailments. Again the aggrieved parties may be able to bring actions for redress.

Rather than prevaricate, the University should make full disclosure and set about limiting the harm done and thereby reduce any future liabilities.

23.)

Education Services for Overseas Students Act 2000

The principal objects of this Act are:

(a) to provide tuition assurance, and refunds, for overseas students for courses for which they have paid; and

(b) to protect and enhance Australia's reputation for quality education and training services;

(TL) In respect to (a) any tertiary education facility that pushes junk pet-food risks needing to repay Overseas Students tuition fees.

In respect to (b) secret deals with junk pet-food makers traduces Australia's reputation for quality education and training.

24.)

Tertiary Education Quality and Standards Agency Act 2011

3 Objects

The objects of this Act are:

(a) to provide for national consistency in the regulation of higher education; and

(b) to regulate higher education using:

(i) a standards-based quality framework; and

(ii) principles relating to regulatory necessity, risk and proportionality; and

(c) to protect and enhance:

(i) Australia's reputation for quality higher education and training services;
and

(ii) Australia's international competitiveness in the higher education sector;
and

(iii) excellence, diversity and innovation in higher education in Australia; and

(d) to encourage and promote a higher education system that is appropriate to meet Australia's social and economic needs for a highly educated and skilled population; and

(e) to protect students undertaking, or proposing to undertake, higher education in Australia by requiring the provision of quality higher education; and

(f) to ensure students undertaking, or proposing to undertake, higher education, have access to information relating to higher education in Australia.

(TL) Pushing junk pet-food and inculcating students with junk pet-food propaganda breaches the provisions of this Act.

The foregoing comments and rebuttals, I respectfully submit, make a compelling case for full disclosure of all documents sought. However it is the *Federal Administrative Decisions Review Act 1997* (ADR) that appears to provide the defining criteria.

25.)

Respondent states at point 19: Relevant provisions of the ADR Act

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 make 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.

(TL) The relevant passage in the ADR Act appears to be:

Section 5 Applications for review of decisions

(1) A person who is aggrieved by a decision to which this Act applies that is made after the commencement of this Act may apply to the Federal Court or the Federal Circuit Court for an order of review in respect of the decision on any one or more of the following grounds:

- (a) that a breach of the rules of natural justice occurred in connection with the making of the decision;
- (b) that procedures that were required by law to be observed in connection with the making of the decision were not observed;
- (c) that the person who purported to make the decision did not have jurisdiction to make the decision;
- (d) that the decision was not authorized by the enactment in pursuance of which it was purported to be made;
- (e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made;
- (f) that the decision involved an error of law, whether or not the error appears on the record of the decision;
- (g) that the decision was induced or affected by fraud;

- (h) that there was no evidence or other material to justify the making of the decision;
- (j) that the decision was otherwise contrary to law.

(TL) As can be seen from the accompanying Affidavit and Annexures various elements of the Respondent's dealings with junk pet-food companies fall foul of these clauses.

26.)

The Applicant respectfully submits, that the 'correct and preferable' course of action is for the Tribunal to set aside the Respondent's review decision of 2 February 2015, in accordance with Section 63(3)(c) of the *Administrative Decisions Review Act 1997* (NSW) In substitution, the Applicant submits, that the Tribunal should give effect to the Applicant's request in the letter dated 29 September 2014, requesting documents under the *Government Information (Public Access) Act 2009* (NSW) ("**GIPA**"):

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.

Tom Lonsdale
Applicant

14 August 2015