12 June 2014

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CRICOS Provider No. 00120C

Dear [Name]

Freedom of Information Request No. 201400175C

I refer to your request for access to documents relating to allegations of anti-Semitism against the Socialist Alternative under the Freedom of Information Act 1982 (FOI Act).

In preparing your FOI request I have conducted a search of the University's records and contacted relevant people within the University. The documents were then examined to determine whether any of them may be exempt or conditionally exempt.

I have located 68 documents that are relevant to your request. After locating the documents I have reviewed them in accordance with provisions of the Act to determine whether they may be exempt or otherwise conditionally exempt from disclosure. As the Freedom of Information delegate I find that:

- 68 documents relate to your request.
- 34 documents are suitable for partial release
- 34 documents are suitable for full release

The documents are summarised in the attached schedule of documents.

No documents exist in relation to point 5 of your request - Copies of the 3 most recent ANU compilations and/or analysis of allegations of racist and/or religious attacks and discrimination and the approach the ANU took and outcomes.

A. Documents to which Section 42 apply:

Section 42 of the Act provides that:

(1) A document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege.

The parts of documents identified in the schedule as exempt under this section of the Act contain material that would be privileged from production in legal proceedings.

B. Documents to which section 47F applies:

I have determined that portions of the documents identified in the Schedule of Documents are partially exempt under Section 47F.

Section 47F of the Act provides that:

1 | UNIVERSITY RECORDS
(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:

- the extent to which the information is known;
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
- the availability of the information from publicly accessible sources;
- any other matters that the agency or Minister consider relevant.

Personal Information means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

I have determined that parts of the documents identified in the Schedule as exempt under this section of the Act include personal information of individuals (including third parties) and the information contained in the documents: readily identifies natural persons, the information directly relates to them and the information says something about them. I have also determined that the public release of the information would affect the individuals’ personal privacy interests.

Public Interest Test

In reaching my decision, I considered: the extent to which the information is well known; whether the persons identified in your request are known to be or have been associated with the matters dealt with in the information and whether this information is publicly available.

In relation to factors favouring disclosure I believe the following are relevant:

- the general public interest in access to information under the Act;
- the general public interest to scrutinise the operations of a government agency.

In relation to the factors against disclosure, I believe the following are relevant:

- the extent to which the information is well known;
- the availability of the information from publicly accessible sources; and
- the likely impact on the individuals if the personal information were to be released; and
- whether the individuals have a reasonable expectation of privacy in the information.

I have considered the public interest factors in favour and against disclosure and I find that the factors at (c) to (f) outweigh the factors in favour of disclosure. Considering all the circumstances I find that parts of documents would be exempt under section 47F of the Act. Therefore I have exempted parts of the documents identifying personal information of individuals.

C. Documents to which Section 47C applies:

Section 47C provides that:

(1) A document is conditionally exempt if its disclosure under this Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for
the purposes of, or for the purposes of, the deliberative processes involved in the functions of an agency or Minister of the Government of the Commonwealth.

The parts of the document identified in the Schedule as exempt under Section 47C contains exempt information on the basis that the document is an internal working document. Provision of parts of the document would disclose matter in the nature of consultation and deliberation that took place for the purposes of deliberative processes involving operational functions of the University. The document identified records recommendations and advice.

Public Interest Test

There is a public interest in protecting the integrity of the decision-making process by separating the final decision-making policy or steps towards making the final decision from the opinions and advice of persons who provided their opinions into the consideration of the matter. The specific documents listed in the Schedule as conditionally exempt under Section 47C do not constitute final decisions nor were they intended as such. The views expressed in the documents are merely preliminary in nature.

Subsection 47C(2) provides that:

(2) Deliberative matter does not include either of the following:

(a) operational information (see section 8A);

(b) purely factual material.

Because the opinions expressed in the documents involve a portion of the process to form judgment, I am satisfied that the information is not operational information or purely factual material and is therefore not excluded under subsection 47C(2). In reaching my decision, I considered public interest factors in favour and against disclosure of the information.

In relation to factors favouring disclosure, I believe the following are relevant:

(a) the general public interest in access to information under the Act; and

(b) the general public interest to scrutinise the operations of a government agency.

In relation to the factors against disclosure, I believe the following are relevant:

(c) the disclosure of the information would restrict the ability of University staff in future to record their opinions directly and freely during a deliberative process; and

(d) there is a public interest in protecting the integrity of the decision-making process by separating the final decision-making policy, including the steps and reasons therefore, from the opinions and advice of the employees who contributed to the deliberation.

I have considered the public interest factors both in favour and against disclosure and I find that the factors identified at (c) and (d) and outweigh the factors in favour of disclosure. I find that the documents or parts of the documents are exempt under section 47C of the Act. Therefore have masked information relating to the deliberative process.

Application for Internal Review of Decision

I draw your attention to Section 54A of the Act, which gives you the right to apply for an internal review of my decision.
An application for internal review of my decision must be made in writing within 30 days receipt of this letter, no particular form is required but it is desirable to set out in the application the grounds on which you consider the decision should be reviewed.

Application for review of the decision should be addressed to:

Executive Director (Administration & Planning)
Building 10
The Australian National University
Canberra ACT 0200

Or via email: edap@anu.edu.au

Application for Information Commissioner (IC) Review of decision

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.australia.gov.au/forms/oaic/foi-review/
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW


Yours sincerely

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