5 June 2014

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CRICOS Provider No. 00120C

Dear [redacted]

Freedom of Information Request No. 201400162C

I refer to your request, under the Freedom of Information Act 1982, for access to documents relating to the minutes of the 423rd meeting of the University Council. I have taken your request to be for:

minutes of the 423rd meeting of the University Council held at 8.30m on Friday, 5 December 2014 in the R C Mills Room, Chancellery Building, ANU campus, Canberra including deleted sections marked by asterisks (****) at items 6.1, 9 and 32.

(Doc. 1381/2014).

I have located one document that is relevant to your request. After locating the document I have reviewed it in accordance with provisions of the Act to determine whether it may be exempt or otherwise conditionally exempt from disclosure. As the Freedom of Information delegate I find that the sections of document that you are seeking access to are either exempt or conditionally exempt from release.

A copy of the document with exempt sections redacted is available from the ANU website:
http://www.anu.edu.au/about/governance/committees/council

The document and the exemptions applied are summarised in the attached Schedule of Documents.

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.

Parts of the document identified in the Schedule of Documents as exempt under this section of the Act contain material that would be privileged from production in legal proceedings.

B. Documents to which Section 47 apply:

Section 47 of the Act provides that:

(1) A document is an exempt document if its disclosure under this Act would disclose:

(a) trade secrets; or
(b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

Parts of the document identified in the Schedule of Documents as exempt under this section of the Act contain material that has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed. In making my decision I considered the following factors:

(a) whether the information is known only to the agency or person for whom it has value or, if it is known to others, to what extent that detracts from its intrinsic commercial value

(b) whether disclosing the information would reduce the value of a business operation or commercial activity.

I have therefore exempted material that has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

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 of Documents as exempt under Section 47C contain exempt information on the basis that the 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 parts of the document relate to recommendations and advice obtained, prepared or recorded.

Public Interest Test

There is a public interest in protecting the integrity of the decision-making process by separating the final decision-making process 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 parts of the document 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 these sections of the document 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 document 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 parts of the document are exempt under section 47C of the Act. I therefore have redacted information relating to the deliberative process.

D. Documents to which Section 47G apply:

Section 47G provides in relevant part that:

(1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or personal affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:

(a) would, or could reasonably be expect to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs, or

(b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency

Public Interest Test

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

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

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

(b) the extent to which the information is known to competitors and/or others engaged in similar business; and

(c) the likely impact on the business if the information were disclosed;
I have considered the public interest factors in favour and against disclosure and factors (b) and (c) outweigh the factor favouring disclosure. I find that document or parts of document are therefore exempt under section 47G of the Act.

Therefore I have redacted details relating to the administration of business affairs from the document.

E. Documents to which Section 47E(d) apply:

Section 47E(d) of the Act provides that:

A document is conditionally exempt if its disclosure under this Act, would, or could reasonably be expected to, do any of the following:

(d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

The parts of the document identified in the Schedule of Documents as exempt under Section 47E(d) of the Act contain information, the release of which would have on the proper and efficient conduct of the operations of the University. The release of the information could potentially jeopardize the ability of the University to manage the operations of the University.

Public Interest Test

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

(a) the general public interest in access to information under the Act;
(b) the general public interest that permits the public to scrutinize the operations of a government agency.

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

(c) the extent to which the information is known to competitors and/or others engaged in similar business; and
(d) the likely impact on the business if the information were disclosed;

I have considered the public interest factors in favour and against disclosure and factors (c) and (d) outweigh the factors favouring disclosure. I have determined that document or parts of the document are exempt under section 47E(d) as the release of the information will likely have a substantial adverse effect on the proper and efficient conduct of the operations of the University.

F. Documents to which Section 45 apply:

I have determined that portions of the document identified in the Schedule of Documents are partially exempt under Section 45.

Section 45 of the Act provides that:

(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth, or Norfolk Island), for breach of confidence.
(2) Subsection (1) does not apply to a document to which subsection 47C(1) (deliberative processes) applies (or would apply, but for subsection 47C(2) or (3)), that is prepared by a Minister, a member of the staff of a Minister, or an officer or employee of an agency, in the course of his or her duties, or by a prescribed authority or Norfolk Island authority in the performance of its functions, for purposes relating to the affairs of an agency or a Department of State unless the disclosure of the document would constitute a breach of confidence owed to a person or body other than:

(a) a person in the capacity of Minister, member of the staff of a Minister or officer of an agency; or
(b) an agency, the Commonwealth or Norfolk Island.

Parts of the document identified in the Schedule of Documents as exempt under Section 45 were supplied to the University on a confidential basis by third parties for a specific purpose. I have determined that if the University were to disclose the information, the disclosure could result in claims against the University. In making my decision I considered the following factors:

(a) The information identified as confidential is not publicly available;
(b) The information was provided to and received by the University on the basis that the information would remain confidential; and
(c) The disclosure of the information would likely have a negative impact on those who provided the information.

I have therefore exempted material obtained in confidence.

Charges

Given that the processing time for your request was nominal no processing charge applies.

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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