Dear [REDACTED]

Freedom of Information Request No. 201400535C

I refer to your request for access to documents relating to the contract concerning ANU College, under the Freedom of Information Act 1982. I took your initial request to be for:

1. documents around the particulars of the name and business address of the contractor administering Australian National University College (ANU College);
2. documents around the particulars of the date on which the contract above became effective and the duration of the contract;
3. documents around the particulars of the goods or services being provided or the real property being leased or transferred under the contract;
4. documents around the estimated amount payable to the contractor under the contract;
5. documents around the a description of any provisions with respect to the renegotiation of the contract;
6. documents around the particulars of the tendering process (if applicable), the method of tendering and a summary of the criteria against which the various tenders were assessed, in awarding the contract; and
7. documents around the description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.

I refer to your email dated 3 September 2014 in which you revised your request. I took your revised request to be for:

- a copy of the contract between Australian National University (ANU) and Study Group for the operation of Australian National University College (ANU College)

I also refer to an email dated 4 September 2014 in which you were advised that the University does have in its possession a copy of an Asset Purchase Agreement, rather than a contract, between Study Group Australia Pty Limited and ANU Enterprise Pty Ltd. The document however, was not created by the University and is not an agreement between the University and Study Group as ANU Enterprise and Study Group are separate legal entities to the ANU. You responded to the email on the same day advising that you wished to proceed with the request.

In preparing your FOI request I conducted a search of the University’s records and contacted relevant people within the University.

I have located 1 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.
I took into account the views of a third parties consulted by the University under Section 27 of the Act.

As the Freedom of Information delegate I find that:

- 1 document relates to your request.
- 1 document is exempt from release under Sections 45 and 47(1)

The document is summarised in the attached schedule.

A. Section 45(1) 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.

The document identified in the Schedule as exempt under Section 45 was 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.

B. Section 47(1)(b) 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.

The document identified in the Schedule as exempt under Section 47 contains information which is commercially valuable to two parties. In making my decision I considered the following factors:

(a) the commercial transaction within this document is still in progress;
(b) its release potentially jeopardises a financial transaction of value to both parties; and
(c) its release would be in breach of the Agreement and given that transactions still need to occur under the Agreement this would cause financial loss to both parties
(d) the information is not publicly available

I have therefore exempted commercially valuable material.

C. Section 47F of the Act provides that:

(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:
a. the extent to which the information is known;
b. 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;
c. the availability of the information from publicly accessible sources;
d. 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 the document identified in the Schedule as exempt under this section of the Act includes personal information of individuals (including third parties) and the information contained in the document: 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 publically available.

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

(a) the general public interest in access to information under the Act;
(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 extent to which the information is well known;
(d) the availability of the information from publicly accessible sources; and
(e) the likely impact on the individual(s) if the personal information were to be released; and
(f) whether the individual(s) 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 the document would be exempt under section 47F of the Act. Therefore I have exempted parts of document identifying personal information of individuals.

**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

[Signature]

David Brumby  
FOI Coordinator  
University Records  
+61 2 6125 4237, foi@anu.edu.au