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FOIREQ16/00003, Schedule B, Document 3, Attachment 1

7 August 2013

Mr Timothy Pilgrim
Acting Australian Information Commissioner
Office of the Australian Information Commissioner
GPO Box 2999
Canberra ACT 2601

Via email: enquires@oaic.gov.au

Dear Mr Pilgrim

Application for a vexatious applicant declaration – s 22

The Commonwealth Scientific and Research Organisation (CSIRO) is seeking a vexatious applicant declaration from the Information Commissioner pursuant to s 89K of the *Freedom of Information Act* (Cth) (FOI Act) with the effect that CSIRO may refuse to consider any request for access or application for internal review from the applicant in question.

Please find attached CSIRO's application for a vexatious applicant declaration. CSIRO notes that CSIRO made a previous application under s 89K of the FOI Act in relation to this same applicant, s 22, which was denied on 7 September 2011 on the basis that although s 22 repeated access actions satisfied the criteria of s 89L(1)(a) they did not involve an abuse of process and failed to satisfy s 89L(b). The current application, although supported by evidence provided in the 2011 application, is based on s 22 significant level of continued unwanted contact with CSIRO employees (including ex-employees) since 2011 and the fact that his current access actions on foot, reference number s 22 involve an abuse of process.

Please do not hesitate to contact me on the details above or s 22, FOI Co-ordinator on ph s 22 should you require any further information or wish to discuss CSIRO's application.

Yours sincerely,

s 22

s 22
Acting General Counsel
CSIRO

Application for a vexatious applicant declaration:

1. The Commonwealth Scientific and Industrial Research Organisation (CSIRO) is seeking a vexatious applicant declaration from the Information Commissioner pursuant to s 89K of the *Freedom of Information Act* (Cth) (FOI Act).

Grounds for declaration:

2. CSIRO submits that the applicant, s 22 [REDACTED] has repeatedly engaged in access actions that involve an abuse of process within the meaning of s89L, including his current access actions; reference numbers s 22 [REDACTED] s 22 [REDACTED]. CSIRO submits that s 22 [REDACTED] should be declared a vexatious applicant by the Information Commissioner.

Relevant Law:

3. Section 89L(1) of the FOI Act provides:

The Information Commissioner may make a vexatious applicant declaration in relation to a person only if the Information Commissioner is satisfied of any of the following:

(a) That:

- (i) the person has repeatedly engaged in access actions;*
- (ii) the repeated engagement involves an abuse of the process for that access action;*

(b) a particular access action in which the person engages involves, or would involve, an abuse of process for that access action;

(c) a particular access action in which the person engages would be manifestly unreasonable.

Abuse of process in this context includes but is not limited to:

(a) harassing or intimidating an individual or an employee of the agency;

(b) unreasonably interfering with the operations of the agency;

(c) seeking to use the Act for the purposes of circumventing restriction on access to a document (or documents) imposed by a court (s89L(4) of the FOI Act).

4. CSIRO notes, part 12 of the Guidelines issued by the Australian Information Commissioner under 93A of the FOI Act ('Guidelines') relates to vexatious applicant declarations; the relevant guidelines are addressed in the 'Evidence' section below.

Evidence

5. CSIRO submits that the following evidence supports a finding that the criteria required to show an abuse of process under s 89L are established and a declaration under s 89K should be made.

Background: Repeated engagements in access actions and document discovery:

6. s 22 has made 62 access actions to CSIRO from January 2010 to date, this represents 31% of CSIRO's FOI workload from 2010-2015. s 22 has three current access actions on foot, one of which is the subject of this application and is currently subject to an internal review, the second has been finalised and the third is in the preliminary phase of processing.
7. s 22 was provided with all relevant material which related to his employment at CSIRO; including his recruitment, grievances, complaints and redundancy as part of the discovery process of his two Federal Court claims, s 22. s 22 withdrew both his Federal Court claims on s 22.

Access action is an abuse of process:

8. As outlined above, s 89(4) defines "abuse of the process for an action access" to include:
 - harassing or intimidating an employee of an agency; and/or
 - unreasonably interfering with the operations of the agency.
9. The Guidelines at 12.4 provide further guidance as to what constitutes an abuse of process:

'Abuse of process' includes harassing or intimidating an individual or agency employee; unreasonably interfering with an agency's operations ...In a similar context the Federal Court of Australia in Ford v Child Support Registrar noted that a series of FOI applications of a repetitive nature and apparently made with intention or annoying or harassing agency staff could be classified as vexatious.

10. Harassment in this context has been given its ordinary meaning see e.g. Prof McMillan in *Department of Defence and 'W'* [2013] AICmr 2 (17 January 2013) at [27], "[a]pplying the dictionary definition to 'harass' a person is to disturb them persistently, or torment them".
11. For the reasons set out below, CSIRO submits that s 22 current access action s 22 amounts to an abuse of process; as it is targeted to harass individual employees and unreasonably interferes with CSIRO's operations, especially in the context of s 22 previous access actions and court proceedings.

Access Action identified as FOI 2015/17

12. CSIRO submits that s 22 access action reference number s 22 involves an abuse of process.
13. On 2 June 2015, s 22 made a FOI request s 22 for:

Abuse of process – unreasonable interference with agency operations

18. CSIRO submits that the access action **s 22**, when taken in the context of **s 22** repeated engagements in access actions, and **s 22** broader pattern of contact with CSIRO, is an abuse of process in that it unreasonably interferes with the operations of CSIRO.

Unreasonable Interference

19. CSIRO submits **s 22** access action **s 22** is unreasonable interference on the basis of:
- a. **s 22** previous access actions; the sheer volume and nature of the access requests and;
 - b. **s 22** lack of genuine concern to have the documents relevant to his access request:

a. Previous access actions: volume and nature of requests

20. The 62 requests made by **s 22** have interfered with the normal operations of CSIRO. Not only have **s 22** access actions significantly diverted the resources of CSIRO's FOI Unit, they have required the same specific employees to undertake extensive searches (CSIRO does not intend to recount **s 22** access actions prior to September 2011 in any detail as that information was provided in CSIRO's previous vexatious applicant declaration application dated 7 September 2011).
21. The FOI Unit has received 62 FOI requests from **s 22** since January 2010, as outlined above at paragraph 6 that represents 31% of CSIRO FOI workload. However, CSIRO submits, if you exclude one other employee's requests (in 2012/2013 a single CSIRO employee made 52 out of the 75 FOI requests for that year) **s 22** requests account for 42% of the FOI Unit's workload from over a five year period.
22. Taking this background into account, CSIRO submits that **s 22** previous access actions have significantly and unreasonably interfered with the operations of CSIRO, **s 22** current action represents a further abuse of process in that if processed, would unreasonably interfere with CSIRO's operations.
- #### *b. Lack of concern*
23. CSIRO submits when considering whether an access action is an abuse of process, regard should be had to Ryan J's comments in *Ford v Child Support Registrar* [2009] FCA 328 where it was held that 'the requests and applications were made for purposes other than a genuine concern to have access to the contents of the subject documents', which should be considered as a factor to support declaring an applicant vexatious.
24. CSIRO submits in relation to **s 22**; **s 22** has no genuine concern within the meaning of *Ford*, particularly in relation to paragraph (1) and (2) of **s 22** access action **s 22**, in the contents of the documents but rather is merely pursuing the FOI request to continue his harassment of CSIRO employees. **s 22** intent to harass CSIRO staff is evidenced by his continued unwanted contact despite CSIRO's demands that this harassment stop, including requests made through external lawyers.

25. CSIRO notes that CSIRO refused to process s 22 pursuant to s 24 of the FOI Act. That decision is currently subject to an internal review (another access action). CSIRO submits that on 13 July 2015, s 22 wrote to CSIRO stating “I wish to appeal this decision [s 22 decision to refuse access in relation to s 22]. s 22 is clearly wasting my time”, see attachment 25. This sort of unnecessary dialogue is meant to insult CSIRO Officers and is indicative of s 22 lack of genuine purpose in making FOI requests to CSIRO.

Other relevant information:

Repeated unwanted contact by s 22 with CSIRO employees:

26. s 22 has engaged in harassing and intimidating conduct via his unwanted email contact with CSIRO staff members, see attachments 1 and 5 – 23 and 25. CSIRO has devoted an enormous amount of time and resources in repeatedly asking s 22 to stop all contact with CSIRO Officers, including via CSIRO external legal representatives, see attachments 2, 3 and 4. CSIRO has also, on request, provided an information brief to the Australian Federal Police (AFP), who were considering taking action against s 22 for his persistent unwanted contact, see attachment 17. Despite CSIRO’s requests and the AFP’s involvement, s 22 still continues to engage in his harassment of CSIRO Officers; this includes in 2013 s 22 physical presence on CSIRO property being report to CSIRO Security.
27. s 22 email harassment has particularly targeted s 22. Including (but not limited to):
- i. threatening physical unwanted contact (see email dated 4 November 2013, at attachment 1;
 - ii. making insulting and derogatory remarks to s 22 (see e.g. attachments 1, 12, 15, 16);
 - iii. attempting to contact s 22 daughter via social media (see email dated 11 June 2014, at attachment 18);
 - iv. contacting organisations at which s 22 volunteers making derogatory remarks about s 22 (see email dated 29 June 2015, at attachment 24).
28. s 22 has directly (and indirectly) made threats of self-harm to CSIRO Officers;
- s 22
29. CSIRO took all appropriate steps to address these incidents, both with regard to s 22 and s 22. Including instigating a ‘check welfare’ with regards to s 22 with the AFP.
30. s 22 has used personal insults, offensive language and made personal attacks on CSIRO Officers via email including (but not limited to):

s 22



(see attachments 1, 3, 5 – 22 and 23).

31. s 22 continued unwanted contact with CSIRO employees was referred to the AFP on 14 February 2014 and 18 March 2014 respectively; reference s 22. A copy of the Information Brief provided to the AFP is attached at 17.
32. s 22 continues make unwanted contact with CSIRO Officers, his most recent correspondence includes emails on;
 - i. 22 June 2015 with subject line: “losers roll call @ csiro”, sent to CSIRO Officers; (at attachment 23);
 - ii. 14 July 2015; addressed to CSIRO Chief Executive entitled ‘Personal and Confidential’ (at attachment 25), reads:

“Dear s 22 ,
You should resign to focus on your court case.
Best wishes
s 22 ”

Declaration sought

33. CSIRO submits that s 22 [REDACTED] should be declared a vexatious applicant and be prohibited from making any request under the FOI Act to CSIRO.
34. In the first alternative, CSIRO seeks under s 89M(2)(a) a declaration that CSIRO may refuse to process any access request by s 22 [REDACTED] unless the request has been approved by the Information Commissioner.
35. In the second alternative, CSIRO seeks a vexatious applicant declaration under s 89M subject to the condition that CSIRO can refuse to process any access request made by s 22 [REDACTED] that relates to specific CSIRO Officers.