



Australian
National
University

Monday 4 March 2013

Mr Tom Swann
Via email: foi+request-43-5dda545d@righttoknow.org.au

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CRICOS Provider No. 00120C

Dear Mr Swann

Freedom of Information (FOI) Request

I refer to your email dated 15 January 2013 and received by the University on 15 January 2013 in which you seek access to documents under the *Freedom of Information Act 1982 (Cth)* ('the Act'). Your request seeks access to the following documents:

Under the FOI Act, I would like to request all documents held by the University, created by any author, meeting the following criteria:

- a) documents created during 2011 or 2012, which refer to the University's ownership and/or sale of shares in Metgasco;*
- b) documents created during 2012, which refer to the University's purchase, sale or ownership of shares in any company which generates revenue from oil, coal, gas (conventional or unconventional), or uranium, whether from extraction, refinement or energy generation;*
- c) documents created during 2012, which relate to criteria or assessment of environmental impact for University investment, whether through shares, managed funds or other means.*

Regarding documents sought concerning (a) *documents created during 2011 or 2012, which refer to the University's ownership and/or sale of shares in Metgasco*. I believe that information concerning University's share holdings during 2011 - 2012 in Metgasco should be able to be obtained from either the company's Annual Reports or Share Register. Information concerning access to Metgasco's Annual Reports and Share Register can be obtained from the company's website at the following web address:
<http://www.metgasco.com.au/index.html>.

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

I have been unable to locate any records relating to:

- c) documents created during 2012, which relate to criteria or assessment of environmental impact for University investment, whether through shares, managed funds or other means.*

In relation to:

- a) documents created during 2011 or 2012, which refer to the University's ownership and/or sale of shares in Metgasco;*

- b) *documents created during 2012, which refer to the University's purchase, sale or ownership of shares in any company which generates revenue from oil, coal, gas (conventional or unconventional), or uranium, whether from extraction, refinement or energy generation.*

I have located 55 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:

- 55 documents relate to your request.
- 1 document is suitable for full release and is enclosed with Appendix A
- 54 documents are exempt from release and are enclosed with Appendix B

A. Documents to which Section 47F applies:

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 well 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 considers 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 3 documents identified in **Appendix B** include personal information of individuals 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.

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 factor is relevant:

- (a) the general public interest in access to information under the Act;
- (b) the extent to which the information is well known.

In the circumstances, I find that there is a general public interest for the community to have access to information because a community that is better informed can participate more effectively in the nation's democratic processes.

In relation to the factors that disfavour disclosure, I find that the following are relevant:

- (c) the availability of the information from publicly accessible sources;
- (d) the likely impact on the individuals if the personal information were to be released.

I have balanced the factor in favour of disclosure against those of non-disclosure and I find that the factors at (c) to (d) outweigh the factor identified in paragraph (a) to (b). Considering all the circumstances, I find that the documents are conditionally exempt under section 47F of the Act as releasing the information would result in an unreasonable disclosure of information affecting a third party's personal privacy.

B. Documents to which Section 47C applies:

Section 47C of the Act 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 documents or parts of document identified in **Appendix B** as exempt under Section 47C contain exempt information on the basis that the documents are internal working documents. Provision of these documents or parts of them 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 documents identified record recommendations, opinions and advice.

C. Documents to which Section 45 applies:

Section 45 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.*

The documents identified in **Appendix B** as exempt under Section 45 were supplied to the University on a confidential basis by third parties. I have determined that if the University were to disclose the information, without the approval of the documents author, 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;
- (c) The information provided to the University did not originate from the Commonwealth or another Commonwealth agency; and
- (d) The disclosure of the information would likely have a negative impact on the University's ability to obtain confidential information in the future.

Charges

The University charges for the costs associated with the time spent searching for and retrieving a document from the University's shared drives and recordkeeping system.

Section 29 of the FOI Act also permits charges for the time spent deciding whether to grant, refuse or defer your request. The charges include the time taken to examine documents, the time spent consulting with relevant parties or bodies, and the time spent making copies and deletions.

The rates of charges are fixed in accordance with the Regulations made under the FOI Act. The relevant statutory charges are outlined in the table below: The documents will be released to you upon receipt of this payment.

PROCESSING CHARGES		
Search and retrieval		
Task	Time	Cost @ \$15/hr
Search and retrieval of relevant electronic and registry files	3	\$45
Search and retrieval of relevant pages in file	0	\$0
Preparation of schedule of documents	4	\$60
A. Search and retrieval subtotal	5	\$105
Decision making		
Task	Time	Cost @ \$20/hr
Examination of documents	13	\$260
Consultation with third parties	1	\$20
Preparation of documents for release	0	\$00
Preparation of notice of access decision	10	\$280
Decision making subtotal (before deduction of 5 hours)	24	\$560
B. Decision making subtotal (after deduction of first 5 hours free)	19	\$460

ESTIMATED TOTALS	
ESTIMATED TOTAL (total of A and B)	\$565

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

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Yours sincerely



David Brumby
FOI Coordinator