

29 April 2013

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

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Dear Mr Swann

Application for Internal Review

I refer to your letter dated 2 April 2013 to the Executive Director (Administration and Planning) in which you requested an internal review of the decision of the FOI Officer outlined in his letter dated 4 March 2013.

The Executive Director (Administration and Planning) has appointed me as the delegated authority to conduct the internal review of your application. I have had no prior involvement in your original FOI request and I wish to advise that I have had the occasion to review the original decision of the University's FOI Officer.

I also wish to advise that in the course of conducting my review, I have examined and re-examined the entirety of the documents that were associated with your original application. I understand that your original FOI application made a request for the following documents:

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.*

I understand that you now seek a review of the original decision made of 4 March 2013 for the following summarised reasons:

1. that ANU failed to redact relevant information from the documents in order to make their release reasonable;
2. that documents ANU assessed as conditionally exempt, because they contain 'deliberative matter', may contain matter that is not deliberative as determined in accordance with s47C of the Act, including because covered by exemptions;
3. whether ANU must publish these documents because they contain 'operational information' under s8 of the Act;

4. that ANU assessed exemption of most documents by finding “no public interest in release” rather than that release is contrary to the public interest as required by s11A(5) of the Act; and
5. that there are many substantial public interest factors favouring the release of these documents, including as defined by ANU’s own guidelines for factors favouring disclosure.

My Decision

A. Request to waive charges

I note that you have made a request to waive or reduce the charges associated with your original application and you have indicated to me that the imposition of charges would cause you financial hardship. I accept that you do not have the financial means to pay the charges and they total more than your entire weekly income.

On that basis I have determined to waive the charge of \$565.

B. Additional documents related to your original FOI request

Firstly, I wish to advise that in the course of reviewing your application, I have discovered four (4) additional documents that relate to your original request. I have identified these documents as Document No’s 53, 54, 55, & 56 at Attachment A. I have also indicated that I have determined that the documents are conditionally exempt in accordance with section 47C of the FOI Act.

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 documents or parts of documents identified in the Attachment A as conditionally exempt under Section 47C contain information on the basis that the documents are working documents and were used in a deliberative, decision-making process.

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 considering operational functions of the University. Further, the documents record advice and recommendations prepared in conjunction with the University’ long-term investment strategy.

The documents were not final documents and were intended to inform the decision-making process—particularly decisions related to future investments and investment strategies.

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 Attachment A as conditionally exempt under Section 47C do not constitute final decisions nor were they intended as such.

The views expressed in the document(s) 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).

Public Interest Test

In reaching my decision, I have 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 financial advisers to record their opinions directly and freely during a deliberative process;
- (d) the disclosure of the information would likely impact on the future of the University's long-term financial and investment strategy if the information were publically disclosed; and,
- (e) 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 persons 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), (d) and (e) 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. I therefore have masked information relating to the deliberative process.

C. Responses to your summary of concerns:

In your application for internal review you make detailed comments on some specific matters. I have considered your concerns and I wish to respond to them as follows:

- 1. that ANU failed to redact relevant information from the documents in order to make their release reasonable, as required by section 22 of the Act.**

I note that I have considered your comments in relation to this matter and I have accordingly reviewed the documents in light of it.

Section 22 provides:

- (1) *This section applies if:*
 - (a) *An agency or Minister decides:*

- (i) to refuse to give access to an exempt document; or
- (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
- (b) it is possible for the agency or Minister to prepare a copy (an edited copy) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
- (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification;
 - (ii) The resources available to modify the document; and
- (d) It is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

I have accordingly determined that edited versions of the documents identified as documents 2, 5, 6, 7, 8, 9, 16, 48, 49, 50, 51, 53, 54, 55, and 56 should be provided to you in accordance with section 22.

2. that documents ANU assessed as conditionally exempt, because they contain ‘deliberative matter, may contain matter that is not deliberative as determined by s47C of the act, including other exemptions;

I have considered your comment in relation to section 47C and I understand your comment to mean that you believe certain portions of documents to which you were not provided access— on the basis of section 47C— may not in fact contain deliberative matter. I also take your comment to mean that those portions that are not conditionally exempt under section 47C or another section of the FOI Act should have been disclosed to you.

In view of your concern, I have reviewed each of the documents and I have determined to uphold the decision of the original decision maker in relation to the general applicability of section 47C to the documents as noted in the Appendix.

However, I have determined that certain portions of the documents should be released to you. Therefore, to the extent that section 47C does not apply to all of a particular document, I have decided to vary the original decision and to provide you access with those portions of the documents.

Those documents are numbered as 2, 5, 6, 7, 8, 9, 16, 48, 49, 50, 51, 53, 54, 55, and 56 and identified at Attachment A.

3. whether ANU must publish these documents because they contain ‘operational information’ under s8 of the Act

I have considered your comment in relation to whether the documents should be disclosed on the basis that they contain ‘operational information’.

In this regard I advise that, firstly, I have determined that the documents do not contain information that could be considered “operational information” by s8A(1) or any other provision of the FOI Act. Secondly, I have determined that information within the document(s) has not been published by the University as operational information such as policies, procedures, guidelines or training courses.

4. That ANU assessed exemption of most documents by finding “no public interest in release” rather than that release is contrary to the public interest as required by s11A(5) of the Act

In relation to this comment, based on my examinations of the unedited documents, I have determined that some documents are deliberative in nature and content and therefore conditionally exempt under s47C (1) of the FOI Act. I have also considered your comment that the original decision should have notified you of the public interest factors in the application of the public interest test.

I have accordingly re-examined the documents in light of your concern and applied the public interest test as described above.

5. that there are many substantial public interest factors favouring [sic] in the release of these documents, including as defined by ANU's own guidelines for factors favouring disclosure.

In relation to this comment, I have determined that there are indeed public interest factors that favour the release of the information and I have described those factors above.

However, there are also factors that do not favour disclosure and I have weighed the factors for and against disclosure and reached a decision that the factors against disclosure outweigh those in favour of disclosure.

On balance, I consider the decision not to provide access to the documents on the basis of section 47C was the correct decision. However I have also determined that it would be reasonable to provide you with some portions of the documents as I have described above.

Accordingly, the University will arrange for the documents noted at Attachment B to be provided to you.

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



Ron Watts FAHRI GAICD

FOI Request Tom Swann – Additional Documents - exempt from release

Document #	Date/Time	Size	Document Description	Decision on Access	Exemption
53	30.04.2012	4 pages	Annexure E: Alternative Investments – Summary of Holdings and Values as at 30 April 2012	There is no public interest favouring disclosure. The release of the document would disclose matter relating to a deliberative process.	S47C – conditional exemption – deliberative processes
54	30.07.2012	4 pages	Annexure E: Alternative Investments – Summary of Holdings and Values as at 30 Jul 2012	There is no public interest favouring disclosure. The release of the document would disclose matter relating to a deliberative process.	S47C – conditional exemption – deliberative processes
55	31.12.2012	4 pages	Annexure E: Alternative Investments – Summary of Holdings and Values as at 31 December 2012	There is no public interest favouring disclosure. The release of the document would disclose matter relating to a deliberative process.	S47C – conditional exemption – deliberative processes
56	31.10.2012	4 pages	Annexure E: Alternative Investments – Summary of Holdings and Values as at 31 October 2012	There is no public interest favouring disclosure. The release of the document would disclose matter relating to a deliberative process.	S47C – conditional exemption – deliberative processes



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ATTACHMENT B

INTERNAL REVIEW – FOI DECISION – T SWANN- April 2013

Document number from decision of 4 March 2013	Date/Time	Size	Document Description	Material For Release
2	2011	136 pages	Investment Advisory Committee, Annual Report 2011	Pages 1 -14, 55 – 60, 66 – 68 (partial), 113 (partial)
5	08.2011	28 pages	Investment Advisory Committee, Attachment 1, Investment Strategy	Pages 1, 3 – 19 , 20 (partial),
6	08.2012	29 pages	Investment Advisory Committee, Attachment 1, Investment Strategy	Pages 1, 3 – 18, 19 (partial), 21 -22, 23 (partial), 25 (partial)
7	03.2012	29 pages	Investment Advisory Committee, Attachment 1, Investment Strategy	Pages 1, 3 – 18, 19 (partial), 20 (partial), 25 (partial)
8	05.2012	30 pages	Investment Advisory Committee, Attachment 1, Investment Strategy	Pages 1, 3 – 15, 16 (partial), 17 , 18 – 19 (partial), 20 , 21 (partial) , 23 (partial) , 24 (partial)
9	11.2012	32 pages	Investment Advisory Committee, Attachment 1, Investment Strategy	Pages 1, 3 – 18, 19 (partial), 20 - 21 , 23 (partial) , 24, 25 (partial) 27 (partial)
16	11.10.2011, 5:34pm	6 pages	Email re ANU Metgasco Investments	All
48	30.04.2012	10 pages	Annexure D: Domestic Equities Portfolio – Summary of Holdings and Values as at 30 April 2012	Pages 4 – 5 (partial)

49	30.07.2012	10 pages	Annexure D: Domestic Equities Portfolio – Summary of Holdings and Values as at 30 Jul 2012	Pages 4 – 5 (partial)
50	31.12.2012	12 pages	Annexure D: Domestic Equities portfolio – Summary of Holdings and Values as at,31 December 2012	Pages 4 – 5 (partial)
51	31.10.2012	10 pages	Annexure D: Domestic Equities portfolio – Summary of Holdings and Values as at 31 October 2012	Pages 4 – 5 (partial)
53	30.04.2012	4 pages	Annexure E: Alternative investments – Summary of Holdings and Values as at 30 April 2012	Page 3 (partial)
54	30.07.2012	4 pages	Annexure E: Alternative Investments – Summary of Holdings and Values as at 30 Jul 2012	Page 3 (partial)
55	31.10.2012	4 pages	Annexure E: Alternative Investments – Summary of Holdings and Values as at,31 October 2012	Page 3 (partial)
56	31.12.2012	4 pages	Annexure E: Alternative Investments – Summary of Holdings and Values as at 31 December 2012	Page 3 (partial)