



Australian Government

Australian Sports  
Anti-Doping Authority

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25 August 2014

Mr Martin Hardie  
School of Law  
Faculty of Business and Law  
Geelong Waterfront Campus  
Geelong VIC 3220

By email only: [foi+request-618-a369348f@righttoknow.org.au](mailto:foi+request-618-a369348f@righttoknow.org.au)

Dear Mr Hardie

**Re: Internal review**

The purpose of this letter is to advise you of my decision in relation to your request for internal review of ASADA's decision on 16 June 2014 to refuse access to the documents you requested under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

**Summary**

On 16 May 2014, you provided a valid FOI request to the Australian Sports Anti-Doping Authority (**ASADA**). In that request you referred to a document outlined in *The Age* on 15 May 2014 (about a "secret deal struck between ASADA and the Government") and sought access to:

*"a copy of the document and/or any other documents relating to the framework and terms of the joint investigation, including the negotiations between the AFL and ASADA, and the provision of the interim report to the AFL."*

On 3 June 2014, in a telephone conversation with Alexie Finucan, Lawyer, ASADA, you clarified the scope of your request so to include access to:

- a) all documents relating to the 'secret deal struck between ASADA and the Government' which allegedly took place on 20 February 2013 (as stated to in *The Age*, 15 May 2014);
- b) all documents relating to the framework and terms setting up the joint investigation between the AFL and ASADA;
- c) all documents relating to any discussions or negotiations between the AFL and ASADA about the investigation being conducted jointly; and
- d) all documents relating to the circumstances that gave rise to the provision of the interim report to the AFL.

You were advised on 16 June 2014 of ASADA's decision to refuse access to the documents under the FOI Act.

You requested an internal review of that decision on 24 June 2014 via email.

In that email you stated:

*"Given that a number of the documents in relation to the February - March 2013 framework negotiations are now in the public domain I would like to request that you reconsider your claim of exemption in respect of those and other related documents on the basis of s.37(2)."*

In a further email on 24 June 2014, you provided additional information in relation to the documents 'in the public domain', stating:

*"In the first place please find a link to some of the documents in the list provided to me in response to my FOI application and which you claim s37(2) exemption that have been published today by the Australian newspaper: <http://t.co/w4ckWNDkdA>."*

On Monday, 28 July 2014, the Office of the Australian Information Commissioner (**OAIC**) granted ASADA an extension of time to process the internal review. The extension was granted to close of business on Monday, 25 August 2014. You were advised of this extension of time, by email, on 29 July 2014.

### **Decision and reasons for decision**

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests. I completed the internal review on 25 August 2014.

In reviewing the original Statement of Decision dated 16 June 2014, I identified ninety nine (99) documents which fell within the scope of your request. I agree with and adopt the original Statement of Decision dated 16 June 2014 to the extent that it relies on the exemptions outlined in sections 37(2), 42, 45(1), 47C and 47F of the FOI Act.

I continue to rely on the exemption outlined in section 37(2) of the FOI Act (relating to documents that would, or could reasonably be expected to prejudice the fair trial of a person or the impartial adjudication of a particular case) as the decision in the Federal Court Proceedings is yet to be handed down, and once it has, it will be subject to an appeal period. While ASADA is subject to the appeal period, I will continue to deny you access to documents that could reasonably be expected to prejudice the fair trial or impartial adjudication of any appeal relating to the Federal Court Proceedings.

I note that none of the 99 documents found to be within scope were in the public domain at the time of the original decision (that is, on 16 June 2014). Since that date, ten (10) documents are now available in the public domain. I have decided to release those documents in the form available on the Federal Court website. The **attached** schedule of documents provides a description of each document that falls within the scope of your request and the grounds for granting or denying you access to those documents. The relevant documents that I have granted access to are highlighted in yellow for ease of reference.

I also refer you to the Federal Court website (<http://www.fedcourt.gov.au/>) where you may find additional material that has been published from the Federal Court proceedings *Hird v CEO of ASADA* [2014] FCA 328 and *Essendon Football Club v CEO of ASADA* [2014] FCA 237 ('**Federal Court Proceedings**') but which fell outside the scope of your FOI request.

### **Material taken into account**

I have taken the following material into account in making my decision:

- your emails dated 16 May 2014 and 24 June 2014 (two);
- the FOI Act (specifically sections 11, 11A, 11B, 37(2), 42, 45(1), 47C, 47F and Part VI);
- the ASADA Act 2006 (Cth), the *Australian Sports Anti-Doping Authority Regulations* 2006 (Cth) and the NAD scheme; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

The schedule indicates each document to which access is granted or refused. As outlined above, I have decided to release ten (10) documents to you.

### **Your review rights**

If you are dissatisfied with my decision, you may apply to the OAIC for review. 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: xxxxxxxx@xxxx.xxx.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. Go to:

[www.oaic.gov.au/foiportal/review\\_complaints.html#foi\\_merit\\_reviews](http://www.oaic.gov.au/foiportal/review_complaints.html#foi_merit_reviews).

### **Questions about this decision**

If you wish to discuss this decision, please contact Alexie Finucan, Lawyer, on (02) 6222 4254 or Bronwyn Fagan, Director Legal Services on (02) 6222 4271 or xxxxx@xxxxx.xxx.xx.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'B. McDevitt', with a stylized flourish at the end.

Ben McDevitt AM APM  
Chief Executive Officer