



Australian Government

Australian Sports
Anti-Doping Authority

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1 December 2014

Mr Martin Hardie

By email only: foi+request-741-c093390d8@righttoknow.org.au

Dear Mr Hardie

Re: Freedom of Information Request

I refer to your email of 31 October 2014 in which you sought access under the *Freedom of Information Act 1982 (FOI Act)*, to:

"all documents relating to the interview given by Mr Ben McDevitt to Gerard Whately of the ABC on August 24 2014 including documents and correspondence relating to any possible breaches of section 71 of the ASADA Act by Mr McDevitt during that interview relating to his statement that Mr Steven Dank had been placed on the ASADA Register of Findings (your Request)."

The FOI Act provides a statutory scheme for the release of documents held by the Commonwealth. I note that where no document is found to satisfy an FOI request, ASADA is not required under the FOI Act to create a new document to answer the request.

A Statement of Reasons for my decision is attached, together with a schedule of documents (**Attachment A**). The attached schedule outlines each document covered by your Request, and whether the document has been released or not. Where relevant, it also sets out the sections of the FOI Act under which an exemption has been claimed and any applicable public interest factors weighed up in considering whether it would be contrary to the public interest to release that document.

Should you wish to seek review of my decision in relation to the exempt nature of the documents relevant to your request, a copy of your review options is attached (**Attachment B**).

Yours sincerely

Trevor Burgess
National Manager Operations

STATEMENT OF DECISION

Name of Decision Maker: Trevor Burgess

Designation of Decision Maker: National Manager Operations

Date of Decision: 1 December 2014

Applicant: Martin Hardie

Decision: Forty-five (45) documents were found to be within the scope of the request.

I have determined to grant full access to two (2) documents and partial access to forty-three (43) documents.

I rely on the exemptions outlined in sections 47C and 47F of the FOI Act in making my decision.

Materials on which the findings are based:

- Your Freedom of Information (FOI) Request;
- The Freedom of Information Act 1982 (FOI Act); and
- The Office of the Australian Information Commissioner's FOI Guidelines – Part 5 – Exemptions and Part 6 – Conditional Exemptions (which includes guidelines in relation to the public interest test).

Scope of the request

The Applicant, Mr Martin Hardie, made a valid FOI request to the Australian Sports Anti-Doping Authority (ASADA) which was received by ASADA on 31 October 2014. The Applicant sought:

"all documents relating to the interview given by Mr Ben McDevitt to Gerard Whately of the ABC on August 24 2014 including documents and correspondence relating to any possible breaches of section 71 of the ASADA Act by Mr McDevitt during that interview relating to his statement that Mr Steven Dank had been placed on the ASADA Register of Findings (your Request)."

Background information

ASADA conducted the following searches to locate the documents requested by the Applicant:

- searches of ASADA's electronic document management system;
- searches of relevant staff's electronic emailing system using relevant email addresses and key dates; and
- consultation with key ASADA staff.

Through the above searches forty-five (45) documents were found to be in scope of your Request. The results have been carefully considered and the decision set out in this Statement has been made in accordance with the FOI Act.

REASONS FOR THE FINDINGS AND DECISIONS

I am authorised under section 23 of the FOI Act to make decisions to release documents and to refuse access to documents considered to be exempt under the FOI Act.

I have determined to grant full access to two (2) documents and partial access to forty-three (43) documents.

Please refer to the 'Schedule to Attachment A' which lists each document that fell within the scope of your Request and, where relevant, on what grounds I have granted partial access.

Attachment A

I have relied on the exemptions outlined in 47C and 47F of the FOI Act in making my decision. It should be noted that more than one exemption may apply to each document.

Deliberative processes (section 47C)

I consider that twenty-eight (28) of the documents within the scope of your Request are partially exempt under section 47C of the FOI Act. Section 47C conditionally exempts a document if its disclosure under this Act would disclose matter (a 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, the deliberative processes involved in the functions of an agency.

The documents contain advice or recommendations prepared or obtained from ASADA staff or the Minister's Office for the purposes of the CEO making a decision as to how to respond to media enquiries relating to ASADA's functions under the ASADA Act and Regulations. Accordingly, it is my view that the relevant portions of the documents contain deliberative material pursuant to section 47C and they are therefore exempt from production.

Personal Privacy (section 47F)

I consider that forty-three (43) of the documents within the scope of your Request are partially exempt under section 47F of the FOI Act. Section 47F conditionally exempts a document to the extent that its disclosure would involve the unreasonable disclosure of personal information about any person.

The documents contain personal information about a number of people. Taking into account the nature of the information and the individuals' reasonable right to privacy, I consider it would be unreasonable to disclose the personal information.

In deciding whether disclosure of personal information would be unreasonable, I have considered the matters set out in section 47F(2) of the FOI Act. In particular, the information about individuals contained in the documents is not well known or publicly available. Further, consistent with *Colakovski v Australian Telecommunications Corp (1991) 29 FCT 429*, the information disclosure is 'of no demonstrable relevance to the affairs of government and [is] likely to do no more than excite or satisfy the curiosity'.

Public Interest test (sections 47C, 47F)

In making my decision in relation to the conditional exemptions under sections 47C and 47F of the FOI Act, I consider that in the circumstances, providing full access to the relevant documents listed in the 'Schedule to Attachment A' would, on balance, be contrary to the public interest.

I consider that the following factors are in favour of the release of those documents:

1.	It promotes the objects of the FOI Act
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This factor is weighed against those factors which indicate it is against the public interest to fully release the documents.

Section 47F – Personal Privacy

In relation to the exemption outlined in section 47F of the FOI Act (personal privacy), the factors indicating it is against the public interest to fully release the documents are:

2.	The content of the documents are not well known or available from publicly accessible sources
3.	Disclosure of the personal information contained in the document would not shed any light on the proper functioning of government and would only serve to satisfy mere curiosity about the individual whose details are being disclosed
4.	Disclosure of the personal information would unreasonably affect a person's right to privacy
5.	Disclosure of the personal information may be in breach of the <i>Privacy Act 1988</i> (Cth)

Attachment A

Section 47C – Deliberative documents

In relation to the exemption outlined in section 47C of the FOI Act (deliberative processes), the factors indicating it is against public interest to release the documents are:

6.	Disclosure would inhibit future frankness and candour between staff members of ASADA during the deliberative processes
7.	Disclosure would be likely to inhibit the effectiveness of the evaluation and decision-making processes of the agency
8.	The deliberations surrounding the documents are such that the documents in their current form may be nothing like the final and determinative version of that document

Relevant legislation

As outlined above, I rely on sections 47C and 47F of the FOI Act in my decision. These sections of the FOI Act are outlined below for your convenience.

Section 47C FOI Act - public interest conditional exemptions—deliberative processes

General rule

- (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, the deliberative processes involved in the functions of:
- (a) an agency;...

Exceptions

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
- (b) purely factual material.
- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
- (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
- (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

...

Section 47F FOI Act - Public interest conditional exemptions—personal privacy

...

- (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.

Attachment A

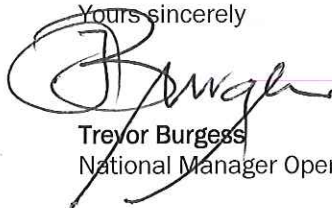
Charges

I have determined that there will be no charge for the processing of your Request.

Conclusion

I consider that forty-five (45) documents are within the scope of your Request. I grant full access to two (2) documents and partial access to forty-three (43) documents. I rely on the exemptions outlined in sections 47C and 47F of the FOI Act.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Trevor Burgess', is written over a horizontal purple line.

Trevor Burgess
National Manager Operations

REVIEW OPTIONS UNDER THE FREEDOM OF INFORMATION ACT 1982

The *Freedom of Information Act 1982* (FOI Act) provides a right of access to government information and also ensures an appeal mechanism is available against a decision to deny access to documents. The appeal procedure has four elements:

- Optional internal review within the Australian Sports Anti-Doping Authority,
- External review at the Office of the Australian Information Commissioner (OAIC),
- External review at the Administrative Appeals Tribunal (AAT), and
- Commonwealth Ombudsman.

It is also possible to have a decision reviewed through court action, either directly via the *Administrative Decisions (Judicial Review) Act 1977* or on appeal following an AAT hearing.

Internal review

An optional internal review can be undertaken before external review and other forms of appeal. Internal review is a re-examination of the request and original decision making process.

Application for a review of the decision must be made in writing and within 30 days of receipt of the decision letter. No fees and charges are payable for internal review of a decision.

There is no set form for making an internal review application, but it would be helpful if you could outline the grounds on which you consider that the decision should be reviewed. A request for internal review must concern:

- the outcome of the request (e.g. refusal, deferral or part compliance),
- a decision concerning the amendment or annotation of personal records,
- the liability to pay charges before receiving the requested information, or
- a decision whether or not to remit all or part of an application fee.

OAIC

You can apply for review of an FOI decision by the OAIC either before or after internal review by the Australian Sports Anti-Doping Authority. OAIC review also involves re-examination of the decision. A written application form must be lodged:

- if the decision was to refuse access – within 60 days of the date of this letter.
- if the decision was to grant access – within 30 days of the date of this letter.

More information about making an application for review by the OAIC is available at www.oaic.gov.au/freedom-of-information/foi-reviews.

Review at the OAIC is free of charge.

AAT

If you are dissatisfied with the review decision made by the OAIC, then you may apply to the AAT for review of the decision.

Further information about making an application to the AAT is available on the AAT website at <http://www.aat.gov.au/>.

Ombudsman

Applicants who wish to make a complaint to the Ombudsman will find information on the Ombudsman's website at <http://www.ombudsman.gov.au/>.

Contacting ASADA

Applicants can contact the FOI Contact Officer for assistance with the review process, if required, on (02) 6222 4259 or legal@asada.gov.au.

SCHEDULE TO ATTACHMENT A – MARTIN HARDIE FOI REQUEST – ABC OFFSIDERS INTERVIEW

#	Date	Description	Release	Exemption	Public interest factors
1.	21 Aug 2014	Email from Tony Baccari (TB) to Ben McDevitt (BM) regarding interview requests	Y (partial)	23, 47F	2 - 3
2.	21 Aug 2014	Email from Kate Tozer (KT) to ASADA media regarding interview	Y (partial)	23, 47F	2 - 5
3.	21 Aug 2014	Email from TB to BM re NRL players	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
4.	21 Aug 2014	Email from ASADA media to KT regarding interview	Y (partial)	23, 47F	2 - 5
5.	21 Aug 2014	Email from ASADA media to BM regarding interview	Y (partial)	23, 47F	2 - 5
6.	22 Aug 2014	Email from ASADA media to KT re: interview	Y (partial)	23, 47F	2 - 5
7.	22 Aug 2014	Email from TB to BM re; Offsiders interview.	Y (partial)	23, 47F	2 - 5
8.	22 Aug 2014	Email from ASADA media to KT re availability of BM	Y (partial)	23, 47F	2 - 5
9.	22 Aug 2014	Email from BM to TB re Interview	Y (partial)	23, 47F	2 - 5
10.	22 Aug 2014	Email from ASADA media to KT confirming timings	Y (partial)	23, 47F	2 - 5
11.	22 Aug 2014	Email from TB to BM re Interview	Y (partial)	23, 47F	2 - 5
12.	22 Aug 2014	Email from BM to TB re Interview	Y (partial)	23, 47F	2 - 5
13.	24 Aug 2014	Email from KT to ASADA media – Interview record	Y (partial)	23, 47F	2 - 5
14.	25 Aug 2014	Email from Melissa Munro (MM) to TB re ROF	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
15.	25 Aug 2014	Email from TB to BM re media enquiry	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
16.	25 Aug 2014	Email from TB to BM regarding media request	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
17.	25 Aug 2014	Email from TB to BM regarding media request	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
18.	25 Aug 2014	Email from TB to BM – David Mark story	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
19.	25 Aug 2014	Email from BM to TB – response	Y (partial)	23, 47F, 47C	2 - 5, 6 - 8
20.	25 Aug 2014	Email from TB to Kay McNiece (KM) – media enquiries	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
21.	25 Aug 2014	Email from KM to TB – media enquiry response	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
22.	26 Aug 2014	Email from TB to KM – revised response	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
23.	3 Sep 2014	Email from MM to BM – response for approval	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
24.	4 Sep 2014	Email from ASADA media to David Mark (DM) – response	Y		N/A
25.	25 Aug 2014	Email from ASADA media to TB	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
26.	25 Aug 2014	Email from TB to BM	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
27.	25 Aug 2014	Email from Elen Perdikogiannis (EP) to TB	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
28.	25 Aug 2014	Email from TB to KM	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
29.	25 Aug 2014	Email from TB to Chris Barrett (CB)	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8
30.	3 Sep 2014	Email from TB to MM	Y (partial)	23, 47F, 47C	2 - 3, 6 - 8

SCHEDULE TO ATTACHMENT A – MARTIN HARDIE FOI REQUEST – ABC OFFSIDERS INTERVIEW

31.	3 Sep 2014	Email from MM to EP	Y (partial)	23, 47F, 47C	2-3, 6-8
32.	4 Sep 2014	Email from TB to DM	Y		N/A
33.	4 Sep 2014	Email from DM to ASADA media	Y (partial)	23, 47F	2-5
34.	5 Sep 2014	Email from EP to ASADA media	Y (partial)	23, 47F, 47C	2-5, 6-8
35.	5 Sep 2014	Email from BM to ASADA media	Y (partial)	23, 47F, 47C	2-5, 6-8
36.	5 Sep 2014	Email from BM to ASADA media	Y (partial)	23, 47F, 47C	2-5, 6-8
37.	5 Sep 2014	Email from ASADA media to DM	Y (partial)	23, 47F	2-5, 6-8
38.	8 Sep 2014	Email from EP to ASADA media	Y (partial)	23, 47F, 47C	2-5, 6-8
39.	8 Sep 2014	Email from ASADA media to BM	Y (partial)	23, 47F, 47C	2-5, 6-8
40.	8 Sep 2014	Email from BM to ASADA media	Y (partial)	23, 47F, 47C	2-5, 6-8
41.	9 Sep 2014	Email from ASADA media to KM	Y (partial)	23, 47F, 47C	2-5, 6-8
42.	9 Sep 2014	Email from KM to ASADA media	Y (partial)	23, 47F, 47C	2-5, 6-8
43.	9 Sep 2014	Email from TB to ASADA media	Y (partial)	23, 47F, 47C	2-5, 6-8
44.	9 Sep 2014	Email from ASADA media to Grant Baker	Y (partial)	23, 47F	2-5
45.	9 Sep 2014	Email from KM to ASADA media	Y (partial)	23, 47F, 47C	2-5, 6-8