



6 September 2022

Mr Goobley Woobley
Via email: foi+request-9136-0ffb9a3@righttoknow.org.au

Kathryn Dan
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CRICOS Provider No. 00120C

Dear Mr Woobley,

Freedom of Information Request No. 202200038

On 16 July 2022, the Australian National University received your request seeking access to documents under the *Freedom of Information Act 1982* (the Act).

1. Scope of Request

I have taken your request to be as follows:

I am seeking under the Freedom of Information Act a copy of the report produced by EY for the university relating to the governance of PARSA. The report is mentioned in this article: <https://www.canberratimes.com.au/story/7815067/it-was-really-a-shock-anu-cuts-funding-to-postgraduate-students-association/?cs=14329> [Sarah Lansdown, 'Australian National University cuts funding to postgraduate and research students association', *The Canberra Times (online)*, 16 July 2022]

The purpose of this letter is to provide you with a decision on your request for access under the Act.

On 10 August 2022, the ANU contacted you and advised that third party consultation was required under section 27 of Act providing a new decision date of 13 September 2022.

Authority to Make Decision

I am an officer authorised under section 23 of the Act to make decisions in respect of requests to access documents or to amend or annotate records.

Relevant Material

In reaching my decision I referred to the following:

- The terms of your request;
- Documents relevant to the request;
- The submissions of third parties consulted about documents that relate to them;
- Advice from University staff with responsibility for matters relating to the documents to which you sought access;
- The Act;
- Guidelines published by the Office of the Australian Information Commissioner (OAIC) under section 93A of the Act (the FOI Guidelines).

Decision

I have identified one document within the scope of your request.

The document identified within the scope of your request is a fully exempt document and will not be released, for the reasons discussed below.

My findings of fact and reasons for deciding that the exemptions apply to the documents in question are set out below.

4.1 Section 42 of the Act - Legal Professional Privilege

Section 42 of the Act provides that a document is an exempt document if it is of such a nature that it would be privileged from production in legal proceedings on the ground of legal professional privilege. Relevantly, the privilege protects confidential communications between a client and their lawyer that are made for the purposes of seeking or being provided with legal advice.

I have considered the common law concepts of legal professional privilege in relation to the document in question. The University retained and instructed EY in its capacity as an independent external legal service provider to advise on a legal matter affecting the University. I am satisfied that a lawyer client relationship exists between EY and the University. I consider that the document was created for the dominant purpose of providing legal advice to the University. The legal advice was provided in confidence and has not been published or distributed to recipients without a direct need to know its contents.

The document is fully exempt as the information contained within the document is subject to legal professional privilege.

I have determined that s 42 applies to the document, in its entirety, and consequently the University is not required to give you access to it.

Section 42 is not a conditional exemption and consideration of whether disclosure would be contrary to the public interest is not required.

4.2 Section 45 of the Act – Documents containing material obtained in confidence

Section 45 of the Act 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.*

The document concerned contains sensitive material that was supplied on the understanding of confidentiality for a specific purpose. The information considered exempt under this section of the Act was obtained for the purpose of preparing the report. The information in the document was provided on the understanding of confidentiality and that the information would not be disseminated beyond the personnel involved in the matters about which it was prepared. Disclosure of the information contained in the document could undermine the ability of the University to obtain information of a similar nature in the future.

I have determined that if the University were to disclose the information, 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 for a specific purpose; and
- (c) The information was provided on the understanding of confidentiality and that the information would not be disseminated further.

I have therefore exempted material obtained in confidence.

Section 45 is not a conditional exemption and a consideration of whether disclosure would be contrary to the public interest is not required.

A copy of the document schedule is enclosed with this letter.

Your review rights are outlined on the following page. If you have any questions or wish to discuss this decision further, please contact me at foi@anu.edu.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Dan', written in a cursive style.

Kathryn Dan
University Archivist, Associate Director
Records & Archives

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Application for Internal Review of Decision

Section 54A of the Act gives you the right to apply for an internal review of my decision.

It must be made in writing within 30 days of 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.

The application should be addressed to Freedom of Information at foi@anu.edu.au.

Application for Information Commissioner Review of decision

Under section 54L of the Act, you may apply to the OAIC to review my decision. An application 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.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW.

More information is available on the OAIC website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.