



Australian Government

Australian Sports
Anti-Doping Authority

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16 March 2015

Ms Cassandra Graham

Via email only: foi+request-968-2cb869ab@righttoknow.org.au

Dear Ms Graham

FREEDOM OF INFORMATION REQUEST

I refer to your email of 20 February 2015, in which you requested, under the *Freedom of Information Act 1982 (Cth) (FOI Act)* access to documents relating to:

- "1. Any correspondence or documentation between ASADA (including but not limited to Ben McDevitt) and the Cronulla Sharks, including their trainer Trent Elkin and supplier Darren Hibbert in relation to the illegal supplements administration.*
- 2. Any documentation or communication between ASADA and ABC journalists (including but not limited to David Mark) regarding illegal substances in the NRL.*
- 3. Any correspondence and documentation between ASADA and the NRL regarding the investigation of the Cronulla Sharks illegal substances, and the treatment of Stephen Dank."*

I also refer to our email to you of 10 March 2015, in which we sought, pursuant to section 15AA of the *FOI Act*, an extension by agreement until 22 April 2015 to finalise your Freedom of Information Request ('**FOI Request**'). I note that you have not yet responded to this request.

I am an officer authorised under section 23(1) of the *FOI Act* to make decisions in relation to FOI Requests.

It is my belief that the work involved in processing your request, in its current form, would substantially and unreasonably divert the resources of this agency from its other operations due to its size. This is a 'practical refusal reason', pursuant to section 24AA of the *FOI Act*.

On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as outlined in section 24AB of the *FOI Act*. You have 14 days to respond to this notice in one of the ways set out below.

Why I intend to refuse your request

The documents you sought access to, in your FOI Request, are outlined above at paragraph 1.

We have performed preliminary document content searches of our electronic database, which have revealed 5,684 documents.

Taking into account the large number of documents which could fall within the scope of your FOI Request, I consider that giving access to these documents would substantially and unreasonably divert the resources of the agency. Because of this, I have decided that a practical refusal reason exists. My reasons for a practical refusal are:

- (a) of the 5,684 documents initially returned, the documents will need to be located, manually examined to ascertain whether it fits within the scope of your request and then a decision will need to be made on each document as to whether you may have access to it. Deciding whether to grant, refuse or defer access to these documents will likely take about three (3) minutes per page per document. Working on a conservative basis that each document is five (5) pages long, it is likely that this process will take in excess of 1,400 hours. Further time and resources will then be required to redact or delete any sensitive material contained in documents that have been decided to be released to you. Given the sensitive nature of much of the information that will be contained in the requested documents, this will likely take a substantial amount of time and unreasonably divert our resources.

In the *Review of Charges under the Freedom of Information Act 1982*, the Australian Information Commissioner recommended that a period of 40 hours be adopted as a statutory ceiling on processing time for an FOI request.

In the case of *Cianfrano v Premier's Department* (2006) NSW ADT 137 ('*Cianfrano*') the Tribunal suggested that 40 hours was a reasonable presumptive period beyond which a request imposed a substantial and reasonable administrative burden on an agency. Your request, in its current form, would likely substantially exceed this amount of time.

Using the recommendations of the *Review of Charges* and the case of *Cianfrano* as a guide, I have determined that your request imposes too great a burden on ASADA's resources to process;

- (b) ASADA is a small agency and does not have a dedicated FOI section. With a small legal team, and limited support staff available to assist in the identification, collation and processing of the requested documents, a request of this magnitude diverts a significant amount of ASADA's finite resources; and
- (c) the specialised nature of the work required in examining the documents requested requires specialist knowledge in relation to the relevant exemptions available to ASADA and how those exemptions are correctly applied. It also requires an in-depth knowledge of the legislative restrictions imposed on ASADA staff in relation to confidentiality and the disclosure of personal information. As such, only myself, with the assistance of the legal services team, can perform the work of examining the documents.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, our agency will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.

For example, your FOI Request, in its current form, seeks "any correspondence or documentation" in relation to documents containing a specific subject matter. In order to limit the number of potential documents returned, you could limit the request to a specific type or types of document, to a specific date range or by seeking information in relation to particular individuals.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request;
- make a revised request; and
- tell us that you do not wish to revise your request.

The consultation period runs for 14 days and starts on the day after you receive this notice.

During this period, you are welcome to seek assistance from the contact person I have listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal

grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Contact officer

If you would like to revise your request or have any questions, the contact officer for your request is:

Emily Fitton
Lawyer
ASADA
Ph: (02) 6222 4241
Email: legal@asada.gov.au

Yours sincerely



Trevor Burgess
National Manager Operations