



Australian Government

Australian Sports
Anti-Doping Authority

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31 March 2015

Ms Cassandra Graham

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

Dear Ms Graham

Freedom of information request

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982 (FOI Act)*.

On 20 February 2015, you requested 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."*

On 10 March 2015 ASADA sent you an email seeking, 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 you did not respond to this email.

On 16 March 2015 you were issued with a 'Practical Refusal Notice' pursuant to section 24AB of the *FOI Act*. That Notice outlined the reasons why giving access to these documents would substantially and unreasonably divert the resources of ASADA. That Notice also outlined that I intended to refuse access to the documents you requested. However, before I made a final decision to do this, you had the opportunity to revise your request during the 'request consultation process' as set out under section 24AB of the *FOI Act*.

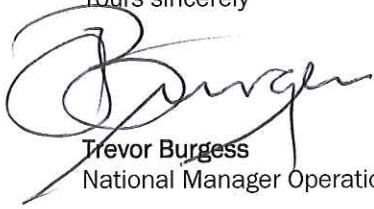
On 24 March 2015 you purported to narrow your request to:

- "(a) Any documentation and correspondence between ASADA and the NRL in relation to Stephen Dank during the time period of 2012-14."*

The *FOI Act* provides a statutory scheme for the release of documents held by the Commonwealth. I am an officer authorised under section 23(1) of the *FOI Act* to make decisions in relation to FOI requests. I am satisfied that that a practical refusal reason still exists in relation to your request. As such I refuse to give access to the documents requested. A Statement of Reasons for my decision is enclosed (**Attachment A**).

This decision is subject to review under Parts VI and VII of the *FOI Act*. Should you wish to seek review of my decision, a copy of your review options is **enclosed (Attachment B)**.

Yours sincerely

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

Trevor Burgess
National Manager Operations

ATTACHMENT A

STATEMENT OF DECISION

Name of Decision Maker: Trevor Burgess
Designation of Decision Maker: National Manager Operations
Date of Decision: 31 March 2015
Applicant: Cassandra Graham
Decision: Practical refusal

Material taken into account

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

- the number of documents that fall within the scope of your request and the time that it would take to process your request;
- email correspondence between you and members of ASADA staff dated 20 February 2015, 10 March 2015, 16 March 2015 and 24 March 2015;
- the *FOI Act* (specifically sections 15 and 24); and
- the guidelines issued by the Australian Information Commissioner under section 93A of the *FOI Act*.

Scope of the request

You made a valid Freedom of Information request (**FOI Request**) to the Australian Sports Anti-Doping Authority (**ASADA**) on 20 February 2015 seeking:

- “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.”*

On 24 February 2015, ASADA notified you by email that it would process the request as a valid request under the *FOI Act* from 20 February 2015.

On 16 March 2015, ASADA issued a practical refusal notice to you under section 24AA of the *FOI Act* on the basis that the request, in its current form would substantially and unreasonably divert the resources of ASADA from its other operations, due to its size. As such, I invited you to enter into a request consultation process and consider refining the scope of your request to make it more manageable.

On 24 March 2015, you revised your request, seeking access to:

- “(a) Any documentation and correspondence between ASADA and the NRL in relation to Stephen Dank during the time period of 2012-14.”*

I note that you did not maintain your request in relation to the balance of the documents you sought initially on 20 February 2015.

Background information

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

- searches of ASADA's electronic document database using relevant keywords and date ranges;
- searches of incoming and outgoing emails; and
- consulting key ASADA staff.

ASADA conducted various searches of its electronic document database. The searches revealed in excess of 2,800 documents that appeared to be relevant to your request. A random sample of 100 documents was selected from the results, of which 35 were identified as potentially falling within the scope of your request. The average page length of the 35 documents was 17 pages. Accordingly, it is estimated that in excess of 900 documents (i.e. of 15,300 pages) of the 2,800 documents may fall within the scope of the request.

It is likely that further searches of ASADA's document management database and email servers would be required to identify the much larger number of documents actually within the scope of this request. Following further searches, these documents would then need to be examined to confirm whether they were within scope of your request, to identify exemptions or conditional exemptions and to make redactions. Working off this conservative estimate, the task would take in excess of 765 hours to complete. 765 hours is well in excess of the statutory ceiling of 40 hours imposed by the *Review of Charges under the Freedom of Information Act 1982*. As such, it is my view that this would substantially and unreasonably divert the resources of the agency and a practical refusal reason still exists.

REASONS FOR THE FINDINGS AND DECISIONS

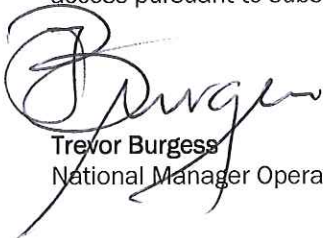
I am authorised under section 23 of the *FOI Act* to make decisions to release documents and to refuse access to documents considered to be exempt under the *FOI Act*.

In accordance with section 24(1) of the *FOI Act*, I am satisfied that a practical refusal reason exists in relation to your request. I have undertaken a request consultation process in accordance with section 24AB of the *FOI Act* and, after that request consultation process, I am satisfied that the practical refusal reason still exists. As such, I refuse to give access to the documents requested.

This refusal is based on the same reasons outlined in my notice to you dated 16 March 2015. Please see that notice, which I attach for your convenience, for an outline of those reasons. Generally, your revised request did not substantially narrow the scope of the material so as to make your request more manageable to process. As a consequence, ASADA is unable to process your request without using excessive resources to identify, examine and decide on the documents you have requested access to.

Conclusion:

I am satisfied that a practical refusal reason still exists in relation to your request. Therefore I have refused access pursuant to subsection 24(1) of the *FOI Act*.



Trevor Burgess
National Manager Operations

ATTACHMENT B

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 Coordinator for assistance with the review process, if required, on (02) 6222 4259 or legal@asada.gov.au.