



THE UNIVERSITY OF
WESTERN AUSTRALIA

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30 November, 2012

By email and post
[REDACTED]

SIMON TURNILL
[REDACTED]

Freedom of Information Application

Dear Mr Turnill

On 19 October, 2012, The University of Western Australia validated your Freedom of Information (FOI) request on receipt of the \$30.00 application fee for access to the following:

Documents relating to the paper by Professor Stephan Lewandowsky et al titled "NASA faked the moon landing – therefore (climate) science is a hoax: An anatomy of the motivated rejection of science" and Human Research Ethics Approval reference RA/4/1/4007 dated 21 December 2009 (and any amendments thereto).

I attach a Notice of Decision which outlines your request, together with a Schedule of Documents, which lists all documents falling within the scope of your application.

For the reasons set out in the decision, you have been granted access to 148 documents.

If you wish to discuss this application, please call me on (08) 6488 4759 or email vittoria.wilkin@uwa.edu.au.

Yours sincerely

V. Wilkin
Vittoria Wilkin
FOI Co-ordinator

NOTICE OF DECISION
(Freedom of Information Act, 1992 'FOI Act' Section 30)

APPLICANT: SIMON TURNILL

DECISION MAKER: VITTORIA WILKIN
FOI CO-ORDINATOR
THE UNIVERSITY OF WESTERN AUSTRALIA (UWA)

DATE OF DECISION: 30 NOVEMBER, 2012

DECISION:

For the reasons set below, I have made the following decision in relation to your access application:

Edited Access:

Folios: 1, 3-5, 7, 8, 11, 12, 16, 17, 37, 39-43, 46-52, 67, 68, 79, 80, 82, 85-88, 90-95, 97-102, 104-111, 113-123, 125-127, 135-138, 140, 144-146, 148-153, 155, 161-165, 167-174, 176, 181-184, 186-196, 198-201, 203-205, 214-220, 222-225, 227-229, 231-235, 238-241, 244-252, 255, 257, 259-261, 268-277, 280-283, 287-292, 294-296, 298, 300, 303-305, 309-312, 314-323, 326-329

Full Access:

Folios: 2, 6, 9, 10, 13-15, 36, 38, 44, 45, 53-66, 69-78, 81, 83, 84, 89, 96, 103, 112, 124, 128-134, 139, 141-143, 147, 154, 166, 175, 177-180, 185, 197, 202, 206-213, 221, 226, 230, 236, 237, 242, 243, 253, 254, 258, 262-267, 278, 279, 284-286, 293, 299, 301, 306-308, 313, 324, 325

Other Matters:

Folios: 302
Parts/thereof 171, 254, 256, 296, 297, 301, 303

Refused Access:

Folios: 18-35, 156-160
Parts/thereof 155

BACKGROUND

1. The FOI application was emailed on 16 September, 2012 and validated by UWA on receipt of the \$30.00 application fee on 19 September, 2012.
2. The application requested access under the FOI Act for documents relating to the following:

I refer to my earlier Fol request, relating to the paper by Prof Stephan Lewandowsky et al, entitled "NASA faked the moon landing – therefore (climate) science is a hoax: An anatomy of the motivated rejection of science" ("the Paper").

As a result of the documents released, I would like to make the following further request under the Freedom of Information Act 1992:

UWA Areas:

- Human Research Ethics Office ("HREO")
- The Vice Chancellor's Office
- The Human Resources Office

Dates:

1 December 2009 and the date of this letter

Names:

- Prof Stephan Lewandowsky and any of his research staff, research students and/or administrative assistants;
- Any member of the HREO staff, including, without limitation, the Ethics Committee and any external third parties involved in the ethical review of UWA research
- The Vice Chancellor and any member of the Vice Chancellor's staff
- The Director of Human Resources and any member of the HR Director's staff

Documents requested:

- All correspondence and documents of whatever nature:
- between or created by any of the parties named above; and
- internally within the HREO, the Vice Chancellor's office and the Human Resources Office

which relate to (a) the Human Research Ethics Approval reference RA/4/1/4007 dated 21 December 2009 (and any amendments thereto) and/or (b) the Paper.

Form:

Please provide copies of the documents requested

Personal information:

I authorise the redaction of email addresses and other personal information of third parties external to UWA, provided that an indication of their job title and/or capacity is retained.

3. On 25 October, 2012, your scope of application was defined as follows:

'...Further to our telephone call earlier, I set out a revised request in RED as discussed. Category 1 will be documents discussing the paper and/or the ethics application between or within HR, VC or HREO, and documents discussing the paper and/or ethics application between Prof Lewandowsky and his team AND any of either HR, VC or HREO. Category 2 is internal discussion within Prof Lewandowsky's group regarding the ethics approval only. This therefore excludes internal communication within Prof Lewandowsky's team relating to the paper...'

UWA Areas:

- Human Research Ethics Office ("HREO")
- The Vice Chancellor's Office
- The Human Resources Office

Dates:

1 December 2009 and the date of this letter

Names:

- (1) *Prof Stephan Lewandowsky and any of his research staff, research students and/or administrative assistants;*
- (2) *Any member of the HREO staff, including, without limitation, the Ethics Committee and any external third parties involved in the ethical review of UWA research*
- (3) *The Vice Chancellor and any member of the Vice Chancellor's staff*
- (4) *The Director of Human Resources and any member of the HR Director's staff*

Documents requested:

1. All correspondence and documents of whatever nature:

- *between or created by any of (2), (3) and (4) above; and*
- *internally within (2), (3) and (4) above*
- *between (1) and any of (2), (3) or (4),*

which relate to (a) the Human Research Ethics Approval reference RA/4/1/4007 dated 21 December 2009 (and any amendments thereto) and/or (b) the Paper.

2. All correspondence and documents of whatever nature internally within (1) which relate to the Human Research Ethics Approval reference RA/4/1/4007 dated 21 December 2009 (and any amendments thereto).

Form:

Please provide copies of the documents requested

Personal information:

I authorise the redaction of email addresses and other personal information of third parties external to UWA, provided that an indication of their job title and/or capacity is retained.

4. On 14 November, 2012, a Notice of Estimated Charges for the amount of \$395.20 and a schedule listing the documents was provided for your consideration.
5. The approval to proceed was received on 15 November, 2012 on the basis of the costs estimate provided and an additional 2 documents, namely 147 and 148, were also identified and included.
6. On 16 November, 2012, the processing charges were confirmed at \$390.00 and payment was received from you on 21 November, 2012.
7. As a result of your application, a search for documents falling within the scope of your application was conducted with Professor Stephan Lewandowsky his research staff including research students and administrative assistants at the Faculty of Life and Physical Sciences (Psychology); Human Research Ethics Committee; Vice-Chancellor and Vice-Chancellery staff; Director of Human Resources (HR) and HR staff. This resulted in 148 documents, consisting of 329 folios, being evaluated for potential release.

8. DECISION

My decision in relation to your access application is stated on page 2. Reasons for this decision of whether to release information related to your application are detailed below. For your reference, I have attached a Schedule of Documents, which contains a list of all documents falling within the scope of your application. The documents are considered to be *material on which findings of fact* are based.

9. Third Party Objection

Notwithstanding the above, in accordance with section 33 of the FOI Act, where a document contains either personal information, commercial or business information about a third party, that third party must be consulted before the documents are released.

10. I have received a third party objection to the release of information contained in folios 15, 51, 94, 149, 150, 152, 188, 192, 231, 233, 245, 270-272, 274, 276 and 282-286. Accordingly, until the third party has had a chance to request a review of my decision, I am unable to grant you access to the folios that have been objected to.
11. If the third party does not request a review within the relevant timeframe, you will receive a copy of the folios in the format outlined in this decision. If the third party does request a review, then that review will determine whether or not the folios will be released.

12. Direct Contact Details of Staff and Signatures

Folios: 1, 3-5, 7, 8, 11, 12, 16, 17, 37, 39, 40-43, 46-52, 67, 68, 79, 80, 82, 85-88, 90-95, 97-102, 104-111, 113-123, 125-127, 135-138, 140, 144-146, 148-153, 155, 161-165, 167-174, 176, 181-184, 186-196, 198-201, 203-205, 214-220, 222-225, 227-229, 231-235, 238-241, 244-252, 255, 257, 259-261, 268-277, 280-283, 287-292, 294-296, 298, 300, 303-305, 309-312, 314-323, 326-329

13. I have applied clause (cl) 3(3) of schedule 1, of the Act to these folios, which states that information is not exempt from disclosure where it consists of prescribed details as outlined in the FOI Regulations, 1993, about an 'Officer of an Agency'.

9. Prescribed personal details (Schedule 1 clause 3 of the Act)

(1) In relation to a person who is or has been an officer of an agency, details of -

- a) the person's name;
- b) any qualifications held by the person relevant to the person's position in the agency;
- c) the position held by the person in the agency;
- d) the functions and duties of the person, as described in any job description document for the position held by the person; or
- e) anything done by the person in the course of performing or purporting to perform the person's functions or duties as an officer as described in any job description document for the position held by the person,

are prescribed details for the purposes of Schedule 1, clause 3(3) of the Act.

14. The exception to this clause are signatures and direct contact details of an 'Officer of an Agency' which I have edited, as this information is considered *prima facie* exempt under cl3(1) of schedule 1, of the Act.

3. **Personal information**

Exemption

- (1) *Matter is exempt matter if its disclosure would reveal personal information about an individual (whether living or dead).*

15. Personal information is defined in the Glossary Section of the 'Act' as

"information or an opinion, whether true or not, and whether recorded in a material form, about an individual, whether living or dead

- (a) *where identity is apparent or can reasonably be ascertained from the information or the opinion; or*
(b) *who can be identified by reference to an identification number or other identifying particular such as a fingerprint, retina print or a body sample."*

16. For your reference, the Western Australia Information Commissioner, Sven Bluemmel, reiterated the exemption of direct contact details of an 'Officer of an Agency' in his external review decision of **Malik and Office of the Public Sector Standards Commissioner, Re [2010] WAICmr 25**.

17. Accordingly, I have decided to remove the exempt matter and release the folios in an edited format in accordance with s.24 of the Act.

24. Deletion of exempt matter

If —

- (a) *the access application requests access to a document containing exempt matter; and*
(b) *it is practicable for the agency to give access to a copy of the document from which the exempt matter has been deleted; and*
(c) *the agency considers (either from the terms of the application or after consultation with the applicant) that the applicant would wish to be given access to an edited copy,*
the agency has to give access to an edited copy even if the document is the subject of an exemption certificate.

18. **Access in Full**

Folios: 2, 6, 9, 10, 13-15, 36, 38, 44, 45, 53-66, 69-78, 81, 83, 84, 89, 96, 103, 112, 124, 128-134, 139, 141-143, 147, 154, 166, 175, 177-180, 185, 197, 202, 206-213, 221, 226, 230, 236, 237, 242, 243, 253, 254, 258, 262-267, 278, 279, 284-286, 293, 299, 301, 306-308, 313, 324, 325

19. Other Matters: 302

Parts/thereof 171, 254, 256, 296, 297, 301, 303

20. Access to the above folios have been released to you in full, with the exception of personal information of third parties (which includes students), in accordance with your ambit of application. As you authorised the redaction of this information, it falls outside the scope of your request. Folios 134 and 221 do not contain any information once the personal information of third parties has been removed, therefore, these folios have been omitted.

21. The folios referred above as 'other matters' include information not related to your request and therefore, have been removed from the folios as it also falls outside the scope of your application. As the whole of folio 302 falls within this category, it has not been included, as the folio does not contain any information when the 'other matters' have been redacted.

22. Attachments within emails that have already been published on the web have not been provided, as access procedures do not apply to documents that are already available (s.6). To assist you, the website address has been provided in the Schedule of Documents for ease of reference.
23. Notwithstanding the above, any other information (not attachments) contained in folios, which is publicly available, have been retained.

6. Access procedures do not apply to documents that are already available

Parts 2 and 4 do not apply to access to documents that are –

- (a) *available for purchase by the public or free distribution to the public;*
- (b) *available for inspection (whether for a fee or charge or not) under Part 5 or another enactment;*
- (c) *available for inspection in State archives;*
- (d) *publicly available library material held by agencies for reference purposes; or*
- (e) *made or acquired by an art gallery, museum or library and preserved for public reference or exhibition purposes*

24. Legal Professional Privilege

Folios: 156-160 and part of 155

25. These folios contain confidential communications between UWA and their legal representatives and were created for the sole purpose of seeking or giving legal advice.
26. As these communications would be privileged from production in legal proceedings on the grounds of legal professional privilege (LPP), access to folios 156-160 have been refused in their entirety in accordance with s23(1)(a) and cl7, schedule 1, of the Act. This exemption also applies to part of folio 155 (refer to Para 17 for s.24). Please note that excluding the information claimed as LPP above, within folio 155, the remaining information released to you does not relate to the LPP claimed.

7. Legal professional privilege

Exemption

Matter is exempt matter if it would be privileged from production in legal proceedings on the ground of legal professional privilege.

23. Refusal of access

- (1) *Subject to section 24 the agency may refuse access to a document if —*
 - (a) *the document is an exempt document;*
27. Please note that LPP was not claimed for folios 161-162, as this exemption was waived on the basis that the legal advice was included in correspondence from Deputy Vice Chancellor Research, Professor Robyn Owens, to members of the public.
 28. In support of my decision in claiming an exemption of legal professional privilege, I refer you to the following passage from Para 4 in **Waterford v Commonwealth of Australia [1987] 163 CLR 54:**

4. In our opinion, given the safeguards to which reference is made in the various citations, there is no reason to place legal officers in government employment outside the bounds of legal professional privilege.

The proper functioning of the legal system is facilitated by freedom of consultation between the client and the legal adviser. In Grant v. Downs [1976] HCA 63; (1976) 135 CLR 674, at p 685, Stephen, Mason and Murphy JJ. in a much-cited passage, said:

"The rationale of this head of privilege, according to traditional doctrine, is that it promotes the public interest because it assists and enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline.

This it does by keeping secret their communications, thereby inducing the client to retain the solicitor and seek his advice, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the solicitor. The existence of the privilege reflects, to the extent to which it is accorded, the paramountcy of this public interest over a more general public interest, that which requires that in the interests of a fair trial litigation should be conducted on the footing that all relevant documentary evidence is available."

To our minds it is clearly in the public interest that those in government who bear the responsibility of making decisions should have free and ready confidential access to their legal advisers. Whether in any particular case the relationship is such as to give rise to the privilege will be a question of fact. It must be a professional relationship which secures to the advice an independent character notwithstanding the employment.

As there is no public interest test which applies to this exemption, it is not necessary to consider whether it is in the public interest to release this information.

29. The State's financial or property affairs

Folios 18-35

30. These folios consist of a research paper by Professor Stephan Lewandowsky, which has been submitted for publication and for that reason, access to these folios have been refused in accordance with s.23 and cl10(5)(a)(b), schedule 1, of the Act.
31. There is an expectation that a paper of this nature would be embargoed from publication when it is submitted for review. It is also my view that prior scrutiny on the premature release of the paper, would undermine the value of the paper and expose Professor Lewandowsky to disadvantage.

10. The State's financial or property affairs

Exemptions

- (1) ...
- (2) ...
- (3) ...
- (4) ...
- (5) Matter is exempt matter if its disclosure –
 - (a) would reveal information relating to research that is being, or is to be, undertaken by an officer of an agency or by a person on behalf of an agency; and
 - (b) would be likely, because of the premature release of the information, to expose the officer or person or the agency to disadvantage.

Limit on exemptions

- (6) Matter is not exempt matter under subclause (1), (2), (3), (4) or (5) if its disclosure would, on balance, be in the public interest."

32. Cl10(6) above, which relates to the public interest test, was considered and I am of the view that the decision to withhold the release of these folios is a reasonable one, when all the circumstances are considered. It is also my view that there is no public benefit in releasing the paper prior to publication, when it is anticipated that this will transpire shortly.

If you wish, arrangements can be made to forward a copy of the paper to you following publication.

Additional Information

33. For your reference, folio 193 was not included in our previous Notice of Decision dated 10 October, 2012, as the request related to climate websites. I have been advised that Mr Hanich corresponded with this third party, however Professor Lewandowsky was not aware of this. Also, this third party was not included in the survey/study and to our knowledge, the link to the survey was never posted.

34. Costs and Charges

Application Fee:	\$30.00	Paid
Processing Charges	\$390.00	Paid
Amount owing:		Nil

35. Please note that whilst the above processing charges were accepted as the Estimated Charges, the time required to prepare the documents, consult and prepare the Notice of Decision, was in excess of 50 hours.

36. Internal Review

If you are not satisfied with this Notice of Decision, you may apply for an internal review within **30 days** of being provided this notice. There are no charges for requesting an internal review and once a request is received, UWA must review the disputed decision within 15 days.

37. An application for an internal review must:

1. be in writing;
2. set out the particulars of the decision that you wish to have reviewed;
3. give an address in Australia for correspondence, to which notices under the FOI Act can be sent; and
4. be lodged at an office of UWA (see below).

38. An internal review request may be sent by email to vittoria.wilkin@uwa.edu.au, delivered in person or by post to the following address:

FOI Coordinator
Legal Services Office M461
University of Western Australia
35 Stirling Highway
CRAWLEY WA 6009

39. Should you require further information or assistance in preparing an internal review application, please contact the FOI Coordinator on 6488 4759. Reference can also be made at:
<http://www.legalservices.uwa.edu.au/iso/foi/applications> for access to documents.

40. External Review

If you are not satisfied with this Notice of Decision, you have the right to lodge a complaint with the Information Commissioner, requesting an external review. The complaint must be lodged within **60 days** of being provided the Notice of Decision.

41. A complaint to the Office of the Information Commissioner must:

1. be in writing;
2. have a copy of the Notice of Decision attached to it;
3. give an address in Australia to which correspondence can be sent; and
4. be lodged at the Office of the Information Commissioner.

42. There is no charge for lodging a complaint with the Office of the Information Commissioner. The postal address is:

Office of the Information Commissioner
Albert Facey House
469 Wellington Street
PERTH WA 6000

43. Should you have any further queries or require further clarification regarding your external review rights, you can contact the Office of the Information Commissioner on (08) 6551-7888.

44. Information is also available on the Information Commissioner's website at:
<http://www.foi.wa.gov.au>.

Yours sincerely

V. Wilkin
Vittoria Wilkin
FOI Co-ordinator