1 May 2014
Ref 3/2014

Mr S Dowling
shanedowling@hotmail.com

Dear Mr Dowling

Freedom of information request no. 3/2014

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).

Summary

I, Gerry Linehan, Assistant Director-General Corporate Services Division, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

You requested access to documents relating to correspondence between the National Library of Australia (the Library) and a complainant in relation to the website Kangaroo Court of Australia on 3 March 2014. Specifically you sought access to:

- A copy of all notes, file notes, emails, letters and other correspondence in relation to the complaint about my site (Kangaroo Court of Australia). The correspondence requested includes but is not limited to correspondence with the complainant and their lawyers and internal correspondence at the NLA in relation to what action they will take and ultimately took.

I identified 7 documents which fell within the scope of your request. I did this by requesting all the relevant areas of the Library to undertake a search of their file databases and e-mail logs to determine the documents which fell within your request of 3 March 2014.

The attached schedule of documents provides a description of each document that falls within the scope of your request and the access decision for each of those documents.
With regard to the documents you requested (set out in the schedule attached), I have
decided to grant partial access to 2 documents and refuse access to the remaining 5
documents. More information, including my reasons for my decision, is set out below.

DECISION AND REASONS FOR DECISION

With regard to the documents identified in the attached schedule, I have decided:

- to grant access in part to documents 1 and 2 with exempt matter deleted under
  section 22 and exempt under s47F public interest conditional exemptions –
  unreasonable disclosure of personal information.
- to refuse access to documents 3 and 4 under section 42 – Documents to which
  legal professional privilege apply and to documents 5, 6 and 7 under section 47
  C(1) public interest conditional exemptions – deliberative processes

Material taken into account

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

- the content of the documents that fall within the scope of your request;
- the FOI Act (specifically sections s42, 47C(1), and 47F(1));
- the guidelines issued by the Australian Information Commissioner under section
  93A of the FOI Act; and
- the views of a third party consulted by the National Library of Australia under the
  FOI Act.

The schedule indicates each document to which access is refused. My reasons for
refusing access are given below.

Public interest conditional exemption – personal privacy

The following documents are covered by the exemption - 1&2

Under section 47F(1) of the FOI Act:

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).

The Library consulted a third party named in these materials and the third party raised
objections in relation to the release of personal information.

Accordingly, I am satisfied that the document falls within the scope of the conditional
exemption for personal privacy (section 47F). Under the FOI Act, access to a document
covered by a conditional exemption must be given unless it would be contrary to the public interest. My weighing of public interest factors is set out below.

The documents contain personal information which if released would be contrary to the public interest.

Accordingly, I am satisfied that the personal information contained within the document is exempt under section 47F(1) and that disclosure would be contrary to the public interest hence I have released documents with the personal information redacted.

**Exemption – legal professional privilege**

*The following documents are covered by the exemption - 3&4.*

Under section 42 of the FOI Act, a document is an exempt document if it relates to advice from an independent legal adviser.

These documents are legal advice sought by the Library in relation to a third party request.

Accordingly, I am satisfied that these documents are exempt under section 42.

**Public interest conditional exemption – deliberative processes**

*The following documents are covered by the exemption- 5,6 & 7.*

Under section 47C(1) of the FOI Act:

A document is conditionally exempt if its disclosure would disclose 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.

These documents involve advice from the Executive of the Library to the Director-General with respect to responding to the threshold matter for the request for withholding items from the collection which give rise to a legal claim against the Library. As such, their contents are considered deliberative matter.

Section 11 A of the FOI Act requires that access to conditionally exempt material must be provided unless that access would on balance, be contrary to the public interest. The FOI Guidelines provide a set of public interest factors favouring disclosure and factors against disclosure in such circumstances.
In this particular case, the deliberative material is such that its release could reasonably be expected to prejudice the management function of the Library.

Weighing up these factors, I have concluded that the release of these documents would be contrary to the public interest. Therefore, the documents are deemed exempt from release.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision.

Internal review

Under section 54 of the FOI Act, you may apply in writing to National Library of Australia for an internal review of my decision at foi@nla.gov.au. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner 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/aba/oaic/foi-review-
- email: enquiries@oaic.gov.au
- post: GPO Box 2999, Canberra ACT 2601
- in person: Level 3, 175 Pitt Street, Sydney NSW

Questions about this decision

If you wish to discuss this decision, please contact the following officer:

Rohan Goyne, FOI CO-ordinator, 62621600(w) or rgoyne@nla.gov.au

Yours sincerely

Gerry Linehan
Assistant Director-General
Corporate Services Division

Attachments

1. Schedule of documents
Attachment 1: Schedule of documents

Applicant: Mr Shane Dowling
Decision date: 2 May 2014
FOI reference number: 3/2014

Documents: a copy of all notes, file notes, emails, letters and other correspondence in relation to the complaint about the site (Kangaroo Court of Australia). The correspondence requested includes but is not limited to correspondence with the complainant and their lawyers and internal correspondence at the NLA in relation to what action they will take and ultimately took.

<table>
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<tr>
<th>Document reference</th>
<th>File Number</th>
<th>Date of document</th>
<th>Author</th>
<th>Recipient</th>
<th>Document description</th>
<th>Full, partial or nil release</th>
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<td>E-mail</td>
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<td>Manager, Web Archiving</td>
<td>Letter</td>
<td>Partial release</td>
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<td>Clayton Utz</td>
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<td>7</td>
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From: [Redacted]
Sent: Wednesday, 2 April 2014 1:50 PM
To: [Redacted]
Subject: Letter to National Library of Australia re Kangaroo Court of Australia web pages.pdf

From: [Redacted]
Sent: Monday, 2 September 2013 5:56 PM
To: [Redacted]
Cc: Web Archiving Section
Subject: [Redacted]

Please see our attached letter. We would appreciate your prompt response.

Regards

[Redacted]

Liability limited by a scheme approved under Professional Standards Legislation. Important: This email and the attachments are confidential and subject to copyright. They may be subject to legal professional privilege. If you receive this email by mistake, please immediately advise the sender by return email and then delete this email and destroy all printed copies.
2 September 2013

Our Ref: (Redacted)

Web Archiving Section
National Library of Australia
Parkes Place
Canberra ACT 2600

Attention: [Redacted] Web Archiving

Dear Sirs,

In your web archive PANDORA (Pandora archive), of a number of blog posts authored by Mr Shane Dowling and which appear on the website kangaroocourtofaustralia.com.

1. (Redacted)

2. (Redacted)

(a) (Redacted)

(b) (Redacted)

Liability for Defamation

And, as the publisher of the PANDORA archive, the National Library of Australia is liable for their publication on the archive.

Liability limited by a scheme approved under Professional Standards Legislation
In those circumstances, PANDORA’s policies

For instance, the Disclaimer provides as follows:

"Content that is known to breach the law will not be included and access will be removed in respect to content that is subsequently proven to be in contravention of the law."

Moreover, it is difficult to see how these blog posts were deemed suitable for archiving by the National Library of Australia in the first place. To our understanding, the PANDORA archive is intended to be a selective archive where material is generally subjected to rigorous selection guidelines before being approved for archiving, with the ultimate aim of archiving material of national significance with long-term research value. It is unclear how these blog posts, and indeed the Kangaroo Court of Australia website as a whole, meet the selection guidelines or the overall purpose of the PANDORA archive.

Action required

Yours faithfully,