



Corporate Affairs

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abc.net.au

Dear

FOI REQUEST - REFERENCE NUMBER 2015-034

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 23 July 2015. Specifically, you have sought access:

"...any notes, emails, briefings agendas, minutes of meetings, and reports to and from the ABC Board and between Board members discussing complaints about Media Watch and its host Paul Barry."

You have indicated that your request is for documents created between 29 July 2013 and 11 July 2015.

I am authorised by the Managing Director under section 23 of the FOI Act to make decisions in respect of requests made under that Act. Following is my decision in relation to your request.

Locating and identifying documents

I have taken reasonable steps to identify and locate all relevant documents. The search for these documents involved contacting the Executive Officer to the ABC Board Secretariat. I requested that searches be conducted of all hard and soft copy records for documents which fall within the scope of your request.

As a result of those searches, 11 documents (comprising 15 pages) were identified which are relevant to your request. A schedule of documents is attached.

Access refusal – s42 (legal professional privilege)

Access to Documents 1 to 11 inclusive is refused on the basis that those Documents are exempt under s42 of the FOI Act, which states that:

"A document is an exempt document if it is of such a nature that it would be privileged form production in legal proceedings on the ground of legal professional privilege."

In determining whether Documents 1 to 11 would be privileged from production in legal proceedings and therefore exempt under s.42, I have had regard to the Guidelines issued by the Australian Information Commissioner under s.93A of the FOI Act (the Guidelines), in particular *Part 5* –*Exemptions*.

Paragraph 5.118 of the Guidelines states:

"At common law, determining whether a communication is privileged requires a consideration of:

- whether there is a legal adviser-client relationship
- whether the communication was for the purpose of giving or receiving legal advice, or use in connection with actual or anticipated litigation
- whether the advice given is independent
- whether the advice given is confidential".

I am satisfied that the common law test for whether legal professional privilege exists has been met. Documents 1 to 11 were prepared by the Director Legal and Business Affairs in his capacity as a legal practitioner; the dominant purpose of the creation of those Documents was the provision of legal advice to the ABC Board; the advice was prepared independently of the Board or ABC management; the information in Documents 1 to 11 is strictly confidential and the Documents are treated as such.

If you are dissatisfied with this decision you can apply for Internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking IC Review. Information about your review rights is attached.

Yours sincerely



Judith Maude Head, Corporate Governance

SCHEDULE OF DOCUMENTS

#	DESCRIPTION	DATE	PAGES
1	Extract from Legal Matters Report	29 August 2013	1
2	Extract from Legal Matters Report	10 October 2013	1
3	Legal Matters Report	20 February 2014	1
4	Legal Matters Report	3 April 2014	1
5	Legal Matters Report	3 June 2014	1
6	Legal Matters Report	6 August 2014	1
7	Legal Matters Report	1 October 2014	1
8	Legal Matters Report	4 December 2014	2
9	Legal Matters Report	19 February 2015	2
10	Legal Matters Report	16 April 2015	2
11	Legal Matters Report	3 June 2015	2