



Corporate Affairs

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Dear

I refer to your email of 8 March 2012 in which you sought access to documents under the *Freedom of Information Act* (FOI Act). The scope of your request was clarified in our subsequent telephone conversations and email exchanges. I confirm that you have requested access to the following documents:

- 1. All email correspondence between ABC Chief Executive Officer Mark Scott and Peter Roebuck (since 1 Jan 2007)
- 2. All written correspondence including letters, memos, notes and briefing notes between Mr Scott and ABC staff regarding Mr Roebuck (since 1 Jan 2007)
- 3. All correspondence between Mr Scott and Cricket Australia (since 1 Jan 2007)
- 4. All correspondence between Mr Scott and South African police (since 1 Jan 2007)
- 5. All correspondence between Kate Dundas and Peter Roebuck (since 1 Jan 2010)
- 6. All correspondence from Ms Dundas regarding Peter Roebuck (since 1 Jan 2010)
- All correspondence between Ms Dundas and Mr Scott regarding Peter Roebuck (since 1 Jan 2010)
- 8. Any complaints regarding Mr Roebuck made to the ABC (since 1 Jan 2007)

Following is my decision in relation to your request.

Points 1 to 5

In relation to the request in points 1 to 5, no documents meeting these descriptions appear to exist. Technically, this means that access is refused pursuant to section 24A of the FOI Act.

Point 6 - Correspondence from K Dundas regarding P Roebuck

In relation to the request in point 6, I have identified the following 6 documents which meet this description:

- (1) Email from K Dundas to Radio management employees, dated 13 November 2011;
- (2) Email exchange between K Dundas and S Lloyd, dated 13 November 2011;
- (3) Email exchange between K Dundas and U Groves, dated 13 November 2011;
- (4) Email exchange between K Dundas and Radio management employees, dated 13 November 2011;
- (5) Email exchange between K Dundas and K Torney, dated 13 November 2011;

- (6) Email exchange between K Dundas and Radio management employees, dated 13 November 2011
- (7) Email exchange between K Dundas and P Longman, dated 16 November 2011.

Access to documents (1) and (2) is refused on the basis that, to the extent that they contain relevant information, they are outside the scope of the FOI Act. Under section 7(2) and Part 2 of Schedule II of the FOI Act, the ABC is exempt from the operation of the Act in relation to documents that relate "to its program material and datacasting content". In making this decision I note that the documents contain information about radio content, and I am satisfied that they have a direct relationship with the ABC's program material such that the ABC is exempt from the operation of the FOI Act in relation to requests for access to them.

Access to documents (3) to (7) inclusive is granted, and copies are attached. Please note that material that is not relevant to this request has been redacted.

Point 7 – Correspondence between K Dundas and M Scott regarding P Roebuck

In relation to the request in point 7, I have identified the following 3 documents which meet this description:

- (8) Email string between K Dundas and M Scott dated 13 November 2011;
- (9) Email from K Dundas to M Scott dated 13 November 2011;
- (10) Email from K Dundas to M Scott dated 17 November 2011.

Access to document (8) above is granted, and a copy is attached.

Access to documents (9) and (10) above is refused on the basis that, to the extent that they contain relevant information, they are outside the scope of the FOI Act for the same reasons outlined above in relation to the request in point 6. In making this decision I note that the emails contain information about radio content, and I am satisfied that they have a direct relationship with the ABC's program material such that the ABC is exempt from the operation of the FOI Act in relation to requests for access to them.

To the extent that any documents fall within the requests in both points 6 and 7, those documents have only been identified once.

Point 8 – Complaints regarding P Roebuck made to the ABC

In relation to the request in point 8, I have identified 59 documents which meet this description. The documents include 48 complaints made to the ABC's Audience and Consumer Affairs department and 11 complaints made directly to ABC Radio, all of which mention Peter Roebuck in some way.

I have decided to refuse access to these documents on the basis that they are outside the scope of the FOI Act for the same reasons as outlined above in relation to the requests in points 6 and 7.

I note that the Federal Court of Australia considered the scope of the exclusion in section 7(2) and Part 2 of Schedule II of the FOI Act in *Australian Broadcasting Corporation v The University of Technology, Sydney* [2006] FCA 964, and held that the exclusion applies to "program material" (such as scripts and tapes) and to any document that has a "direct or indirect relationship to program material". In that case, the documents being sought related to "correspondence with complainants; and internal files and correspondence, board minutes, investigation files and reports and documents in relation to the complaints". The Court held that such documents were related to program material. Given that Mr Roebuck was engaged to provide radio commentary which was broadcast on

ABC programs, and having regard to the nature of the complaints, I am satisfied that the documents described in point 8 of your request are outside of the scope of the FOI Act.

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 FOI Coordinator

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