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Dear

FOI REQUEST - REFERENCE NUMBER 2015-003

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 21 January 2015. In our subsequent correspondence, the scope of your request was refined to access to the following documents:

"...all internal documents and correspondence [to or from Triple J staff dated between 11 and 23 January 2015] pertaining to Taylor Swift, the song 'Shake It Off', and the BuzzFeed-led social media campaign #Tay4Hottest100 as [they] pertain to the Hottest 100."

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. My search for these documents involved contacting the Head of Triple J, who in turn consulted with relevant managers and staff.

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, 219 documents were identified. A schedule of documents is attached.

Please note that in identifying relevant documents, I have excluded duplicates of the same document where it is appropriate to do so. Accordingly, email messages which appear as part of a string may not also be included as separate emails.

Access to documents

Access is granted to 55 documents (being documents numbered 4, 8-10, 12, 19, 28, 31-4, 37-9, 43-4, 47, 51, 59, 62-3, 65-9, 76, 79-81, 83, 93, 111, 113, 119, 123, 134, 136, 145, 148, 151, 161, 164, 171, 184, 187-8, 191, 202, 211-16).

Some documents contain some information which could reasonably be regarded as irrelevant to the request for access, including the names and contact details of ABC audience members, personal

information about other third parties, and content not related to the subject of the request. Section 22 of the FOI Act allows access to be granted to an edited copy of a document if it is reasonably practicable to remove irrelevant material. Accordingly, some documents have been redacted to remove irrelevant information.

Copies of the documents to which access is granted are attached. Please note that pages which consist of only parts of email signatures or standard automated messages (such as 'Please consider the environment before printing this e-mail') have not been included. Accordingly, some documents may consist of fewer pages than indicated in the attached Schedule.

Documents that are out of scope

I have formed the view that the remaining 164 documents in the schedule are all 'program material'. The ABC is specifically excluded from the operation of the FOI Act in relation to its program material by virtue of s7(2) and Part II, Schedule 2 of the FOI Act. 'Program material' for the purposes of that Part has been interpreted to mean:

"the program and all versions of the whole or any part of the program, any transmission broadcast or publication of the program, and includes a document of any content or form embodied in the program and <u>any document acquired or created for the purpose of creating the program</u>, whether or not incorporated into the completed program." [emphasis added]

The documents you have requested would not have been created but for the creation of triple j's *Hottest 100* broadcast. In my view, they were created for the purposes of creating that content. Accordingly, they fall within the definition of 'program material' and the ABC is exempt from the operation of the FOI Act in relation to them. In those circumstances, a decision regarding access is not required.

I note that if the documents were considered to be within the scope of the FOI Act (which the ABC considers they do not), access to them would be refused on the basis that they are exempt for reasons which are set out below.

Access refusal – s47C (deliberative processes)

Access to 164 documents is refused on the basis that the documents are conditionally exempt under s47C of the FOI Act. In my view, disclosure of those documents under the FOI Act would disclose matter in the nature of, or relating to, opinions and recommendations obtained, and consultation that has taken place, in the course of the deliberative processes of the ABC. I am further satisfied that, on balance, it would be contrary to the public interest to disclose that material at this time.

I have had regard to the substance of the information in the listed documents when determining that it contains deliberative matter. The material is not procedural or day-to-day content, nor is it operational or purely factual material.

The documents reflect internal consultation regarding the response to third party questions regarding the *Hottest 100*. Some documents contain material that is draft only, and as such they represent a stage in the thinking processes prior to arriving at a final, settled position. I note that Paragraph 6.64 of the Guidelines states that "a deliberative process may include the recording or exchange of ...

interim decisions or deliberations". In his decision in *Hunt and Australian Federal Policy*¹, the Freedom of Information Commissioner confirmed that draft documents may be deliberative.

In determining whether the information in the documents contains deliberative matter I have had regard to the Guidelines, in particular *Part 6 – Conditional Exemptions*. Paragraph 6.62 of the Guidelines states:

"A deliberative process involves the exercise of judgement in developing and making a selection from different options:

The action of deliberating, in common understanding, involves the weighing up or evaluation of the competing arguments or considerations that may have a bearing upon one's course of action. In short, the deliberative processes involved in the functions of an agency are its thinking processes – the processes of reflection, for example, upon the wisdom and expediency of a proposal, a particular decision or a course of action.²

The documents are each part of a process of consultation that has been undertaken for the purposes of considering a particular course of action, and contain a collection of facts, opinions and advice. Some of the listed documents reflect the exercise of judgment arising from the consideration of information and competing ideas contained in the documents. Accordingly, I consider that they are deliberative in nature.

I note that the deliberative processes exemption does not require a specific harm to result from disclosure. Rather, the only consideration is whether the document includes content of a specific type, namely deliberative matter. I am satisfied that the documents contain deliberative matter and are therefore conditionally exempt.

Public interest

Section 11A(5) of the FOI Act would require the ABC to provide access to a conditionally exempt document unless, in the circumstances, access to the document would, on balance, be contrary to the public interest.

I have considered the factors set out in s11B of the FOI Act which favour disclosure, specifically whether disclosure would promote the objects of the FOI Act, inform debate on a matter of public importance, promote effective oversight of public expenditure, or allow a person to access his or her personal information.

Section 11B(5) requires agencies, when assessing whether access to a document would on balance be contrary to the public interest, to have regard to the Guidelines. I have had regard to the non-exhaustive list of public interest factors favouring and against disclosure in paragraphs 6.25 and 6.29 of the Guidelines.

I accept that disclosure may promote the objects of the FOI Act in that it would provide access to information. Further, the deliberative processes to which the information in the documents relate are arguably the subject of public debate in certain sectors.

However, while disclosure may broadly promote the objects of the FOI Act, it would not:

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¹ [2013] AICmr 66 (23 August 2013)

² See Re JE Waterford and Department of Treasury (No 2) [1984] AATA 67. See British American Tobacco Australia Ltd and Australian Competition and Consumer Commission [2012] AlCmr 19, [15]–[22].

- Allow or assist inquiry into possible deficiencies in the conduct or administration of the ABC;
- Reveal or substantiate any misconduct, negligent, improper or unlawful conduct; or
- Reveal the reason for a government decision or provide contextual information which informed such a decision.

There is no public interest relating to access to personal information, as the documents do not contain personal information to which an individual is seeking access.

Whilst it could be argued that disclosure of those documents may promote the effective oversight of public expenditure, there are well-established processes in place for the scrutiny of the ABC's expenditure. The ABC's governance and financial affairs can be examined by the Australian National Audit Office (ANAO). The ANAO has extensive powers of access to the ABC's documents and information and can perform audits and reviews to provide the Parliament – and therefore the community – with assurance about the ABC's financial reporting, administration and accountability.

The ABC is also required to comply with the public financial reporting requirements set out in the *Public Governance Performance and Accountability Act 2013*. In addition, the ABC is required to attend public Senate Estimates hearings, at which time ABC officers are questioned about the objectives, operational procedures and efficiency of the programs for which they are responsible. The Senate Estimates Committee may "ask for explanations from ministers in the Senate, or officers, relating to the items of proposed expenditure" (Senate Standing Order 26(5)).

Balanced against the factors favouring disclosure, there are public interest factors against disclosure. The ABC is a funded primarily through appropriations from government in order to achieve its functions, expressed in the ABC Charter.³ The ABC has an obligation to, amongst other things, "broadcast programs that contribute to a sense of national identity and inform and entertain" and to "encourage and promote the musical ... and other performing arts in Australia". The ABC pursues these functions through the delivery of a range of programs and services, including its unique youth radio network, triple j. Disclosure of documents which disclose the deliberative processes relating to the creation and broadcast of the *Hottest 100* countdown may jeopardise the program-makers' ability to ensure that future countdowns are free from external interference. In this regard, the public interest is best served by the ABC through the provision of quality, innovative content that delivers on the Corporation's Charter obligations.

In my view, there are insufficient factors favouring disclosure to outweigh the factors against disclosure. I am satisfied that the material contained in the documents is conditionally exempt under s47C of the FOI Act, and that disclosure of that material at this time is, on balance, contrary to the public interest.

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

³ s.6, Australian Broadcasting Corporation Act (Cth) 1983

Schedule of documents

#	Doc type	From	То	End date	Pages
1	Email	R Kingsmill	D D'Souza and 3 others	14-Jan-15	1
2	Email string	C Scaddan	R Kingsmill and 3 others	14-Jan-15	2
3	Email string	F Lake	C Scaddan	14-Jan-15	4
4	Email string	G Bull	Newscorp journalist	14-Jan-15	4
5	Email string	C Scaddan	E Ohanessian	14-Jan-15	8
6	Email string	F Lake	C Scaddan	14-Jan-15	5
7	Email string	R Kingsmill	C Hill	14-Jan-15	1
8	Email string	F Lake	R Arnold and 1 other	14-Jan-15	1
9	Email string	F Lake	News.com.au	14-Jan-15	8
10	Email string	G Bull	The Guardian	14-Jan-15	2
11	Email string	R Kingsmill	G Bull	14-Jan-15	2
12	Email string	Newscorp journalist	G Bull	14-Jan-15	4
13	Email	E Ohanessian	Radio management and 4	14-Jan-15	7
			others		
14	Email string	C Scaddan	F Lake and 4 others	14-Jan-15	3
15	Email	R Kingsmill	C Scaddan	14-Jan-15	1
16	Email string	C Scaddan	R Kingsmill	14-Jan-15	1
17	Email string	A Callenn	D D'Souza	14-Jan-15	1
18	Email string	O Wards	F Lake	14-Jan-15	1
19	Email	Fairfax journalist	C Scaddan	14-Jan-15	1
20	Email string	R Kingsmill	O Wards	14-Jan-15	2
21	Email string	R Kingsmill	O Wards and 1 other	15-Jan-15	1
22	Email string	C Scaddan	R Kingsmill	15-Jan-15	2
23	Email string	C Scaddan	F Lake	15-Jan-15	2
24	Email string	D D'Souza	C Scaddan	15-Jan-15	2
25	Email string	D D'Souza	C Scaddan	15-Jan-15	2
26	Email string	Fairfax journalist	C Scaddan	15-Jan-15	3
27	Email string	C Scaddan	F Lake and 1 other	15-Jan-15	4
28	Email string	C Scaddan	Fairfax journalist	15-Jan-15	3
29	Email string	F Lake	G Bull	15-Jan-15	2
30	Email string	E Ohanessian	C Scaddan	15-Jan-15	7
31	Email string	S Phillips	O Wards and 2 others	15-Jan-15	2
32	Email string	F Lake	S Phillips and 2 others	15-Jan-15	2
33	Email string	B McLean	G Bull	15-Jan-15	2
34	Email string	L Dayman	G Bull	15-Jan-15	2
35	Email string	C Scaddan	D D'Souza	15-Jan-15	1
36	Email string	D D'Souza	C Scaddan	15-Jan-15	1
37	Email string	Fairfax journalist	C Scaddan	15-Jan-15	6
38	Email string	Fairfax journalist	C Scaddan	15-Jan-15	6
39	Email string	G Bull	AAP journalist	15-Jan-15	2
40	Email string	C Scaddan	F Lake and 1 other	15-Jan-15	6

41	Email string	F Lake	C Scaddan	15-Jan-15	6
42	Email string	G Bull	C Scaddan and 1 other	15-Jan-15	6
43	Email string	C Scaddan	Fairfax journalist	15-Jan-15	6
44	Email string	G Bull	Daily Mail journalist	15-Jan-15	2
45	Email	Google Alerts	C Scaddan	15-Jan-15	7
46	Email	A Trusket	O Wards and 3 others	15-Jan-15	1
47	Email string	G Bull	Herald Sun journalist	15-Jan-15	12
48	Email string	O Wards	A Truskett	15-Jan-15	1
49	Email string	N Morris	C Scaddan and 2 others	15-Jan-15	1
50	Email string	E Ohanessian	N Morris and 3 others	15-Jan-15	2
51	Email string	The Sound Alliance	G Bull	15-Jan-15	2
52	Email string	G Bull	C Scaddan	15-Jan-15	2
53	Email string	C Scaddan	O Wards and 1 other	15-Jan-15	1
54	Email string	W Tiernan	C Scaddan and 3 others	15-Jan-15	2
55	Email	M Mason	C Scaddan	15-Jan-15	1
56	Email string	E Ohanessian	Radio management and 4 others	15-Jan-15	9
57	Email string	M Mason	C Scaddan	15-Jan-15	1
58	Email string	C Scaddan	E Ohanessian and 4 others	15-Jan-15	9
59	Email string	Fairfax journalist	C Scaddan and 1 other	16-Jan-15	1
60	Email string	G Bull	C Scaddan	16-Jan-15	2
61	Email string	C Scaddan	G Bull	16-Jan-15	2
62	Email string	C Scaddan	Fairfax journalist	16-Jan-15	2
63	Email string	Fairfax journalist	C Scaddan	16-Jan-15	3
64	Email	J Treuen	C Scaddan	16-Jan-15	1
65	Email string	Fairfax journalist	C Scaddan	16-Jan-15	2
66	Email string	Fairfax journalist	C Scaddan	16-Jan-15	4
67	Email string	C Scaddan	Fairfax journalist	16-Jan-15	5
68	Email string	G Bull	Fairfax journalist	16-Jan-15	3
69	Email string	Fairfax journalist	C Scaddan	16-Jan-15	6
70	Email string	E Ohanessian	C Scaddan	16-Jan-15	10
71	Email	M Ross	G Bull	16-Jan-15	1
72	Email	E Ohanessian	Radio management and 4 others	16-Jan-15	10
73	Email string	A Callen	D D'Souza	18-Jan-15	1
74	Email string	G Pike	R Kingsmill and 1 other	18-Jan-15	1
75	Email	G Bull	G Bull	18-Jan-15	1
76	Email	Fairfax journalist	G Bull	19-Jan-15	2
77	Email string	O Wards	C Scaddan	19-Jan-15	4
78	Email	C Scaddan	C Scaddan	19-Jan-15	3
79	Email string	C Scaddan	Fairfax journalist and 1 other	19-Jan-15	2
80	Email string	Fairfax journalist	C Scaddan	19-Jan-15	4
81	Email string	Fairfax journalist	G Bull	19-Jan-15	4

82	Email	G Bull	C Scaddan	19-Jan-15	1
83	Email string	The Sound Alliance	G Bull	19-Jan-15	4
84	Email	Fairfax journalist	G Bull	19-Jan-15	1
85	Email string	C Scaddan	G Bull	19-Jan-15	1
86	Email	A Dyson	O Wards and 3 others	19-Jan-15	1
87	Email string	S Davies	D D'Souza	19-Jan-15	2
88	Email string	O Wards	C Scaddan and 4 others	19-Jan-15	2
89	Email string	G Bull	Fairfax journalist	19-Jan-15	1
90	Email	C Scaddan	O Wards	19-Jan-15	7
91	Email string	E Ohanessian	Radio management and 4 others	19-Jan-15	12
92	Email string	C Scaddan	O Wards and 1 other	19-Jan-15	4
93	Email	Buzzfeed reporter	C Scaddan	19-Jan-15	1
94	Email	C Scaddan	C Scaddan	19-Jan-15	1
95	Email string	O Wards	C Scaddan	19-Jan-15	3
96	Email string	C Scaddan	C Scaddan	20-Jan-15	1
97	Email string	C Scaddan	C Scaddan	20-Jan-15	1
98	Email string	C Scaddan	O Wards and 1 other	20-Jan-15	3
99	Email string	O Wards	M Loader	20-Jan-15	1
100	Email string	G Bull	C Scaddan and 1 other	20-Jan-15	1
101	Email string	F Lake	G Bull and 1 other	20-Jan-15	2
102	Email string	F Lake	D D'Souza and 3 others	20-Jan-15	1
103	Email string	F Lake	G Bull	20-Jan-15	1
104	Email string	G Bull	V Jokic	20-Jan-15	2
105	Email string	O Wards	G Bull	20-Jan-15	3
106	Email	A Dyson	O Wards and 1 other	20-Jan-15	1
107	Email	Google Alerts	C Scaddan	20-Jan-15	2
108	Email string	G Bull	C Scaddan and 1 other	20-Jan-15	2
109	Email string	C Scaddan	G Bull and 1 other	20-Jan-15	2
110	Email string	G Bull	C Scaddan	20-Jan-15	2
111	Email string	The Sound Alliance	G Bull	20-Jan-15	2
112	Email	C Scaddan	O Wards	20-Jan-15	2
113	Email	R Kingsmill	O Wards and 2 others	20-Jan-15	1
114	Email string	A Trusket	O Wards and 1 other	20-Jan-15	2
115	Email	F Lake	G Bull and 2 others	20-Jan-15	1
116	Email string	G Bull	F Lake	20-Jan-15	1
117	Email string	G Bull	F Lake	20-Jan-15	1
118	Email string	C Scaddan	G Bull and 1 other	20-Jan-15	2
119	Email string	News.com.au	G Bull	20-Jan-15	6
120	Email string	G Bull	C Scaddan	20-Jan-15	2
121	Email string	F Lake	W Tiernan and 1 other	20-Jan-15	2
122	Email string	F Lake	G Bull	20-Jan-15	1
123	Email string	G Bull	Herald Sun journalist	20-Jan-15	1
124	Email string	C Scaddan	C Scaddan	20-Jan-15	1
125	Email string	A Workman	C Scaddan	20-Jan-15	1

	1				
126	Email string	C Scaddan	G Bull and 2 others	20-Jan-15	1
127	Email string	K Lee	C Scaddan	20-Jan-15	1
128	Email string	O Wards	C Scaddan	20-Jan-15	1
129	Email string	C Scaddan	A Workman	20-Jan-15	2
130	Email string	O Wards	C Scaddan and 1 other	20-Jan-15	1
131	Email string	T Ayliff	G Bull	20-Jan-15	2
132	Email string	E Ohanessian	Radio management and 4	20-Jan-15	10
			others		
133	Email string	T Ayliff	C Scaddan	20-Jan-15	3
134	Email string	G Bull	The Guardian	20-Jan-15	1
135	Email string	O Wards	G Bull and 1 other	20-Jan-15	2
136	Email string	G Bull	Daily Mail journalist	20-Jan-15	1
137	Email string	C Scaddan	O Wards	20-Jan-15	1
138	Email	G Bull	C Scaddan and 2 others	20-Jan-15	1
139	Email string	C Scaddan	G Bull and 2 others	20-Jan-15	1
140	Email string	C Scaddan	O Wards and 1 other	20-Jan-15	3
141	Email	F Lake	G Bull	21-Jan-15	1
142	Email	A Catterns	C Scaddan	21-Jan-15	1
143	Email	F Lake	G Bull	21-Jan-15	1
144	Email string	E Ohanessian	C Scaddan	21-Jan-15	10
145	Email string	G Bull	Mashable	21-Jan-15	2
146	Email string	S Phillips	Audience member	21-Jan-15	2
147	Email	E Ohanessian	C Scaddan	21-Jan-15	4
148	Email string	G Bull	The Music Network	21-Jan-15	1
149	Email	O Wards	C Scaddan	21-Jan-15	1
150	Email string	F Lake	G Bull	21-Jan-15	1
151	Email string	G Bull	The West Australian	21-Jan-15	2
152	Email string	F Lake	L Marigliano	21-Jan-15	1
153	Email string	Fairfax journalist	G Bull	21-Jan-15	3
154	Email string	The West Australian	G Bull	21-Jan-15	2
155	Email string	O Wards	C Scaddan	21-Jan-15	1
156	Email string	G Bull	F Lake and 2 others	21-Jan-15	3
157	Email string	O Wards	G Bull and 2 others	21-Jan-15	3
158	Email	C Scaddan	O Wards	21-Jan-15	1
159	Email string	C Scaddan	A Catterns	21-Jan-15	1
160	Email	O Wards	C Scaddan	21-Jan-15	1
161	Email string	G Bull	MX journalist	22-Jan-15	2
162	Email string	O Wards	L McKirdy and 2 others	22-Jan-15	1
163	Email string	F Lake	G Bull	22-Jan-15	2
164	Email string	F Lake	MX journalist	22-Jan-15	2
165	Email string	Fairfax journalist	G Bull	22-Jan-15	2
166	Email string	G Bull	F Lake and 1 other	22-Jan-15	3
167	Email string	C Scaddan	G Bull	22-Jan-15	3
168	Email string	F Lake	G Bull and 1 other	22-Jan-15	3
169	Email string	M Mason	K Gallacher and 1 other	22-Jan-15	2
		1	I.		

170	Email	F Lake	A Dyson	22-Jan-15	1
171	Email string	The West Australian	G Bull	22-Jan-15 22-Jan-15	2
171	Email string	G Bull	F Lake and 1 other	22-Jan-15 22-Jan-15	3
173	Email string	Fairfax journalist	G Bull	22-Jan-15	4
174	Email string	O Wards	C Scaddan	22-Jan-15	7
175	Email string	C Scaddan	G Martin	22-Jan-15	7
176	Email string	K Gallacher	M Mason	22-Jan-15	2
177	Email string	E Ohanessian	Radio management and 4 others	22-Jan-15	9
178	Email string	O Wards	C Scaddan and 1 other	22-Jan-15	1
179	Email string	C Scaddan	M Lavergne	22-Jan-15	1
180	Email string	C Scaddan	E Ohanessian	22-Jan-15	9
181	Email string	M Lavergne	C Scaddan	23-Jan-15	1
182	Email string	F Lake	G Bull	23-Jan-15	2
183	Email	F Lake	C Scaddan	23-Jan-15	5
184	Email string	Fairfax journalist	G Bull	23-Jan-15	2
185	Email string	F Lake	C Scaddan and 1 other	23-Jan-15	2
186	Email string	G Bull	F Lake	23-Jan-15	2
187	Email string	S Phillips	Audience member	23-Jan-15	2
188	Email string	S Phillips	Audience member	23-Jan-15	2
189	Email string	R Egan	C Scaddan	23-Jan-15	2
190	Email string	E Ohanessian	C Scaddan and 2 others	23-Jan-15	3
191	Email string	S Phillips	Audience member	23-Jan-15	2
192	Email string	C Scaddan	E Ohanessian and 2 others	23-Jan-15	3
193	Email string	C Scaddan	F Lake	23-Jan-15	1
194	Email string	F Lake	G Bull	23-Jan-15	11
195	Email	F Lake	C Scaddan	23-Jan-15	1
196	Email string	C Scaddan	F Lake	23-Jan-15	1
197	Email	F Lake	C Scaddan	23-Jan-15	1
198	Email string	C Scaddan	O Wards	23-Jan-15	1
199	Email string	C Scaddan	F Lake	23-Jan-15	1
200	Email string	F Lake	J Treuen	23-Jan-15	1
201	Email string	E Ohanessian	Radio management and 4	23-Jan-15	21
	_		others		
202	Email string	S Phillips	Audience member	23-Jan-15	2
203	Email	C Scaddan	O Wards	23-Jan-15	1
204	Email string	O Wards	R Kingsmill and 1 other	23-Jan-15	3
205	Email	F Lake	G Bull	23-Jan-15	1
206	Email	F Lake	O Wards and 1 other	23-Jan-15	1
207	Email string	R Kingsmill	O Wards	23-Jan-15	3
208	Email string	G Bull	F Lake	23-Jan-15	2
209	Email string	F Bell	O Wards	24-Jan-15	3
210	Email	O Wards	Premium PR	25-Jan-15	1
211	Email string	Radio Audience	S Phillips	27-Jan-15	2

212	Email string	Radio Audience	S Phillips	27-Jan-15	2
213	Email string	Radio Audience	S Phillips	28-Jan-15	2
214	Email string	Radio Audience	S Phillips	28-Jan-15	2
215	Email string	Radio Audience	S Phillips	28-Jan-15	2
216	Email string	Radio Audience	S Phillips	28-Jan-15	2
217	Document			Undated	10
218	Document			Undated	10
219	Document			Undated	10