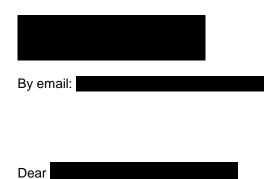


Victoria - Southbank

ABC Southbank Centre 120 Southbank Boulevard Southbank VIC 3006

GPO Box 9994 Melbourne VIC 3001

Tel. +61 3 9626 1600 abc.net.au



Freedom of Information Act request - Internal review

I refer to your email dated 8 April 2013 requesting an internal review of the ABC's decision to refuse your request to not impose (or to waive) the charges notified to you for processing your request under the *Freedom of Information Act 1982 (Cth)* (FOI Act) for access to a range of policies or documents relating to the ABC's classification of television programs broadcast on the ABC.

I am authorised by the Managing Director, under section 23 of the FOI Act, to make decisions on requests for internal review. I have conducted a review of the original access refusal decision in accordance with section 54 of the FOI Act and make a fresh decision.

Decision and reasons

Having reviewed your request, I have decided to affirm the ABC's original decision not to waive the charges notified to you in relation to processing your request.

Material taken into account

In making my decision, I have taken into account the evidence, submissions and reasons contained in the correspondence exchanged between yourself and the ABC's FOI Officer, Judith Maude, including:

- Ms Maude's letter dated 31 January 2013 notifying you of the charges to be imposed;
- your email dated 1 February 2013 requesting that the charges not be imposed on the grounds of financial hardship;
- Ms Maude's letter dated 21 February 2013 informing you of her decision that the charges would not be reduced or not imposed (waived);
- your email dated 16 March 2013 requesting Ms Maude to provide reasons for her decision of 21 February and seeking an extension of time to request internal review;
- Ms Maude's letter of 21 March 2013 advising reasons had already been provided and agreeing to an extension of time;
- your email dated 8 April 2013 seeking internal review of the decision not to waive the charges
 - and various enclosures/attachments, including your Centrelink Income Statement dated 31 January 2013 and a series of "classification inconsistency" documents comparing ABC classification decisions for particular program episodes with those of the Classification Board.

I have also had regard to the FOI Act, the *Freedom of Information (Charges) Regulations 1982*, and the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

Discretion to reduce or waive charges

Section 29(5) of the FOI Act provides that, without limiting the matters an agency may take into account in deciding whether to reduce or waive a charge, the agency must take into account:

- whether payment of the charge would cause financial hardship to the applicant; and
- whether giving access to the document in question would be in the general public interest or in the interest of a substantial section of the public.

The FOI Guidelines (at para 4.46) make it clear that, in addition to these two matters, agencies may consider any other relevant matter. The Guidelines go on to state (at para 4.48) that "[i]t is open to an agency or minister to impose a charge even though it would cause financial hardship to the applicant, or a public interest purpose for disclosure has been established".

Financial hardship

You have advised that you are unemployed, in receipt of unemployment benefits, and do not own a house, motor vehicle or other "assets of worth". You have also provided evidence showing that you are in receipt of Newstart Allowance and Rent Assistance. Having regard to these matters, I accept your claim that payment of the charges would cause you financial hardship. However, for the reasons outlined below, I have decided that it is appropriate to impose the charge even though it would cause financial hardship.

Public interest

You have submitted that it would be in the public interest to waive the charges and refer to the recent reviews of the national classification scheme by the Senate Legal and Constitutional Affairs Committee and Australian Law Reform Commission. You also refer to your submission to the Senate committee inquiry, which included your analysis of a number of ABC programs which were classified differently to that of the Classification Board. You argue it would be in the public interest for the documents to be released as they would shed light on the ABC's internal classification processes and show why the ABC classifies differently to the Classification Board. You state that the documents would show why the ABC and SBS's submission to the ALRC inquiry – that the ABC and SBS should not be subject to the same standards as the commercial television industries and their decisions not subject to review by the Classification Board – should not be followed. You submit that it is in the public interest that there be a consistent classification scheme across all media, including ABC and SBS television.

You also refer to your complaints to the ABC's Audience & Consumer Affairs unit – some of which you referred to the Australian Communications & Media Authority (ACMA) for investigation – about ABC classifications of broadcast programs differing to those of the Classification Board in relation to DVD releases of those programs. You state that you believe release of the requested documents will assist you in framing your remaining complaints to the ACMA.

I am not persuaded that the requested documents would assist in framing complaints to the ACMA about ABC classification decisions. The ACMA's role in investigating complaints about ABC classification decisions requires it to assess whether the ABC complied with the ABC Code of Practice (including the ABC Television Program Classification Standard). The ACMA is not required to assess whether the ABC applied or was consistent with the national classification guidelines adopted by the Classification Board, particularly when the content has been modified and the circumstances for broadcast are taken into account. See, for instance, the ACMA's decision in January 2011 relating to an episode of *Criminal Justice* (Series 2) broadcast on 22 August 2010, http://www.acma.gov.au/webwr/assets/main/lib312032/abctvreport-2523.doc, where the ACMA found the program was appropriately classified and included the ABC's explanation of how the ABC Code differs from the national classification guidelines and why Classification Board decisions are not

I agree with the finding of the original ABC decision maker in her letter to you dated 21 February 2013 that a significant amount of material is already available to the general public regarding the ABC's classification policies and processes. These documents also include material addressing the unique position of the public broadcasters in relation to the national classification scheme. In addition to all of

a useful guide against which to assess ABC programming decisions.

the material Ms Maude listed, ¹ I note the following documents are also publicly available in relation to the Senate Legal and Constitutional Committee's Inquiry into the Australian film and literature classification scheme:

- the ABC's submission to the Senate Committee inquiry (March 2011), https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=cf869e77-9fd1-4e66-aa9f-8aea8e8f650f;
- the ABC's evidence at a public hearing of the Senate Committee (April 2011), http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=@Hansard/S13770.pdf
- the ABC's Answers to Questions on Notice (May 2011), https://senate.aph.gov.au/submissions/comittees/viewdocument.aspx?id=35b5b50d-42a6-44f1-914d-1da8ca1ce0c0;
- the Senate Committee's final report (June 2011), which expressly discussed both available at http://www.aph.gov.au/Parliamentary_Business/Committees/Senate_Committees?url=legcon_ctte/completed_inquiries/2010-13/classification_board/submissions.htm.

I note that the Senate committee, during its inquiry and in its final report, specifically examined and questioned the ABC about the issue of its program classifications differing with those of the Classification Board. (See, for example, pages 4-5 of the Answers to Questions on Notice.)

I also accept the view of the original decision maker that, given the substantial volume of documents requested, a significant amount of work would be required to process your request. In my view, and consistent with the guidance in the FOI Guidelines (at para 4.57), the range or volume of documents sought is more than is reasonably necessary for the purpose of contributing to public debate given the volume of documents that are already publicly accessible and in light of the fact that the national classification scheme – and the public broadcasters role in it – has already been the subject of two significant inquiries that canvassed the issues relating to your request.

Accordingly, it is my view that it would be appropriate in these circumstances to decline to waive the charges.

Rights of review

If you are dissatisfied with this decision, you can apply for review by the Australian Information Commissioner, whose contact details are:

Office of the Australian Information Commissioner GPO Box 2999 Canberra ACT 2601 (or) GPO Box 5218 Sydney NSW 2001 Tel: 1300 363 992 | Fax: 02 9284 9666

Email: enquiries@oaic.gov.au | Website: www.oaic.gov.au

In making your application to the Information Commissioner, you need to provide an address for notices to be sent (this can be an email address) and a copy of this decision. You may also wish to inform the Information Commissioner of the reasons for seeking review.

Yours sincerely

Michelle Fisher, FOI Internal Reviewer, authorised under s 23 FOI Act

¹ The list included: the ABC's *Code of Practice* (which addresses television program in section 7), http://about.abc.net.au/reports-publications/code-of-practice-2013/; the ABC *Editorial Policies* and Associated Standard for Television Program Classification, both available at http://about.abc.net.au/reports-publications/editorial-policies/; additional classification provided on the ABC's independent production site at http://www.abc.net.au/tv/independent/; the joint submission by the ABC and SBS to the ALRC National Classification Scheme Review in November 2011, http://about.abc.net.au/wp-content/uploads/2012/06/ABC-SBSSubmissionALRCClassificationReviewDec2011.pdf; the ALRC's Final Report in relation to the National Classification Scheme Review (tabled in March 2012), http://www.alrc.gov.au/publications/classification-content-regulation-and-convergent-media-alrc-report-118; the information about changes the ABC effective from January 2013 to classification time zones for each ABC television channel, http://www.abc.net.au/tv/classification.