

Corporate Affairs

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abc.net.au

By email:

Dear

FOI REQUEST - REFERENCE NUMBER 2014-006

I refer to your request for access to documents under the Freedom of Information Act 1982 (the FOI Act) in your email of 24 March 2014. In our subsequent correspondence, the scope of your request was refined to access to the following documents:

"Any internal communication produced or distributed from 1 January 2012 onwards - including email, memorandum, staff correspondence, policy document or report - relating to the possibility of extending the broadcast hours of ABC3 beyond 6am - 9pm.

Documents are limited to those provided to or by the following people in the Television division:

- Director Television,
- Head. Children's Television
- Head, Business and Operations
- Head, Strategy and Governance."

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 following relevant people, who in turn consulted with relevant managers and staff within their respective teams:

- Director Television.
- Head, Children's Television
- Head, Business and Operations
- Head, Strategy and Governance.

I requested that searches be conducted of all hard and soft copy records for documents which fall within the scope of your request. I have been informed that electronic searches were conducted of relevant drives, as well as archived emails. No hard copy files or folders exist. As a result of those searches, the following two documents were identified:

Document 1 Draft paper prepared for ABC3 Channel Controller, undated

Document 2 Further draft of paper prepared for ABC3 Channel Controller, undated

I understand that the 2013 Walkley Awards were broadcast on ABC3 after 9pm. At this stage, I have not pursued a search for documents relating to that broadcast as it was a one-off broadcast and does not appear to be directly relevant to your request. If you would like that search to be conducted, please let me know.

Access refusal – s47C (deliberative processes)

Access to Documents 1 and 2 (collectively referred to as (the Documents") is refused on the basis that the Documents are conditionally exempt under s47C of the FOI Act. In my view, disclosure of the 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 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 contain a collection of facts, opinions and advice regarding potential strategic decisions regarding ABC Television. The information was provided in confidence as the basis for ongoing deliberations regarding strategic decision making.

In determining whether the information in the Documents contains information that is 'deliberative matter', 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 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.¹

The Documents propose a range of ideas and options for consideration, and reflect on expediency of those ideas. They provide an assessment of potential courses of actions and decisions, and as such, is clearly part of the ABC's "thinking processes" and part of the process of deliberating. The information is draft only, and does not reflect a settled position.

¹. 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].

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.

Factors favouring disclosure

While disclosure may broadly promote the objects of the FOI Act in that it would provide access to information, it would not:

- 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.

I am not aware of any current debate or particular interest in broadcast hours of ABC3. Disclosure would therefore not inform a debate on a matter of public importance. I note that the Documents are draft only, are relatively general in nature and do not reflect a settled ABC position. Accordingly, disclosure of draft documents of this kind would not meaningfully contribute to or inform any discussion or review of the ABC's functions or activities.

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 Finance Minister's Orders made under the *Commonwealth Authorities and Companies Act 1997*. 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)).

The Documents do not contain personal information to which an individual is seeking access.

Factors against disclosure

Balanced against the factors favouring disclosure, there are public interest factors against disclosure.

The facts, opinions and advice contained in the Documents was sought and provided in confidence, and the information in the Documents is not publicly known or available. The information in the Documents is only known to a limited group, and is not common knowledge or in the public domain. It is inherently confidential in nature and is treated by the ABC as confidential.

Disclosure of the information in the Documents could reasonably be expected to inhibit the effectiveness of the ABC's decision-making and deliberative processes, as well as prejudicing the ABC's management functions.

In my view, the factors in favour of disclosure are not sufficient 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