



Corporate Affairs

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Dear

FOI REQUEST - REFERENCE NUMBER 2015-041

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 8 October 2015. You have requested access to the following documents:

"all emails, memos and correspondence and any other material generated and provided			
[by ABC staff] as part of the investigation into[a] complaint [made by			
	dated 25 August 2015, about] a Kathy		
McLeish ABC news story of 12 July 2015."			

I note that your request is for documents created between 27 July 2015 and 25 August 2015. I confirm your advice that the request was made by you on behalf of , not in a personal capacity.

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 Head of Audience and Consumer Affairs, who in turn consulted with relevant managers and staff within their respective teams.

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, the following six documents were identified:

No.	Document	Date	Pages
1	Internal ABC email thread	13 Jul–14 Aug 2015	2
2	Letter from	27 Jul 2015	3

3	Email from to and subsequent internal ABC email thread	27 Jul-14 Aug 2015	4
4	Letter from Audience and Consumer Affairs (A&CA) to	4 Aug 2015	1
5	Internal ABC email thread	14–15 Aug 2015	2
6	Internal ABC email thread	14–25 Aug 2015	2
7	Internal ABC email thread	14–25 Aug 2015	2
8	Internal ABC email thread	14–25 Aug 2015	2
9	Response—A&CA to	25 Aug 2015	3

Please note that in identifying relevant documents, I have sought to exclude duplicates of the same document. Accordingly, some email messages which appear as part of a string may not have been included as separate emails.

Access to documents

Access is granted as follows:

- In full to Documents 2, 4 and 9
- In part to Document 3.

For the reasons outlined below, access is refused to Documents 1 and 5-8 inclusive, and to part of Document 3. Copies of the documents to which access is granted are attached.

Access refusal—s47C (deliberative processes)

Access to Document 1, Documents 5-8 inclusive, and to part of Document 3 (collectively referred to as the Documents) is refused on the basis that the material on those pages is conditionally exempt under s47C of the FOI Act, that is, because disclosure of that material under the FOI Act would disclose matter in the nature of, or relating to, an opinion or recommendation prepared in the course of the deliberative processes involved in the functions of the ABC. I am further satisfied that, on balance, it would be contrary to the public interest to disclose that material.

The material in the Documents is not operational or purely factual material. Rather, those documents contain a collection of facts, opinions and recommendations.

In considering whether the Documents are exempt under s. 47C, 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 that:

"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 information in the Documents reflects internal consultation about the appropriate course of action to take in response to a complaint made to A&CA (see Document 2). The Documents are each part of a process of consultation that was 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.

The investigation function carried out by A&CA is independent of the content-making areas of the ABC, and there is often a requirement for consultation with relevant staff and management. A&CA relies on the frankness and candour of staff and management when providing information to ensure that a fair and accurate determination is made. There is a significant risk that A&CA's ability to effectively investigate complaints will be compromised if staff are concerned about the possible disclosure of information they provide to A&CA.

Effective complaints investigation procedures is one of the mechanisms available to the Board to determine whether it has satisfied its duty under s8(1) of the ABC Act to ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognised standards of objective journalism.

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. For the reasons outlined above, I am satisfied that the documents contain deliberative matter and are therefore conditionally exempt under s47C of the FOI Act.

Public interest

Section 11A(5) of the FOI Act requires 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 had regard to 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.

I have weighed the factors in favour of disclosure against the factors against disclosure. Whilst granting access to documents in this matter may provide access to information in the broad sense of the objects of the FOI Act, I do not consider that, on balance, this is sufficient to outweigh the factors against disclosure. Given the important role of the ABC Editorial Policies and the ABC Code of Practice to the ABC fulfilling its functions and its Charter obligations, I have given weight to the potential detriment that disclosure would have on the ABC's ability to make effective decisions regarding editorial matters and complaints.

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 information contained in the Documents has no direct, demonstrable relevance to the affairs of government. I am satisfied that the balance of public interest at this time lies in favour of refusing access to those documents.

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