9 May 2011



ABC Australian Broadcasting Corporation

Victoria - Southbank

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## Freedom of Information Act request – Internal review

I refer to your email dated 14 April 2011 requesting an internal review of the ABC's original decision to refuse your request under the *Freedom of Information Act 1982 (Cth)* (FOI Act) for access to audience figures, specifically:

the last three summary reports for each ABC platform (television, radio and online), and both percentage share and audience numbers.

In your email, you confirmed that the scope of your request is not content-specific, but rather relates to overall audience figures.

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 in response to your FOI request

Having reviewed your request, I have determined that it falls outside the operation of the FOI Act. Documents relating to audience figures for ABC television, radio and online content relate to the ABC's program material. Accordingly, such documents are exempt from disclosure under the FOI Act by virtue of section 7(2) and Schedule II, Part 2. The reasons for my decision follow.

I have taken into account the Federal Court of Australia's finding in *ABC v UTS*<sup>1</sup> that the exemption in section 7(2) applies not just to "program material" (such as scripts, tapes and films) but also to any document that has a "direct or indirect relationship to program material" provided only that the document has a relationship to both "program material" and to the ABC. In that case, the Federal Court determined that letters of complaint about the ABC's programs were exempt from the operation of the FOI Act.

In determining whether the documents requested have a direct or indirect relationship to the ABC's program material, I have considered the purpose for which the documents have been created and the relationship between the documents and the ABC's program material. The ABC creates or obtains reports into the number of people watching ABC television, listening to ABC radio, or using ABC websites in order to learn more about its audiences and to inform current and future content making. Audience research documents are closely tied with the ABC's programs, relating to the extent to which the ABC's content is consumed, and

<sup>&</sup>lt;sup>1</sup> Australian Broadcasting Corporation v The University of Technology, Sydney [2006] FCA 964 at paras 31-32, http://www.austlii.edu.au/au/cases/cth/FCA/2006/964.html.

informing decisions about the creation, production, commissioning, scheduling and dissemination of current and future content. I am therefore satisfied that the documents requested are related to the ABC's program material and accordingly are excluded from the operation of the FOI Act.

## Access to information otherwise than under the FOI Act

While the ABC is not obliged under the FOI Act to provide information about its audience figures, the ABC routinely publishes such information in its annual reports. Television, radio and online audience figures for the last three financial years can be freely accessed on the ABC's website:

- ABC Annual Report 2009/10, <u>http://abc.net.au/corp/annual\_reports/ar10/</u> see especially "Audience experiences" in Chapter 2;
- ABC Annual Report 2008/09, <u>http://abc.net.au/corp/annual\_reports/ar09/</u> see especially "ABC audiences" in the Overview Chapter (Section 2);
- ABC Annual Report 2007/08, <u>http://abc.net.au/corp/annual\_reports/ar08/</u> see especially "ABC audiences" in the Overview Chapter (Section 2).

Information and reports providing summary data about audience share and viewer and listener numbers for ABC television and radio are also accessible from external sources. The ABC, like other media organisations, uses the industry standard ratings data (or currency) compiled by OzTAM and Nielsen, whose reports are publicly accessible. For television audience data, the currency providers' reports can be accessed at <a href="http://www.oztam.com.au/WeeklyDownloads.aspx">www.oztam.com.au/WeeklyDownloads.aspx</a>; and <a href="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country="http://www.agbnielsen.net/whereweare/dynPage.asp?father=223&lang=english&id=605&country=</a>

<u>Australia</u>. For radio audience data, the currency provider's reports can be accessed at au.nielsen.com/products/nmr\_radio\_radioratings-metromarkets.shtml.

While, at present, there are no official currency providers for online audience data, a number of companies provide top-level data on website usage. Some website analytics can be freely accessed online, such as from Hitwise (<u>www.hitwise.com/index.php/au/resources/data-centre/</u> and Alexa (<u>www.alexa.com/topsites/countries/AU</u>).

## **Rights of review**

If you are dissatisfied with this decision, you can ask for a 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: <u>enquiries@oaic.gov.au</u> | Website: <u>www.oaic.gov.au</u>

In making your application to the Information Commissioner, you should 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 pursuant to s 23 FOI Act