2 July 2013



Australian Broadcasting Corporation

## Corporate Affairs

ABC Ultimo Centre 700 Harris Street Ultimo NSW 2007

GPO Box 9994 Sydney NSW 2001

Tel. +61 2 8333 5261 abc.net.au

By email:			
Dear			

## FOI REQUEST - REFERENCE NUMBER 2013-33

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your emails of 10 June 2013. Specifically, you have sought access to the following documents:

"copies of any and all emails dated between the 3<sup>rd</sup> and 10<sup>th</sup> June 2013 (inclusive) that relate in any manner or way direct or indirect to the comment made by Barry Cassidy on the Insiders program on 9 June 2013 that Julia Gillard would soon not lead the Labor Party.

That is, supply any and all emails related to the proposed or actual comment and the future coverage of this issue between these people:

- 1 The Head or producers of ABC News
- 2 The producers of the Breakfast show
- 3 The producers of Q&A
- 4 The Morning show on News 24
- 5 Barry Cassidy
- 6 Michael Rowland
- 7 Alan Sunderland
- 8 Virginia Trioli
- 9 Tony Jones
- 10 Latika Burke
- 11 The Head of ABC programming
- 12 The Head of ABC marketing
- 13 The producers of The Drum
- 14 The producers of 7.30
- 15 Leigh Sales."

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.

The documents you have requested relate directly to material which has, or may in the future, form part of the content of one or more of the programs you have identified. 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 any document acquired or created for the purpose of creating the program, whether or not incorporated into the completed program...[and including] a document created after a program is broadcast [such as] transcripts of programs ... and documents produced by the ABC or incorporated in its records directly concerning the substantive content of the broadcast program"<sup>1</sup>

The documents you have described, if they exist, would clearly be documents created 'for the purpose of creating a program' or alternatively documents 'directly concerning the substantive content of the broadcast program'. 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.

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

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Judith Maude Head, Corporate Governance Direct line 02 8333 5316

<sup>1</sup> Australian Broadcasting Corporation and Herald and Weekly Times Pty Limited and Anor [2012] AATA 914 (21 December 2012)