

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 2015-038

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your emails of 31 August and 2 September 2015. In our subsequent correspondence, the scope of your request was clarified to access to the following documents:

"Any documents created, or received, by the ABC Radio 666 Canberra Mornings program team which bear my name or which refer to me, from the beginning of May 2015 to [the date of your request]."

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 ABC 666 Canberra Local Radio Manager, 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	Email exchange between and A Ho	18-19 August 2015	3
2	Internal email exchange	18 August 21015	4
3	Internal email exchange	13-14 August 2015	2
4	Internal email exchange (incl attachment)	12 August 2015	2

5	Internal email exchange	6-11 August 2015	4	
6	Internal email exchange (incl email from	5-6 August 2015	2	
	to ABC Audience and Consumer Affairs)			

Please note that in identifying relevant documents, I have sought to exclude duplicates of the same document. Accordingly, email messages which appear as part of a string may not have been included as separate emails. You should also be aware that any documents which do not specifically refer to you have not been included.

Access to documents

Access is granted to the following documents:

- Document 1
- Document 6.

For the reasons outlined below, access is refused to Documents 2–5 inclusive. Copies of the documents to which access is granted are attached.

Access refusal—s47F (personal information)

Access to Documents 3, 4 and 5 is refused on the basis that those documents are conditionally exempt under s47F of the FOI Act, that is, that disclosure would involve the unreasonable disclosure of personal information about a person. I am further satisfied that, on balance, it would be contrary to the public interest to disclose that material at this time.

The information satisfies the definition of 'personal information' in the FOI Act, being "information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not, and whether the information or opinion is recorded in a material form or not".

Document 3 contains information about ABC employees who work at 666 ABC Canberra and although the document contains your name, it is primarily about a matter which does not relate to you. I note that s22 of the FOI Act allows access to be granted to an edited copy of a document if it is reasonably practicable to remove irrelevant material. While I am able to redact the irrelevant material from Document 3, I note that s.22 of the FOI Act applies 'if it is not apparent ... that the applicant would decline access to the edited copy'. In my opinion, the redactions to Document 3 would be extensive, and access to the edited copy under s.22 is not warranted.

In considering whether Documents 3, 4 and 5 are exempt under s. 47F, 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*. The Guidelines states (at paragraph 6.125):

"The information needs to convey or say something about a person, rather than just identify them. The mere mention of a person's name or signature may, however, reveal personal information about them depending on the context."

In the present case, Documents 4 and 5 identify ABC employees in relation to a matter which was the subject of discussion with the Australian Federal Policy. The Documents contain information about the

ABC's concerns for the safety and welfare of the named employees, and must be considered in that context.

I am further satisfied that it would be unreasonable to disclose the personal information contained in the documents. In accordance with s.47F(2), regard must be had to the following factors:

- the extent to which the information is well known
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document
- the availability of the information from publicly accessible sources.

The information in Documents 4 and 5 is not well known, nor is it available from publicly accessible sources. The persons to whom the information relates are not generally known to have been associated with the issue that is the subject of those Documents.

The Guidelines relevantly state the following (at paragraph 6.13):

"In considering what is unreasonable, the AAT in Re Chandra and Minister for Immigration and Ethnic Affairs stated that:

...whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protection the personal privacy of a third party..."

The Guidelines further state (at paragraph 6.133) that:

"...in Colakovski v Australian Telecommunications Corp, Heerey J considered that '...if the information disclosure were of no demonstrable relevance to the affairs of government and was likely to do no more than excite or satisfy the curiosity of people about the person whose personal affairs were disclosed...disclosure would be unreasonable'."

Having regard to all of the above, I am satisfied that it would be unreasonable to disclose the information contained in Documents 4 and 5. I consider that greater weight should be given to the public interest in protection the personal privacy of the individuals referred to in the documents.

Access refusal—s47C (deliberative processes)

Access to Document 2, 4 and 5 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 Documents 2, 4 and 5 is not operational or purely factual material. Rather, those documents contain a collection of facts, opinions and recommendations.

In assessing whether this information relates to a 'deliberative process', the guidance provided in 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 Documents 2, 4 and 5 reflects the internal consultation about the appropriate course of action to take in response to your email to the ABC's Audience and Consumer Affairs (A&CA) department. 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 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.

I am satisfied that the material contained in Documents 2, 4 and 5 is conditionally exempt under s47C of the FOI Act, and that disclosure of that material at this time would be, on balance, contrary to the public interest.

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.

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 consider that greater weight should be given to the public interest in protection the personal privacy of the affected individuals. I have also given weight to the potential detriment that disclosure would have on the ABC's ability to make effective decisions. I note that the information contained in Documents 2, 3, 4 and 5 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