6 June 2014



Australian Broadcasting Corporation

Corporate Affairs

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[personal information redacted]

Dear [personal information redacted]

By email: [personal information redacted]

FOI REQUEST - REFERENCE NUMBER 2014-010

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 28 April 2014. Specifically, you have sought access to the following documents:

"The Oakton Review ... [being the] ABC NSW Technical Services Operational Review conducted for the Technology & Distribution Division in about April or May 2008".

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 the document. As a result of the searches conducted, the following document was identified:

Document 1 ABC – NSW Technical Services Operational Review, June 2008

Access refusal – s47C (deliberative processes)

Access to Document 1 ("the Document") is refused on the basis that the Document is conditionally exempt under s47C of the FOI Act. In my view, disclosure of the Document under the FOI Act would disclose matter in the nature of opinions, advice and recommendations that have been obtained 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.

In determining whether the information in the Document 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:

"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 Guidelines set out the factors to be considered when determining whether a document includes deliberative matter. Each of those factors is addressed below.

In accordance with paragraph 6.63 of the Guidelines, I have considered whether the deliberative processes relates to the functions of the ABC.

The functions of the ABC are set out in section 8 of the *Australian Broadcasting Corporation Act 1983* (the ABC Act). The Document relates to a review of the delivery of technical services that support the ABC's operations, including radio and television production. Section 8(1)(s) of the ABC Act imposes a duty on the ABC to "ensure that the functions of the Corporation are performed efficiently and with the maximum benefit to the people of Australia". Reviewing operational activities is a mechanism used by the ABC to assess efficiency and productivity. Accordingly, I am satisfied that the deliberative processes reflected in the Document relate directly to the functions of the ABC.

In accordance with paragraphs 6.66-6.69 of the Guidelines, I have had regard to the substance of the information in the Documents when determining whether they contain deliberative matter. The material is not procedural or day-to-day content, nor is it operational or purely factual material.

Paragraph 6.64 of the Guidelines states that

"A deliberative process may include the recording or exchange of:

- Opinions
- Advice
- Recommendations
- A collection of facts or opinions, including the pattern of facts or opinions considered
- Interim decisions or deliberations."

The Document describes the systems and processes existing at the time, provides analysis of those systems and processes and makes a number of recommendations. As such, I consider that the Document contains deliberative matter.

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 Document contains deliberative matter and is therefore conditionally exempt.

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 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.

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] AICmr 19, [15]–[22].

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 public debate around the internal delivery of technical services at the ABC. There is no evidence that disclosure of the Document would inform debate on a matter of public importance.

Whilst it could be argued that disclosure of the Document 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.

In my view, there is little weight to the public interest arguments in favour of disclosure. Balanced against those factors, disclosure of the Document could reasonably be expected to prejudice the ABC's management function. The Document is a confidential report which provides a detailed assessment of the people, systems and processes associated with a key aspect of internal service delivery. The findings and recommendations have been treated by management as confidential, and have informed decision making around operational structures and work practices. Disclosure of the Document would compromise the effective management of those structures and practices.

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

Mande.

Judith Maude Head, Corporate Governance