

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 2014-036

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 29 October 2014. You have sought access to the following documents:

"material from ABC Radio Australia (Chinese) available from the transcripts/story lists of the Chinese language service of the ABC [which contain] mentions of the 'Tiananmen Massacre' between the dates of May 21 2014 and June 11 2011."

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.

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 by the Administrative Appeals Tribunal 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.." ¹

It is clear on the face of your request that the documents you are seeking access to are documents "created after a program is broadcast [such as] transcripts of programs".

I am satisfied that the requested documents fall within the definition of 'program material', and that the ABC is exempt from the operation of the FOI Act in relation to them.

¹ Australian Broadcasting Corporation and Herald and Weekly Times Pty Limited and Anor [2012] AATA 914 at [57]

If you are dissatisfied with this outcome 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