



#### 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



#### **FOI REQUEST - REFERENCE NUMBER 2015-028**

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 16 June 2015. Specifically, you have sought access to:

- "...documents [relating to] the following:
- 1) Any policies that the ABC has on charitable fundraising and on the selection of charities to support.
- 2) How the decision was made by the ABC to support fundraising for the Society of Mental Health Research.
- 3) Whether any other mental health charities were considered as alternatives for support.
- 4) What investigation was done into the Society for Mental Health Research's previous use of charitable funds and financial status.
- 5) What monitoring was carried out on the Society for Mental Health Research's use of the funds raised via the ABC.
- 6) What investigation was carried out to assess any adverse impact of the ABC's fundraising for the Society of Mental Health Research on other mental health charities during Mental Health Week."

I note you have requested documents created between 1 January 2013 and 16 June 2015.

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 liaising with people in the following positions, who in turn consulted with relevant managers and staff within their respective teams and across other divisions:

- · Director, Audience and Marketing
- Assistant to the Director, Television
- · Assistant to the Director, Radio.

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 21 documents were identified:

#	Document	Date	Pages
1	ABC Mental Health Week Steering Committee–meeting outcomes/minutes	14 March 2014	3
2	Internal ABC string	24-26 March 2014	2
3	Agenda ABC Mental Health Week Steering Committee	10 April 2014	1
4	Internal ABC email (incl 6 pg attachment)	15 April 2014	7
5	ABC Mental Health Week Steering Committee–meeting outcomes/minutes	15 May 2014	4
6	Internal ABC email (including 3 pg attachment)	19 May 2014	4
7	Email string between P McGorry and ABC (incl 8 pg attachment)	19-29 May 2014	12
8	Internal ABC email string (incl 3 pg attachment)	21-22 May 2014	6
9	ABC Mental Health Week Steering Committee— Agenda	12 June 2014	1
10	Mental As draft FAQs	23 June 2014	2
11	Copy of registration certificate for Society of Mental Health Research Inc	1 July 2014	1
12	ABC Mental Health Week Steering Committee–meeting outcomes/minutes	3 July 2014	3
13	ABC Mental Health Week Steering Committee–meeting outcomes/minutes	24 July 2014	4
14	Memorandum of Understanding between the ABC and the Society for Mental Health Research	19 August 2014	4
15	ABC Board Information Paper	September 2014	3
16	Internal ABC string (incl 3 pg attachment)	22-26 September 2014	16
17	Internal ABC email (incl 4 pg attachment)	13 November 2014	5
18	Internal ABC email (incl 3 pg attachment)	29 May 2015	5
19	ABC Corporate Responsibility Policy and Procedures for Participating in an External Corporate Responsibility Activity	Updated 11 August 2014	9
20	Recommendation to Support Mental Health in 2015	Undated	1
21	Mental As Campaign 2014	29 May 2015	1

Given that some documents fall within the scope of more than one part of your request, I have responded to the request altogether rather than to each individual part.

Please note that in identifying relevant documents, I have excluded duplicates of the same document. Accordingly, email messages which appear as part of a string have not also been included as separate emails.

## Access to documents

Access is granted as follows

• in full to six documents (being documents numbered 3, 9,11, 14,15 and 19)

in part to three documents (being documents numbered 4, 6 and 17). Access to parts of those
documents is refused on the basis that the material is conditionally exempt under s.47C of the
FOI Act for the reasons outlined below.

Copies of the documents to which access is granted are attached.

# Access refusal – s47C (deliberative processes)

Access to 12 documents (being documents numbered 1, 2, 5, 7, 8, 10, 12, 13, 16, 18, 20 and 21) as well as to parts of three documents (being documents numbered 4, 6 and 17), is refused on the basis that those documents are conditionally exempt under s47C of the FOI Act. In my view, disclosure of those documents under the FOI Act would disclose matter in the nature of, or relating to, opinions and recommendations obtained, and consultation that has taken place, 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.

I have had regard to the substance of the information in the listed documents when determining that it contains deliberative matter. The material is not procedural or day-to-day content, nor is it operational or purely factual material.

Documents 1, 5, 12 and 13 and parts of document 4, 6 and 17 contain the minutes of meetings held to discuss the *Mental As* project. They contain a collection of facts, opinions and recommendations regarding the nature and implementation of the project. The documents reflect consultation that was undertaken with stakeholders, and the exercise of judgement that was made as part of the decision making process.

Documents 2, 7, 8, 16 and 18 contain advice and opinions that were sought regarding the *Mental As* project, including advice regarding the assessment of risks.

Document 10 contains material that is draft only, and as such they represent a stage in the thinking processes prior to arriving at a final, settled position. I note that Paragraph 6.64 of the Guidelines states that "a deliberative process may include the recording or exchange of ... interim decisions or deliberations". In his decision in *Hunt and Australian Federal Policy*<sup>1</sup>, the Freedom of Information Commissioner confirmed that draft documents may be deliberative.

Documents 20 and 21 contain information and recommendations regarding the ABC's potential support of mental health week in 2015.

In determining whether the information in the documents contains deliberative matter I have had regard to the Guidelines, in particular *Part 6 – Conditional Exemptions*. Paragraph 6.70 of the Guidelines states:

"A consultation undertaken for the purposes of, or in the course of a deliberative process includes any discussion between the agency, minister or government and another person in relation to the decision that is the object of the deliberative process."

Further, paragraph 6.62 of the Guidelines states:

"A deliberative process involves the exercise of judgement in developing and making a selection from different options:

<sup>&</sup>lt;sup>1</sup> [2013] AlCmr 66 (23 August 2013)

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.<sup>2</sup>

The documents are each part of a process of consultation that has been undertaken for the purposes of considering a particular course of action, and contain a collection of facts, opinions and advice. Some of the listed documents reflect the exercise of judgment arising from the consideration of information and competing ideas contained in the documents. Accordingly, I consider that they are deliberative in nature.

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. I am satisfied that documents numbered 1, 2, 5, 7, 8, 10, 12, 13, 16, 18, 20 and 21, and parts of 4, 6 and 17 each contain deliberative matter and are therefore conditionally exempt.

#### Public interest

Section 11A(5) of the FOI Act would require 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.

Section 11B(5) requires agencies, when assessing whether access to a document would on balance be contrary to the public interest, to have regard to the Guidelines. I have had regard to the non-exhaustive list of public interest factors favouring and against disclosure in paragraphs 6.25 and 6.29 of the Guidelines.

I accept that disclosure may promote the objects of the FOI Act in that it would provide access to information.

However, while disclosure may broadly promote the objects of the FOI Act, it would not reveal or substantiate any misconduct, negligent, improper or unlawful conduct.

I am not aware that the deliberative processes to which the information in the documents relate are the subject of current public debate.

Disclosure of the documents would not, in my view, directly promote the effective oversight of public expenditure. In any event, 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

<sup>&</sup>lt;sup>2</sup> 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].

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 *Public Governance Performance and Accountability Act 2013*. 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)).

Balanced against the factors favouring disclosure, there are public interest factors against disclosure. The facts, opinions and advice contained in the documents is not publicly known or available. There is a risk that disclosure of the information could reasonably be expected to prejudice the ABC's ability to make and implement effective editorial and operational decisions.

To the extent that the documents contain draft material which does not necessarily reflect a settled position (for instance, Document 10), disclosure would not meaningfully contribute to or inform any discussion.

In my view, there are insufficient factors favouring disclosure to outweigh the factors against disclosure.

I am satisfied that the material contained in documents numbered 1, 2, 5, 7, 8, 10, 12, 13, 16, 18, 20 and 21, and parts of 4, 6 and 17 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

Judith Maude Head, Corporate Governance