Dear





Victoria - Southbank

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Freedom of Information Act request – Internal review

I refer to your email dated 13 February 2013 requesting an internal review of the ABC's original decision relating to your request under the *Freedom of Information Act 1982 (Cth)* (FOI Act) for access to "copies of all 'hot issues briefs' including any attachments, prepared [by the ABC] for the last Senate Estimates round".

On 4 February 2013, the original ABC decision maker provided you with access to a number of briefings but refused access to one page on the basis that it was conditionally exempt under section 47C(1) in that it contained deliberative matter and that, on balance, disclosure was contrary to the public interest. You have now requested internal review of this access refusal decision.

I am authorised by the Managing Director, under section 23 of the FOI Act, to make decisions on requests for internal review. I have conducted a review of the original access refusal decision in accordance with section 54 of the FOI Act and make a fresh decision.

Summary of decision

I have decided to release the requested document with deletions made in accordance with section 22 of the FOI Act (Access to edited copies with exempt or irrelevant matter deleted), on the basis that the deleted material is conditionally exempt under section 47C in that it contains deliberative matter and disclosure at this time would on balance be contrary to the public interest. A copy of the edited document is now enclosed.

Statement of reasons

<u>Deliberative processes – section 47C</u>

A document is conditionally exempt under section 47C(1) of the FOI Act if it includes deliberative matter – that is, content in the nature of, or relating to an opinion, advice or recommendation that has been obtained, prepared or recorded; or a consultation or deliberation that has taken place in the course of, or for the purposes of a deliberative process of the agency, a minister or the Commonwealth Government.

Having examined the document, I agree with the finding of the original decision maker that the document contains content relating to a consultation between the ABC and the Minister for Broadband, Communications and the Digital Economy in relation to decisions directly affecting the ABC, and that it includes recommendations and opinions. Accordingly, I have decided that the document contains deliberative matter and is therefore conditionally exempt under section 47C(1).

Public interest – section 11A(5)

Section 11A(5) of the FOI Act requires that access must nevertheless be given to conditionally exempt documents unless, in the circumstances, access at the time would on balance be contrary to the public interest.

I have considered the public interest factors for and against disclosure, as set out in the FOI Act (section 11A(5)) and in the Australian Information Commissioner's FOI Guidelines (as I am required to do by section 11B(3), FOI Act). I have also considered the factors favouring disclosure which you raised in your initial FOI request and in your request for internal review.

You have argued that disclosure would contribute to greater public scrutiny of the ABC's relationships with Government or funding arrangements. I am not persuaded that this is the case. It is readily apparent, with the benefit of hindsight, that the issue which had been the subject of the previously exempt briefing note could be and was discussed at the recent Senate Estimates hearing by the Environment and Communications Legislation Committee relying on its existing powers, procedures, practices and protections for witnesses appearing before it. In my view, the public interest in transparency is appropriately met by the scrutiny that is able to be – and is – applied to the ABC through the Senate Estimates proceedings.

I consider that there is a public interest in agency executives being candidly briefed by their staff so that those appearing before Senate Estimates are in a position to swiftly and frankly – with the legal and procedural protections accorded to witnesses – answer questions, provide context, and follow up in writing where necessary.

I find that, at the time of the original access refusal decision, the public interest may have favoured non-disclosure of the whole of the document for the reasons relied upon by the original decision maker – namely, that it would compromise the ABC's ability to communicate effectively with its responsible Minister and hinder the conduct and administration of the ABC. However, with the passage of time between the original decision and this internal review, circumstances have changed. Some of the material contained in the previously exempted document is now a matter of public record, having been raised by Senator Abetz and responded to by the ABC's Managing Director at the recent Senate Estimates hearing. (See the Senate Environment and Communications Legislation Committee, Estimates, *Hansard*, 11 February 2013, page 6.) I accept that disclosure of the remainder of the document would, however, continue to compromise the ABC's ability to communicate effectively with its responsible Minister and hinder the conduct and administration of the ABC.

I have therefore determined that, on balance, disclosure of the edited material at this time would be contrary to the public interest.

Rights of review

If you are dissatisfied with this decision, you can ask for a review by the Australian Information Commissioner, whose contact details are:

Office of the Australian Information Commissioner GPO Box 2999 Canberra ACT 2601 (or) GPO Box 5218 Sydney NSW 2001 Tel: 1300 363 992 | Fax: 02 9284 9666 | Email: enquiries@oaic.gov.au

In making your application to the Information Commissioner, you should provide an address for notices to be sent (this can be an email address), and a copy of this decision. You may also wish to inform the Information Commissioner of the reasons for seeking review.

Yours sincerely,

Michelle Fisher

FOI Internal Reviewer, authorised pursuant to s 23 FOI Act