

10 April 2014



Australian  
Broadcasting  
Corporation

[REDACTED]

Corporate Affairs

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By email: [REDACTED]

Dear [REDACTED]

### FOI REQUEST - REFERENCE NUMBER 2014-003

I acknowledge receipt of your request for access to the following documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 4 March 2014:

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 4 March 2014. Specifically, you have sought access to the following documents:

*“copies of all documents, including but not limited to agreements, correspondence, contracts and financial documents, related to payments for ABC advertising to APN Outdoor ...and its related bodies corporate (APN Group) or its representative agency, since 1 July 2013”.*

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 following relevant people, who in turn consulted with relevant managers and staff within their respective teams:

- Head, Finance
- Director, Audience and Marketing.

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 19 documents were identified:

Document 1	Tax Invoice from APN Outdoor (Trading) Pty Limited dated 31 July 2013 (Campaign ID 49111)
Document 2	Outdoor Advertising Order, signed 6 August 2013 (Campaign ID 50786)
Document 3	Outdoor Advertising Order – Variation, signed 9 August 2013 (Campaign ID 50786)

Document 4	Tax Invoice from APN Outdoor (Trading) Pty Limited dated 31 August 2013 (Campaign ID 50786)
Document 5	Tax Invoice from APN Outdoor (Trading) Pty Limited dated 31 August 2013 (Campaign ID 49111)
Document 6	Invoice from APN Outdoor (Trading) Pty Limited dated 30 September 2013 (Campaign ID 50786)
Document 7	Agreement between the ABC and APN Outdoor (Trading) Pty Limited dated 7 October 2013 (Campaign ID 50529)
Document 8	Tax Invoice from APN Outdoor (Trading) Pty Limited dated 31 October 2013 (Campaign ID 50529)
Document 9	Tax Invoice from APN Outdoor (Trading) Pty Limited dated 30 September 2013 (Campaign ID 50786)
Document 10	Tax Invoice/Statement from APN Outdoor (Trading) Pty Limited for November 2013
Document 11	Outdoor Advertising Order, signed 19 December 2013 (Campaign ID 53936)
Document 12	Tax Invoice/Statement from APN Outdoor (Trading) Pty Limited for January 2014
Document 13	Agreement between the ABC and APN Outdoor (Trading) Pty Limited dated 27 January 2014 (Campaign ID 53936)
Document 14	Agreement between the ABC and APN Outdoor (Trading) Pty Limited dated 10 February 2014
Document 15	Tax Invoice/Statement from APN Outdoor (Trading) Pty Limited for February 2014
Document 16	Bundle of correspondence regarding Campaign ID 53936
Document 17	Bundle of correspondence regarding Campaign ID 54516
Document 18	Bundle of correspondence regarding Campaign ID 50529
Document 19	Vendor report

Documents 16, 17 and 18 are described for convenience as a 'bundle of correspondence'. They comprise a number of separate but related documents. Please note that in identifying relevant documents, I have excluded duplicates of the same document provided to me as a result of searches by different people.

***Access refusal – s45 (material communicated in confidence)***

Access to documents 1-19 inclusive (collectively referred to as 'the Documents') is refused on the basis that the material in the Documents is exempt under s45 of the FOI Act, that is, because disclosure under the FOI Act could found an action against the ABC for breach of confidence.

I have had regard to the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines) in determining whether the Documents contain material communicated in confidence, in particular *Part 5 - Exemptions*.

Paragraph 5.139 of the Guidelines confirms that to found an action for breach of confidence (and therefore for s45 to apply), the following five criteria must be satisfied in relation to the information:

- it must be specifically identified;
- it must have the necessary quality of confidentiality;
- It must have been communicated and received on the basis of a mutual understanding of confidence;
- it must have been disclosed or threatened to be disclosed, without authority; and
- unauthorised disclosure of the information has or will cause detriment.

I have considered each of these criteria and I am satisfied that they are met in relation to the Documents.

The Documents have been specifically identified and are listed above. They contain information which was given and received on the understanding that it would be treated in confidence.

The information in the Documents has the necessary quality of confidentiality. It is only known to a limited group, and is not common knowledge or in the public domain. It concerns the details of commercial dealings between the parties and as such is inherently confidential in nature and is treated by the ABC as confidential.

The information in the Documents was communicated and received on the basis of a mutual understanding that it would be treated by the ABC as confidential. This understanding is reflected in an explicit obligation of confidentiality in agreed terms and conditions between the ABC and APN Outdoor (Trading) Pty Limited.

APN Outdoor (Trading) Pty Limited has not consented to disclosure of the information in the Documents. Accordingly, disclosure of the information would be unauthorised and may result in potential claims for damages for breach of the ABC's contractual obligation to maintain confidentiality.

For the reasons set out above, I am satisfied that disclosure of the Documents could found an action against the ABC for a breach of confidence, and that the Documents are therefore exempt under s 45 of the FOI Act.

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

A handwritten signature in blue ink that reads "J Maude".

**Judith Maude**  
Head, Corporate Governance