Dear

Thank you for your email of 1 May 2011 seeking access to information under the *Freedom of Information Act 1982* (the FOI Act). In particular, you have sought access to a copy of the complete interview conducted with by Hagar Cohen for *Background Briefing*. I understand that the interview was part of a program from February 2011 relating to cigarette packaging.

I have decided to refuse access on the basis that documents relating to interviews conducted for radio programs fall outside the scope of the FOI Act.

Under section 7(2) and Part 2 of Schedule II of the FOI Act, the ABC is exempt from the operation of the Act in relation to documents that relate "to its program material and datacasting content". The Federal Court of Australia considered the scope of this exclusion in *Australian Broadcasting Corporation v The University of Technology, Sydney* [2006] FCA964, and decided that the exclusion applies to "program material" (such as scripts and tapes) as well as any document that has a "direct or indirect relationship to program material".

I am satisfied that a transcript of an interview conducted for a radio program has a direct relationship with the ABC's program material such that it falls outside the operation 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.

Regards

Judith Maude Manager, Corporate Planning and Reporting FOI Coordinator