

4 August 2023

Mr Alex Pentland

By email: foi+request-10442-e3f77352@righttoknow.org.au

Dear Mr Pentland

DECISION – REF. NO ABC FOI 202324-001 – Correspondence with ABC staff

I refer to your email sent Monday 10 July 2023 seeking access under the *Freedom of Information Act 1982* (the **FOI Act**) to:

- (a) Any correspondence or record of correspondence exchanged between Managing Director David Anderson and Kate Doak referencing comments and conducts made by ABC Employee Paul Barry;
- (b) Any correspondence or record of correspondence exchanged between ABC Pride Activist Manda Hatter and Kate Doak referencing comments and conducts made by ABC Employee Paul Barry.

A decision on your request is due by Wednesday **9 August 2023**.

Authorisation

I am authorised by the Managing Director of the ABC to make decisions about FOI requests under s 23 of the FOI Act.

Decision

I have identified 2 documents that answer the scope of your request - **Documents 1 to 2**. These documents are described in **Schedule 1**, attached.

I have refused access to **Documents 1 and 2**.

Material taken into account

In making my decision I have considered:

- the scope of your request
- the content of the documents requested
- the FOI Act
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**the Guidelines**)

Locating and identifying documents

The search for documents included approaching the Managing Director's office and Ms Hatter.

I consider all reasonable steps were taken to identify and locate relevant documents that answer your request. I am satisfied that the searches conducted were thorough and all reasonable steps have been taken to locate the documents relevant to your request. I find that the ABC is not in possession of further documents.

I have also excluded duplicates of email chains (or annexures if applicable), where an earlier part of a chain is replicated in a longer email chain, such that a decision is made on one version only.

Reasons for decision

s 47F – Personal Privacy – conditionally exempt

The Guidelines at paragraph 6.120 define personal information as including “*information about an identified individual or an individual who is reasonably identifiable*” which I take to include a person’s name, opinion, and or other identifying information, such as contact details.

The Guidelines, at paragraph 6.138, articulate that the personal privacy exemption is designed to prevent the unreasonable invasion of third parties’ privacy. The test of ‘unreasonableness’ implies a need to balance the public interest in disclosure of government-held information and the private interest in the privacy of individuals.

In determining whether disclosure of the documents would involve an unreasonable disclosure of personal information I have had consideration of the following factors:

- the nature of the information;
- the circumstances in which the information was obtained;
- the likelihood of the information being information that the person concerned would not wish to have disclosed without consent;
- extent to which the information is well known;
- whether the information has any current relevance.

In considering whether it would be unreasonable to disclose personal information, without the consent of the relevant individual, I have had regard to the factors listed in s 47F(2), in particular:

- the extent to which the information is well known;
- whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document; and
- the availability of the information from publicly accessible sources.

The documents contain personal information, including information that is co-mingled with affected third parties in certain parts which is sensitive and private. Those individuals hold a reasonable expectation that this information would not be disclosed under FOI. That information includes names, opinion, and contact details.

In my view, the elements of the exemption in s 47F are clearly met. The parties have not consented to the release of this information under FOI and I consider it would be an unreasonable disclosure of that information without each person's consent.

If the information was publicly disclosed under FOI, employees and a third party could be exposed to unwarranted public criticism or targeted online abuse, including cyberbullying. The FOI Act places no limit on the dissemination of the information once it is released under FOI. Staff members who are mentioned in these documents have not consented to the public distribution of information in the documents and did not reasonably expect this information would be shared through FOI when they engaged in the communications.

The ABC has a duty of care to protect the wellbeing of its staff, and disclosure of identifying details and sensitive private matters in this context could result in a loss of trust by employees in the ability of the ABC to protect their privacy and wellbeing.

I have found the protection of the relevant individuals' personal privacy of their personal information outweighs any public interest in disclosure of that information. Although the name of the Managing Director of the ABC is known, his views in this context are shared with a third party about a private matter. It is my view that the third party's right to privacy and protecting that person from being bullied, online or otherwise, outweighs any public interest in reading about private matters.

I am satisfied that granting access to the conditionally exempt material in the documents would, on balance, be contrary to the public interest. Accordingly, I find disclosure of the documents would be unreasonable as the information is conditionally exempt under s 47F.

Review rights

Your review rights are set out in **Annexure A**.

Yours sincerely



Ali Edwards
Head of Rights Management & FOI Decision Maker
foi.abc@abc.net.au

Schedule 1 – Document Schedule – FOI 202324-001

No.	Date	Description	Page/s	Access grant decision	Exemption section/s
01	October 2022	Email chain	3	Refused	47F – personal privacy
02	October 2022	Email chain	3	Refused	47F – personal privacy

Annexure A – Your Review Rights

If you are dissatisfied with this decision you can apply for Internal Review by the ABC, or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking IC Review.

APPLICATION FOR INTERNAL REVIEW

You have the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request. If you apply for an internal review, the Managing Director will appoint an officer of the Corporation (not the person who made the initial decision) to conduct a review and make a fresh decision.

You must apply in writing for an internal review of the decision within 30 days of receipt of this letter. No particular form is required, although it would help if you set out the reasons for review in your application.

Application for a review of the original decision should be emailed to ABC: foi.abc@abc.net.au

or addressed to: FOI coordinator
 ABC Legal
 Level 13, 700 Harris Street
 ULTIMO NSW 2007

APPLICATION FOR INFORMATION COMMISSIONER (IC) REVIEW

Alternatively, you have the right to apply for a review by the Information Commissioner of the decision refusing to grant access to documents in accordance with your request. Your application must:

- be in writing;
- be made within 60 days of receipt of this letter;
- give details of how notices may be sent to you (for instance, by providing an email address); and
- include a copy of the decision for which a review sought.

The Information Commissioner has a discretion not to undertake a review (see Division 5, FOI Act). Please refer to the OAIC website FOI review process page for further information and/or to access the online form for applying for IC review:

<https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Alternatively, application for IC Review can be emailed to: enquiries@oaic.gov.au or

addressed to: Director of FOI Dispute Resolution
 GPO Box 5218
 Sydney NSW 2001

COMPLAINTS TO THE INFORMATION COMMISSIONER

You may complain to the Information Commissioner about any action taken by the ABC in the performance of functions, or exercise of powers, under the FOI Act. The Information Commissioner may make inquiries for the purpose of determining whether or not to investigate a complaint.

Complaints can be made in writing to: OAIC - GPO Box 5218 Sydney NSW 2001