



15 September 2015

Cail Young

Email: foi+request-1206-0adbe1b4@righttoknow.org.au

Dear Mr Young,

FOI Request:

Correspondence within POCU regarding interested party expenditure in QAPE and other information

I refer to your request dated 3 September 2015 for access to various documents under the *Freedom of Information Act 1982 (FOI Act)*.

Screen Australia has now completed processing the request and I set out the Notice of Decision on the request, as required under section 26 of the FOI Act.

Decision Maker

1. I am the authorised decision maker in this matter, having been authorised under section 23 of the FOI Act.

Scope of Request

2. You have requested the following:
 - (a) Validity of arms-length transactions during assessment of Offset certifications, especially:
 - i. instances where applicants' claim(s) for QAPE were denied specifically as a result of an expense being determined as not meeting an arms-length test.
 - ii. instances where Fulcrum Media Finance provided cashflow services, if known.
 - iii. instances where Deluxe, Digital Pictures, DDP Studios (or any other antecedent business to these) provided post-production services and/or financing to the film, if known.
 - iv. instances where Panavision Australia (or related companies) provided camera and/or other equipment hire services to the film, if known.
 - v. Any other discussions regarding setting rules or guidelines for how to assess arms-length transactions during certification.
 - (b) Statistics showing a breakdown of final certificates (by quantity and/or value) issued to applicants using any of the above-mentioned companies for cashflow and/or services versus applicants using other suppliers or financiers, if known.

- (c) Other data produced, more detailed than that available on the website, regarding the nature (such as budget range, type of project, first-time versus repeat producer, e.g.) of recipients of Producer Offset certificates, if known.

Decision

3. With respect to your request under paragraphs 2(a) i-iv inclusive and 2(b) above seeking information in relation to specific applications for the producer offset I advise that this information is exempt information under section 38(1)(b)(i) of the FOI Act. It is exempt information because it is secret tax information covered by sections 355-25, 355-155 and 355-265 of the Taxation Administration Act 1953, which is specified as secret information under Schedule 3 of the FOI Act. Accordingly, under section 11A(4) of the FOI Act, Screen Australia is unable to give you information of this type.
4. With respect to your request under paragraph 2(a)(iv) please refer to the following documents on our website:
- the [Producer Offset Guidelines](#) (Guidelines) (refer to page 25 of the Guidelines)
 - a resource document titled [At A Glance](#) (AAG) (refer to page 11 of the AAG) and
 - a Fact Sheet titled '[Interested Parties/Arm's Length Transactions](#)' which specifically addresses the issue of non-arm's length arrangements
5. These documents are our policy statements on how we apply the Income Tax Assessment Act 1997 and Producer Offset Rules to assess applications for the producer offset.
6. With respect to your request under paragraph 2(c) please further refer to:
- [The Drama Report 13/14](#) and
 - [Screen Australia Annual Report 13-14](#)
7. These documents include some of the information that you have requested. This information is disaggregated from any specific applicant for the producer offset or a company involved in a producer offset film so does not refer to any specific company. We cannot provide information regarding specific companies for the reasons set out in paragraph 3.

Rights of Review

Internal review

8. Pursuant to section 54 of the FOI Act, you have the right to apply for an internal review of my decision insofar as it refuses access to the documents you have requested in your 3 September 2015 email. If you make an application for internal review, it will be conducted by an officer of Screen Australia (not myself as the original decision maker) who will make a fresh decision on the merits of the case.
9. You must apply in writing for an internal review of the decision within 30 days after the day on which this decision is received by you (or any longer period which we agree to).
10. No particular form is required to apply for internal review although it is desirable to set out in the application the grounds on which you consider that the decision should be reviewed.

11. Application for an internal review of the decision should be addressed to my attention. I will then ensure the review is conducted by the appropriate person.

External review - the Information Commissioner

12. Either following, *or as an alternative to*, internal review, you may seek a review of my decision by the Australian Information Commissioner (**AIC**) in accordance with paragraph 25 or 26 below. The Office of the AIC can be contacted by email at enquiries@oaic.gov.au, or by telephone on 1300 363 992. Requests to the AIC for review must be made in writing. The AIC's addresses are GPO Box 2999, Canberra ACT 2601, or GPO Box 5218, Sydney NSW 2001.
13. If you make an application for internal review and either the original decision to refuse access is confirmed, or you are not notified of a decision within 30 days of Screen Australia's receipt of the application (or such longer period as the AIC may grant Screen Australia), you will be entitled to make an application within a further 60 days to the AIC for a review of the original decision.
14. You are also entitled to apply to the AIC for a review of my decision without applying for an internal review. This application must be made to the AIC within 60 days of receiving notice of my decision.
15. A party to a review to the AIC may appeal to the Federal Court of Australia, on a question of law, from a decision of the AIC.
16. If the AIC confirms the original decision, or declines to review your case because it is satisfied that the interests of the administration of the FOI Act make it desirable that the decision be considered by the Administrative Appeals Tribunal (**AAT**), you may apply to the AAT (see below) for review of the decision.

The Administrative Appeals Tribunal

17. The AAT is a completely independent review body with the power to make a fresh decision in response to your request.
18. Your application to the AAT should be accompanied by an application fee (currently \$861) unless you are granted legal aid or you come within an exempt category of persons. The AAT Registrar or Deputy Registrar may waive the fee on the ground that its payment would impose financial hardship on you. The fee may be refunded where you are successful. The Tribunal cannot award costs either in your favour or against you, although it may in some circumstances recommend payment by the Attorney-General of some or all of your costs.
19. Further information is available from the AAT Registry, telephone 1300 366 700.

Complaints to the Commonwealth Ombudsman

20. You may complain to the Ombudsman concerning action taken by Screen Australia in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will make a completely independent assessment of your complaint.
21. You may complain to the Ombudsman either orally or in writing. The Ombudsman's address is:

Commonwealth Ombudsman
GPO Box 442
Canberra ACT 2601

Telephone: 1300 362 072

22. You may wish to consult with the Ombudsman's office as to whether it is preferable to seek internal review prior to seeking the assistance of the Ombudsman.

Yours sincerely,



Nick Coyle

FOI Co-ordinator