



28 October 2015

Cail Young

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

Request for review:

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

Dear Mr Young,

Thank you for your emails requesting an internal review of our decision not to give you access to the documents you were seeking as part of your original request of 3 September 2015.

I am the Chief Operating Officer of Screen Australia. I have reviewed Nick Coyle's original decision (sent to you on 15 September 2015), as well as Jane's Supit's clarification, which she sent you on 28 September 2015.

Background

Our Producer Offset Unit holds a wide variety of documents, including internal communications between staff members, and between staff and independent assessors. These documents are subject to a number of exemptions under the FOI Act. These exemptions include:

- Documents to which secrecy provisions apply (S. 38). This is the section which states that documents covered by the tax secrecy provisions of the *Taxation Administration Act 1953* are exempt from being released under the FOI Act. It is a very broad provision, and covers all documents relating to individual applications, including their assessments and any internal communications regarding assessment. This is the exemption that applies to 2 (a) i. – v. and 2 (b) of your original request. I confirm the original decision that these documents are exempt, and we cannot release them.
- Documents subject to legal professional privilege (S. 42). This exemption covers any Screen Australia communications with a lawyer advising on the application of the arm's-length test under Division 376 of the *Income Tax Assessment Act 1997*.

Documents relating to non-arm's length transactions

Any information that is not covered by the exemptions set out above, such as documents covering general, non-project specific, discussions as to what constitutes an arm's-length transaction, are conditionally exempt documents under S. 47C of the FOI Act. This section of the Act says that a document is conditionally exempt if disclosing it could disclose deliberative matter (i.e. deliberation that has taken place as part of Screen Australia's functions).

Documents that are conditionally exempt still have to be released, unless their release would be against the public interest. In this case, however, I've decided that releasing this document would be against the public interest. In making this decision, I've weighed up the following factors:

Factors against disclosure:

- That disclosure could reasonably be expected to prejudice the management function of Screen Australia
- That disclosure could reasonably be expected to adversely impact the proper administration of Division 376 of the *Income Tax Assessment Act 1997* by Screen Australia
- That disclosure could reasonably be expected to prejudice the effectiveness of testing or auditing procedures
- That disclosure could reasonably be expected to prejudice Screen Australia's ability to obtain confidential information
- That disclosure could reasonably be expected to prejudice the conduct of investigations, audits or reviews by the Auditor-General

Factors in favour of disclosure:

- That disclosure would promote the objects of the FOI Act, including informing the community of the Government's operations, and enhancing the scrutiny of government decision making
- That disclosure would promote effective oversight of public expenditure

Overall, I've determined that the factors against disclosure outweigh the factors favouring disclosure. On balance, therefore, release of the document at this time would be contrary to the public interest. This means that I am refusing access to the deliberative documents relating to arm's-length transactions according to the FOI Act.

At this point, I should clarify that all the discussions that took place (both documented and in person) culminated in our Factsheet [Interested Parties / Arm's-Length Transactions](#) which sets out our approach to this subject. This is a complex area, so we'd be happy to answer any particular questions you might have on our approach to related parties / arm's-length transactions. If you would like to talk to us, the best initial contact would be with our Producer Offset and Co-productions Unit on 02-8113 1042 or POCU@screenaustralia.gov.au.

Possibility of releasing redacted documents

In your request for review, you said that you wanted to know why Screen Australia considers that all information related to a Producer Offset application, even if partially redacted, is protected by the taxation secrecy exemption.

As I mentioned above, the tax secrecy provisions of the *Taxation Administration Act 1953* are very wide-ranging and capture the whole of any document that contains tax information. Therefore, any document containing tax information is immediately and completely exempt from release under FOI.

S. 22 of the FOI Act requires Screen Australia to release edited documents if it is possible for it to prepare a redacted version of the documents. However, it also has to be “reasonably practicable” to do this. To determine whether it is reasonably practicable, we take into account the nature and extent of the redactions we’d have to make, and the resources available for us to do so. Preparing anonymised versions of individual applications for the Producer Offset would involve extensive redactions and be labour-intensive, and I have therefore decided that it is not practicable for us to do so. This means that S. 22 of the FOI Act does not apply.

Release of Producer Offset information

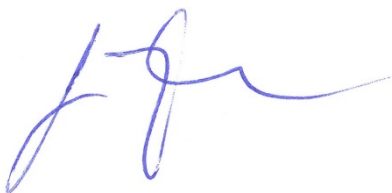
Our research unit and our Producer Offset unit collaborate on aggregating and anonymising statistics for the Producer Offset, and we make this aggregated data publicly available on our website, within the constraints of tax secrecy legislation. There is therefore nothing more that we can provide you in response to 2 (c) of your original request than the publicly-available information that we have already given you on this topic, such as guidelines, fact sheets and the Drama Report.

Decisions

My decisions in this review confirm Mr Coyle’s and Ms Supit’s previous decisions. Because of this, you have certain rights of review, which you can find below.

I note from your request for clarification from 15 September that you appreciated our Drama Report. I’m happy to tell you that the 2014-15 edition will be published on Friday 30 September, and reiterate that we would be happy to engage with you if you have any further questions on arm’s-length transactions.

Yours sincerely



Fiona Cameron

Chief Operating Officer

Rights of Review

External review - the Information Commissioner

1. Following this internal review, you may seek a review of my decision by the Australian Information Commissioner (**AIC**) in accordance with paragraph 2 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.
2. You will be entitled to make an application within a further 60 days to the AIC for a review of the original decision.
3. 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.
4. 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

5. The AAT is a completely independent review body with the power to make a fresh decision in response to your request.
6. 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.
7. Further information is available from the AAT Registry, telephone 1300 366 700.

Complaints to the Commonwealth Ombudsman

8. 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.
9. 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
10. 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.