

29 May 2025

Mr John Smith / Peking Pamela / Mr Patrick Wright

By email: foi+request-13098-50d6d249@righttoknow.org.au

Dear applicant

ABC FOI 202425-127 - NOTICE OF INTENTION TO REFUSE YOUR REQUEST

I refer to your email sent Tuesday 29 April 2025 seeking access under the *Freedom of Information Act* (Cth) 1982 (the **FOI Act**) to:

...Please provide any coverage guidance and email correspondence, including discussions between colleagues, regarding the use of terminology used to refer to anti-trans feminists /gender critical activists.

On Monday 12 May 2025, the ABC emailed you to confirm whether you were making a freedom of information request or an informal administrative access request. In that email, the ABC also stated:

We note that you have not replied to 3 different emails sent to your Right To Know email address. This indicates you may not have an effective address for service. If you would like this file to continue, please respond as soon as possible.

As of 29 May 2025, the ABC has not received a reply from you to 4 separate emails sent to you about 3 different Right to Know email addresses. We consider you are uncontactable without an effective address for service.

At this stage, the ABC considers you have made an informal request that does not comply with s 15 of the FOI Act. It is optional to process informal requests and the ABC does not intend to process an administrative access request,

Had you made a valid request, a decision would be due by Thursday **29 May 2025**.

Authorisation

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

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 s 93A of the FOI Act (**the Guidelines**)

Locating and identifying documents

The search for documents included approaching the ABC News and Editorial teams.

Invalid wording – s 15 of the FOI Act

Under s 15 of the FOI Act, a valid request must provide information that is reasonably necessary to enable a responsible officer of the agency to identify the document(s) sought. Your scope is unclear and lacks a timeframe for searches. Section 15 also requires applicants to be contactable in writing, which is known as an effective address to serve documents. You have not acknowledged receipt or replied to any emails the ABC has sent over the past month. We consider you are currently uncontactable.

s 24AA – Practical refusal reason

Had you confirmed before 29 May 2025, that you wanted to make a FOI request under the Commonwealth FOI Act and that you have a valid email to receive ABC responses, I am of the view that the work involved in processing your request in its current form will unreasonably divert the resources of the ABC from its other operations due to the substantial number of documents which may fall within the scope of the request (ss 24AA(1)(i) and 24AA(2)(b)(i)), which is a *'practical refusal reason'*. On this basis, if your request was valid, I intend to refuse access to the documents you have requested based on the size of the request as the scope is not clear for effective searches to be made. Before I make a final decision, to close the file on this basis, you have the opportunity to revise your request which is a *'request consultation process'* as set out under s 24AB.

You have 14 days to respond to this notice in one of the ways set out at below.

This letter is a notice under s 24AB, meaning the time to process your request will be stopped until we have completed consultation with you regarding the scope of your request, under s 24AB(8).

Examination and assessment time

Based on preliminary consultation and searches, I have considered how much the time it would take the FOI decision maker to locate, examine, assess and edit the documents in scope in order to process and make a decision on your FOI request, had you made a valid request at the outset. I advise the following:

- You have not identified a timeframe for the searches to be conducted
- You have not indicated what area of the ABC may hold documents
- You have not noted whether you seek Editorial guidance, or another type of written advice or guidance
- A discussion is not a document that can be searched or collated

Decision making time

Based on the need to clarify the above to finalise meaningful searches, I have estimated there could be between 60 and 80 hours of unfocused searches, including decision making time, which is not reasonable as there is no timeframe, or area / team, for the ABC to search. It appears any outcome of effort to conduct wide searches may not be received by you as you appear to not receive our emails or mark them as read on the Right to Know website which generated your email address/es.

Diversion of resources

The Guidelines identify matters that may be relevant when deciding whether processing the request will unreasonably divert an agency's resources from its other functions. These include:

- the staffing resources available for FOI processing
- the impact that processing a request may have on other work in the agency, including FOI processing whether an applicant has cooperated in framing a request to reduce the processing workload
- whether there is a significant public interest in the documents requested
- other steps taken by an agency or minister to publish information of the kind requested by an applicant.

The ABC FOI team is small, with few people available to process FOI requests received nationally. The FOI team would be diverted from its other functions work which includes responding promptly to the OAIC regarding IC Reviews, internal support and guidance required regarding FOI matters and reporting, processing other original decisions, and training.

In addition, other areas of the ABC would also be diverted from their principal roles by making searches in an unlimited time frame. The ABC has a large number of staff and the FOI team is not able to assume which parts of the ABC you mean for searches to be conducted.

Request consultation process

You have an opportunity to revise your request to enable it to proceed, so it is valid and clear.

First, please confirm in writing that you wish to make a request pursuant to the Commonwealth *Freedom of Information Act*, so that your request complies with s 15 and can be considered valid and demonstrates your email address is functional.

Revising your request by narrowing the scope, for example, by providing specific information about exactly what team in the ABC you would like to search for documents, and also state a clear timeframe (such as April to May 2025).

Before the end of the consultation period, the FOI Act requires you respond in writing to:

- withdraw your request;
- make a revised request; or
- state you do not wish to revise your request.

The consultation period runs for 14 days starting the day after you receive this notice. You must respond to this notice, in writing, by Thursday **12 June 2025**.

During this period, you can ask the ABC's for help revising your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, and complies with s 15, the ABC will recommence processing it.

If you do not respond within the nominated 14 day period, in writing, your request will be taken to have been withdrawn and closed on that basis, pursuant to the FOI Act.

Ways you can reduce the scope of your request

Ways to reduce the request, include:

- Stating a specific, reasonable timeframe, such as 2 months or 1 year
- Limiting your request to the search for specific key words within the emails within a particular team at ABC, such as Editorial
 - Keywords could be: gender critical activists, and, to anti-trans feminists

Contact officer

During the consultation period, you may contact the ABC to ask for help in revising your request. The contact officer's details are:

Senior FOI Officer

02 8333 3312 | foi.abc@abc.net.au

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

Annexure A – Your Review Rights

If you are dissatisfied with this decision you can apply for Internal Review of the decision 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 BY THE ABC

You have the right to apply for an internal review of the decision refusing to grant access to documents. If you apply for an internal review, a delegate who is not the person who made the initial decision will undertake 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 helps if you set out the reasons for review in your application and include the decision under review.

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

or posted to: **FOI team**
ABC Legal
GPO Box 9994
SYDNEY NSW 2001

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. Your application must:

- be in writing;
- be made **within 60 days** of receipt of this letter (the original decision or the internal review decision, or a deemed refusal decision);
- give details of how notices may be sent to you (eg. an email address); and
- include a copy of the decision for which a review sought.

Please refer to the OAIC website the IC review process page for further information including the online form for applying for IC review:

<https://www.oaic.gov.au/freedom-of-information/your-freedom-of-information-rights/freedom-of-information-reviews>

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

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

The Information Commissioner has a discretion not to undertake a review.

COMPLAINTS TO THE INFORMATION COMMISSIONER

You may complain to the Information Commissioner about 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