

3 December 2025

(Not the real) Bob Neil

**By email:** [foi+request-13580-0b74f3cb@righttoknow.org.au](mailto:foi+request-13580-0b74f3cb@righttoknow.org.au)

Dear (Not the real) Bob Neil

## **DECISION – ABC FOI 202526-029**

I refer to your email sent Wednesday 3 September 2025 seeking access under the *Freedom of Information Act* (Cth) 1982 (the **FOI Act**) to:

...Please provide records of any inquiry or investigation of the conduct of Dr Norman Swan in relation to the potential conflict of interest associated with his personal pecuniary interest in the 'Chemist 2 U' prescription home delivery service.

On 15 September 2025, by email sent to the FOI team, you provided background information to assist with searches:

In March 2020, Swan and his business partner Matthew Cullen launched a new business called Chemist 2U, which provides home delivery of chemist prescriptions and other pharmacy products. The launch of their home delivery chemist and prescription service coincided perfectly with the start of the Covid pandemic state of emergency, during which the citizens of our fair nation spent extended periods (a) in lockdown at home and (b) requiring and seeking medicine and chemist items. Their timing was extraordinarily fortuitous, certainly, and perhaps only the clinically perspicacious would say, suspiciously so. The ongoing and unprecedented public health restrictions provided a supercharged springboard for Chemist 2U, which may have otherwise struggled to generate demand.

Meanwhile, Swan was the ABC's 'voice of Covid', via his Covid-cast, sharing his views with the nation about the usual bug-bears of public health :- lockdowns (more and longer please, preferably forever), the dreaded lurgy (Hasta La Vista Nanny), masks (it's your duty - buy now), cough drops (strongly recommended and cheaper in bulk), and eucalyptus inhalers (only \$3.99 or two for \$10). Media observers who are in the know, including Paul Barry on Media Watch, observed that Swan was using his platform at the ABC to press for longer, harder lockdowns, leading some to wonder whether such vociferous advocacy might be influencing public health officials. Others just thanked their lucky stars that Aunty was blessed with a public health pundit capable of providing reliable, credible, and most importantly, independent expert opinion about the government policies that were making his side hustle go completely gangbusters. In short, Swan and the ABC could have protected the national broadcaster's editorial integrity by declaring Swan's personal pecuniary interest in relation to the subject matter of his expert opinion. But they didn't.

Certain precepts in the ABC Editorial Policy do appear to be somewhat relevant in this regard:

1.1 Maintain the independence and integrity of the ABC.

1.2 Exercise ABC editorial control over the content the ABC broadcasts or publishes.

1.3 Ensure that editorial decisions are not improperly influenced by political, sectional, commercial or personal interests.

1.4 External activities of individuals undertaking work for the ABC must not undermine the independence and integrity of the ABC's editorial content.

That should explain the context for you. In terms of the potential sources for documents within the ABC, I do not wish to limit your enquiries, and you will know better than I where documents of the sort that I have requested would usually reside, May I suggest that you might start with the ABC Ombudsman's office, and Jonathan Webb, the Science Editor. You could also ask the person called Sally Jackson, whose name appeared at the bottom of a PR release entitled 'ABC Statement on Norman Swan' dated 20 April 2020.

To be clear, Swan and Cullen set up the company Tonic Media some years ago, and Chemist 2 U was set up as a subsidiary of Tonic Media. I gather that Chemist 2 U has since attracted substantial private equity funding from which Swan or his associates stood to gain a massive benefit.

The above context is noted for background. The ABC Ombudsman's office is the designated process for reviewing a complaint about content or Editorial Standards. Concerns are to be raised within the Ombudsman's framework and timeframes in order to be investigated<sup>1</sup>.

On Thursday 2 October 2025 by email, the timeframe for processing your request was extended by agreement by 30 days under s 15AA of the FOI Act. As notified to you by email on Monday 3 November 2025, the ABC was required to consult with an affected third party, such that the timeframe was automatically extended by 30 days, under s 15(6) of the FOI Act.

A decision is due on your request by Wednesday **3 December** 2025 (today).

The ABC has been processing a high volume of requests and we thank you for your patience where we have been finalising requests were received before yours at the same time as processing your request.

### **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 refused access to the documents that answered the scope, specifically those that in part or full were:

...records of any inquiry or investigation of the conduct of Dr Norman Swan in relation to the potential conflict of interest associated with his personal pecuniary interest in the 'Chemist 2 U' prescription home delivery service.

These documents are not subject to the FOI regime meaning there is not a right to seek access to these documents under the FOI Act.

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<sup>1</sup> <https://www.abc.net.au/about/ombudsman> accessed 1 December 2025

Under s 7(2) of the FOI Act, Schedule 2 Part II refers, the ABC as an agency is exempt from the operation of the FOI Act in relation to its program material. The document/s located in response to your request were program material. The ABC is not required to take any action in relation to these document/s under FOI.

On page 6, I have included information approved to share with you that was provided after third party consultation with Dr Swan, who is a contractor.

### **Material taken into account**

In making my decision I have considered:

- the scope of your request
- the content of the document/s requested
- the FOI Act
- the guidelines issued by the Office of the Australian Information Commissioner under s 93A of the FOI Act (**the Guidelines**)
- consultation with affected third party, and
- relevant case law

### **Locating and identifying documents**

The search for documents included approaching the ABC Ombudsman's office, the Audio team and the Communications team.

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.

### **Reasons for decision (under s 26 of the FOI Act)**

#### **Program material s 7(2) – exempt agencies in respect of particular documents**

The document/s that answer the scope of your request are the ABC's program material and are refused on the basis they are not subject to the FOI Act. The ABC's program material falls outside of the FOI regime meaning it is not subject to an access request.

Section 7(2) of the FOI Act provides that (my underlining):

The persons, bodies and Departments specified in Part II of Schedule 2 are exempt from the operation of this Act in relation to the documents referred to in that Schedule in relation to them.

Part II of Schedule 2 lists the ABC in “...*in relation to its program material and datacasting content*”. 'Program material' is not defined in the FOI Act, however it has been the subject of judicial consideration.

The Guidelines<sup>2</sup> point to *Australian Broadcasting Corporation and Herald and Weekly Times Pty Limited*<sup>3</sup> (**ABC and HWT**), where the AAT held that program material means a

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<sup>2</sup> Refer to section 2.19 of the [FOI Guidelines - Compliance - October 2025](#)

<sup>3</sup> *Australian Broadcasting Corporation and Herald and Weekly Times Pty Limited* [2012] [AATA 914](#) at para 57

document *‘which is the program and all versions of the whole or any part of the program, any transmission broadcast or publication of the program, and includes a document of any content or form embodied in the program and any document acquired or created for the purpose of creating the program, whether or not incorporated into the complete program.’* (my underlining).

The ABC’s program material includes content published on any platform, from a television episode to a radio show to a related online article on the ABC’s website. It is clear that material broadcast as part of the ABC’s radio or television shows is program material. The same assessment applies to transcripts of material that was broadcast on air. Program material includes editorial decision making and program elements, pre- and post- broadcast content, including rundowns, source material, and guidance about coverage. Program material also includes complaints about the ABC’s publications and broadcasts and related documents, including investigations related to content or complaints about content. The OAIC agrees that content complaints are not subject to FOI.

#### Reasonably direct relationship to program material

The Guidelines<sup>4</sup> adopt the ‘reasonably direct relationship’ test in ABC and HWT when it comes to documents *‘in relation to’* program material, i.e. that the ABC exemption applies to documents comprising program material as well as documents which have a reasonably direct relationship with that program material. The Guidelines contrast *‘reasonably direct’* with a connection that is *“indirect, remote or tenuous”*.<sup>5</sup> (my underlining).

The documents at issue directly relate to the ABC’s journalism and program making, including any complaints about same. They directly relate to substantive content of the ABC’s program material being complaint/s about broadcast material. Some included comments about Dr Norman Swan, who at the time was presenting programs, and the complainant’s opinion about either the program itself or Mr Swan’s involvement in that program at the time. These documents are exempt from the operation of the FOI Act under s 7(2).

#### ‘In relation to’ program material

The Federal Court of Australia considered the scope of the s 7(2) exemption in *Australian Broadcasting Corporation v The University of Technology, Sydney (ABC v UTS)*<sup>6</sup> and held that the exemption also applies to *‘any document that relates to program material’*. In that case, the documents sought were relating to complaints made to the ABC, including *“internal files and correspondence, board minutes, investigation files and reports and documents in relation to the complaints.”* (my underlining).

In June 2025, in *‘AXI’ and Australian Broadcasting Corporation (Freedom of information)* at [32]<sup>7</sup> (**AXI and ABC**), the FOI Commissioner was satisfied that complaints to which the documents relate quote directly from program material and concern the

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<sup>4</sup> Para 2.19 of the [FOI Guidelines - Compliance - October 2025](#)

<sup>5</sup> See para 2.19 of [FOI Guidelines - Compliance - October 2025](#) and para 99 of [ABC and HWT](#).

<sup>6</sup> [2006] FCA 964

<sup>7</sup> [2025] AICmr 125 (30 June 2025)

substantive content of programs and content-making meaning they were also the ABC's program material under s 7(2).

In AXI and ABC, the Commissioner made it clear that documents are not narrowly required to be information that was publicly broadcast but could be *related to* broadcast content or other programming, and program elements, to be exempt under s 7(2). Documents that comprised discussions about the content of the ABC's program material together with any complaints about ABC programs were found to be exempt under s 7(2). Relevantly, this would extend to claims that a particular presenter creating content at the ABC may have had a conflict of interest about the subject matter of the content that was broadcast to the audience. Based on the documents I have reviewed, this information was inextricably linked with internal discussions about programs and programming.

Whether or not enquiries, scripts, draft material or notes, or interview recordings make a final iteration of a published or broadcast story is not relevant as pre- and post-broadcast material is covered by the program material exemption.

#### Post-broadcast material

ABC and HWT [57] says program material "*...would include a document created after a program is broadcast. Such documents might include...internet pages and documents produced by the ABC or incorporated in its records directly concerning the substantive content of the broadcast program*" (my underlining). This clearly includes documents that for the review or investigation of the ABC's content or decision-making about content, whether this is an investigation undertaken by the ABC Ombudsman or otherwise within the ABC about content that has been aired, including when there may have been an allegation of bias whether it was perceived or otherwise.

As the documents fall outside of the FOI regime, the ABC is not required to take any further action under FOI in relation to the document as it has a direct relationship with the ABC's content.

The program material exemption is not subject to a public interest test.

Had the documents not been exempt as program material being complaints and related documents, I am of the view that personal privacy of the complainants as well as Dr Swan would have been a relevant consideration to apply an exemption on balance, under s 47F, where the weighting of the public interest would have been against disclosure. This analysis however is not necessary as the s 7(2) exemption is absolute and overrides a s 47F claim.

#### **Affected third party consultation**

The scope of your request identified third parties, being Dr Swan and Chemist 2 U. For the purposes of any investigation or perceived employment relationship, Dr Swan is a third party to the ABC as he is a contractor. The ABC consulted with him under ss 27 and 27A about a document and whether there may be information that he was happy to share as administrative release outside of FOI. Dr Swan did not agree to release the document under FOI. This being personal information to him as a third party and equally the ABC's program material.

Dr Norman Swan in responding to consultation advised he was happy to share you that:

*Dr Swan is a contractor to the ABC and has disclosed his small minority shareholding in Tonic Media Network which in turn has a minority shareholding in Chemist 2 U.*

The paragraph above is in interests of transparency where other documents are rightfully exempt in full as they fall outside of the FOI regime. It is consistent with the statement you referred to previously, linked here<sup>8</sup>, and is shared as administrative release whereby the substantive documents are refused under the FOI Act.

I note that you raised a concern by email where you considered the decision may have become deemed on day 60 whereas the ABC advised it was due on 3 December 2025 being day 90 of the processing period after two 30 day extensions.

I note the ABC's program material is not subject to an access request in the first place. This means that on day 60, if the decision became a deemed refusal it would have had no practical negative impact on you in that the documents were not subject to the FOI regime and would have not be released to you under FOI on any earlier date. An on time decision (or a deemed decision) gives applicants a 60 day period to seek review of a decision meaning you are still within time to may exercise your review rights. The OAIC has discretion to extend this period. The benefit of the extra time taken by the ABC for consultation was to allow the third party to consider sharing information with you that was otherwise rightfully exempt and not subject to an access request. As a result, the wording on page 6 was provided to you directly as a result of consulting with the third party. We thank you for your patience.

Despite the exemption under s 7(2) applying to the documents in scope, the ABC has facilitated an outcome where some information was shared with you in the spirit of the legislation.

### **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](mailto:foi.abc@abc.net.au)

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<sup>8</sup> [ABC statement on Dr Norman Swan - About the ABC](#) published 20 April 2020

## **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](mailto: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](mailto: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