

3 March 2016

Mr Brandon Atkins

By email: foi+request-1692-a4ab163e@righttoknow.org.au

ACMA file reference: ACMA2016/172

Dear Mr Atkins

Request for access to documents under the *Freedom of Information Act 1982*

I refer to your *Freedom of Information Act 1982* (FOI Act) request dated 29 February 2016 and received on that day, in which you sought access to:

[...] any documents of investigation in regards to the 2DAY FM hoax in December 2012 in which a UK nurse committed suicide from the radio presenters actions in a segment they did on the defunt [sic] Hot 30 Countdown.

Clarification of the scope of your request

In addition to acknowledging receipt of your request, I am writing to seek clarification of the scope of your request.

Limited scope

On one reading, your request appears to solely concern the ACMA's report of its investigation into the incident to which you refer (sometimes referred to as 'the royal prank call'). For your information, the ACMA has published the report of its investigation of that matter along with a substantial volume of related background information. The information is available here: <http://www.acma.gov.au/theACMA/Newsroom/Newsroom/Media-releases/2dayfm-royal-prank-broadcast>.

You may be aware that the ACMA's investigation into the broadcast was extensively litigated. The decisions of the Federal Court of Australia, the Full Court of the Federal Court of Australia and the High Court of Australia may contain information of interest to you and are available at the following URLs:

<http://www.austlii.edu.au/au/cases/cth/FCA/2013/1157.html>

<http://www.austlii.edu.au/au/cases/cth/FCAFC/2014/22.html>

<http://www.austlii.edu.au/au/cases/cth/HCA/2015/7.html>

Additionally, I understand that the court documents relied upon for each of the above-mentioned judicial decisions are publicly available. Those documents may contain information of interest to you, in which case you could contact the registries of the Federal Court and the High Court so as to obtain those documents.

If it is the case that your request solely concerns the ACMA's investigation report and you are satisfied with the information I have provided above to enable you to access that publicly available document, along with other related, publicly available documents, could you please formally respond to this letter indicating as much and withdrawing your request.

Broader scope

Alternatively, the scope of your request might be interpreted broadly, so as to include every document held by the ACMA related to its investigation of the relevant broadcast. The ACMA's investigation took approximately two and a half years to finalise (as noted, it was the subject of protracted litigation). A number of ACMA staff worked on the investigation and the ACMA would likely hold hundreds of documents that would fall within the scope of your request (if it is intended to be interpreted as to include every document held by the ACMA related to this investigation).

If the intended scope of your request concerns every document held by the ACMA related to the investigation, you should note that it will take a considerable amount of time for the ACMA to retrieve and assess each document that falls within the scope of your request and to determine whether any of the exemptions in the FOI Act apply, such as those relating to personal information, deliberative processes and legal professional privilege.

It is also likely that the ACMA will need to consult with third parties before making any decision on release. This may mean that the ACMA will need an additional 30 days (as provided for in the FOI Act) to undertake consultation with third parties, which may mean the ACMA may not make a decision in respect of your request until towards the end of April 2016. You should also note that the FOI Act makes provision for the ACMA to impose charges in respect of processing your request. I have set out those charges below.

Please also note that the FOI Act provides (see section 24AA) that the ACMA may refuse to give access to documents sought by way of a request made under the FOI Act if a *practical refusal reason* exists. Pursuant to subparagraph 24AA(1)(a)(i) of the FOI Act, a practical refusal reason exists if the work involved in processing a request "would substantially and unreasonably divert the resources of the agency from its other operations".

Unless withdrawing the request as noted above, could you please reply formally to this letter indicating your preferred interpretation of the scope of your request, or otherwise, if you wish to rephrase or refine the scope of your request.

Charges

The processing charges which the ACMA is entitled to impose are prescribed in the *Freedom of Information (Charges) Regulations 1982*.

These charges include:

- > searching and retrieving (\$15.00 per hour)
- > making a decision on access (\$20.00 per hour after the first five hours, which are for free)
- > photocopying a written document (10 cents per page)
- > making a copy of a written document other than a photocopy (\$4.40 per page)
- > postage or delivery (an amount not exceeding cost of postage or delivery)
- > transcribing (\$4.40 per page)
- > supervising, if the applicant wishes to inspect (\$6.25 per half an hour, or part thereof).

The ACMA will, in accordance with section 29 of the FOI Act, advise if you are liable to pay any charge and provide a preliminary assessment of those charges.

Time for processing

Australian
Communications
and Media Authority

www.acma.gov.au

The statutory timeframe for responding to your request under the FOI Act is generally 30 days, commencing the day following the day on which the ACMA received the valid application.

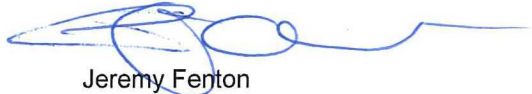
In accordance with subsection 15(5) of the FOI Act, we will notify you of a decision regarding your request as soon as practicable, but in any event by 30 March 2016, unless the timeframe is extended under the FOI Act.

Further information

Further information about the FOI Act, including the ACMA's publication obligations, is available on the ACMA's website at <http://www.acma.gov.au/theACMA/About/Corporate/Accountability/freedom-of-information-acma>.

Please do not hesitate to contact me on either (02) 9334 7880 or via email at jeremy.fenton@acma.gov.au if you have any questions.

Yours sincerely



Jeremy Fenton
Manager
Broadcasting Investigations Section

