

6 December 2012

G. King
c/- "Right to Know"
By email: foi+request-20-22a0327a@righttoknow.org.au

ACMA file reference: ACMA2011/1067

Dear Sir/Madam,

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

I refer to your email of 25 November 2012, requesting access under the *Freedom of Information Act 1982 (FOI Act)* to "a copy of all "link-deletion" notices issued by the [Australian Communications and Media Authority (ACMA)] from January 2000 through to October 2012".

Final and interim link-deletion notices are given by the ACMA under Division 5, Part 3 of Schedule 7 to the *Broadcasting Services Act 1992 (BSA)*. Final link-deletion notices are given in respect of certain "prohibited content", and interim link-deletion notices are given in respect of certain "potential prohibited content".

Under the BSA, content is prohibited content if it has been classified by the Classification Board as:

- Refused Classification (RC) or X18+, or
- R18+ and access to the content is not subject to a restricted access system within the meaning of the BSA, or
- MA15+ and access to the content is not subject to a restricted access system within the meaning of the BSA and certain other conditions are met.

Potential prohibited content is content that has not been classified by the Classification Board, but is substantially likely to be prohibited content if it were to be classified by the Classification Board.

I have taken your request to be for final and interim link-deletion notices.

Timeframe referred to in request

Schedule 7 to the BSA was inserted in 2007. Therefore no link-deletion notices were given by the ACMA prior to 2007.

ACMA exempt from operation of FOI Act in respect of certain documents

Subsection 7(2) of the FOI Act provides that:

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.

Under Part II of Schedule 2, the ACMA is listed as an agency that is exempt from the operation of the FOI Act in respect of certain documents, namely, "exempt content-service documents concerning the performance of a function, or the exercise of a power, under Schedule 7 to the [BSA]".

"Exempt content service document" is defined in section 4 of the FOI Act to mean:

- (a) a document containing content, or a record of content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*), that:
 - (i) has been delivered by, or accessed using, a content service (within the meaning of that Schedule); and
 - (ii) was offensive content-service content when it was delivered by, or accessed using, that content service; or
- (b) a document that sets out how to access, or that is likely to facilitate access to, offensive content-service content (for example, by setting out the name of a website, an IP address, a URL or a password).

The term "offensive content services" is also defined in section 4 of the FOI Act and essentially means prohibited content and potential prohibited content within the meaning of Schedule 7 to the BSA.

The documents you seek are documents prepared in respect of the exercise of a power under Schedule 7 to the BSA. The documents in question:

- contain records of content that has been delivered by, or accessed using, a content service, and which was offensive content-service content when it was delivered by, or accessed using, the content service; or
- set out how to access (or are likely to facilitate access to) offensive content-service content.

Accordingly, I consider that the ACMA is exempt from the operation of the FOI Act in respect of these documents in accordance with subsection 7(2) of the FOI Act and Part II of Schedule 2 to the FOI Act.

Your rights of review

While I consider that the ACMA is exempt from the operation of the FOI Act in respect of the documents you seek I have enclosed the ACMA's Information Sheet entitled *Freedom of Information Act 1982 - Rights of Review*.

If you have any questions or wish to discuss this letter please contact me on (02) 9334 7700.

Yours sincerely



Jeremy Fenton
Manager, Content Classification Section

INFORMATION SHEET

Freedom of Information Act 1982 - Rights of Review

The purpose of this information sheet is to set out the rights of applicants to seek review of decisions made by the ACMA under the *Freedom of Information Act* (FOI Act).

1. Review of decisions

If you are dissatisfied by any decision made by an ACMA decision maker concerning access to documents or charges imposed for processing your request you can ask the ACMA to conduct a review of the decision or you may apply to the Australian Information Commissioner (the Information Commissioner) for a review.

1.1 Application for review by the ACMA

If you want the ACMA to conduct a review of the decision you must write to the ACMA. You should set out why you are dissatisfied with the decision made. The review will be undertaken by a different ACMA decision maker.

Time within which to seek review

Generally, your request must be made within 30 days of receiving notice of the decision (see section 54B of the FOI Act).

The application may be sent to the ACMA in any of the following ways:

Hand delivery:	Level 5, The Bay Centre, 65 Pirrama Road, Pyrmont, NSW, 2000 Purple Building, Benjamin Offices, Chan Street, Belconnen, ACT, 2617 Level 44, Melbourne Central Tower, 360 Elizabeth Street, Melbourne, VIC, 3000
Post:	PO Box Q500, Queen Victoria Building, NSW, 1230 PO Box 78, Belconnen, ACT, 2616 PO Box 13112 Law Courts, Melbourne, VIC, 8010
E-mail:	foi@acma.gov.au

An application hand delivered or posted to the ACMA should also be marked to the attention of the FOI Co-ordinator.

If, after this review, you remain dissatisfied you may ask the Information Commissioner to conduct a review (see the discussion below).

1.2 Application for review by the Information Commissioner

If you are dissatisfied by a decision made by an ACMA decision maker you may ask the Information Commissioner to conduct a review.

The request for review by the Information Commissioner must be made in writing and you should set out why you are dissatisfied with the decision. You must give details of how notices may be sent to you and include a copy of the relevant the decision.

Time within which to seek review

If it relates to an access refusal decision (which includes a decision under section 29 relating to the imposition of a charge or the amount of a charge) your request should generally be made within 60 days of receiving notice of the decision (see sections 53A and 54S of the FOI Act).

The application may be sent to the Office of the Australian Information Commissioner (the OAIC) in any of the following ways:

Hand delivery:	Level 3, 25 National Circuit, Forrest, ACT Level 8, Piccadilly Tower, 133 Castlereagh Street, Sydney NSW
Post:	PO Box 2999, Canberra, ACT, 2601 PO Box 5218, Sydney, NSW, 2001
E-mail:	enquiries@oaic.gov.au
On-line:	www.oaic.gov.au
Facsimile:	02 92849666

2. Right to make a complaint

If you have concerns about any action taken by the ACMA in the performance or exercise of its functions or powers under the FOI Act, you may make a complaint to the Information Commissioner.

You are encouraged by the OAIC to contact the ACMA directly to try to resolve any concerns of that kind before making a complaint to the Information Commissioner.

If you make a complaint, it must be in writing and identify the ACMA as the agency about which you wish to complain.

A complaint may be sent to the Information Commissioner by post, e-mail, online or facsimile (see the details set out above at 1.2).