

20 October 2016



Australian
Broadcasting
Corporation

CD

Corporate Affairs

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Dear CD

FOI REQUEST – REFERENCE NUMBER 2016–027

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 28 September. Specifically, you have sought access to the following documents:

“Emails, letters and memo created and held by the ABC between 22 July 2016 and 27 September 2016 (inclusive) regarding the participation of Blair Cottrell on Hack Live: Aussie Patriots as broadcast on 22 September 2016.

I am authorised by the Managing Director under section 23 of the FOI Act to make decisions in respect of requests made under that Act. Following is my decision in relation to your request.

The ABC is specifically excluded from the operation of the FOI Act in relation to its program material by virtue of s.7(2) and Schedule 2, Part II of the FOI Act. ‘Program material’ for the purposes of that Part has been interpreted to mean:

“...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 completed program...”¹

Any documents relating directly to the production and broadcast of the *Hack Live: Aussie Patriots* program—including any communications between potential or actual participants in the program—would have been specifically created in order to create the program. It is clear on the face of your request that you are seeking access to documents which relate directly to the creation of a program that was broadcast on the ABC. There is little doubt that the documents that would have been “...created for the purpose of creating the program, whether or not incorporated into the completed program”.

¹ *Australian Broadcasting Corporation and Herald and Weekly Times Pty Limited and Anor [2012] AATA 914 (21 December 2012)*, see [57].

On that basis, I consider that the documents requested would fall within the definition of 'program material' and that the ABC is exempt from the operation of the FOI Act in relation to those documents.

If you are dissatisfied with this outcome you can apply for Internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking IC Review. Information about your review rights is attached.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'jmaude', written in a cursive style.

Judith Maude
Head, Corporate Governance