

2 October 2013

Mr Greg Wilson  
Villa 3, Moreton View Tower & Villas  
42 Ferry St  
KANGAROO POINT QLD 4169

By Email: [foi+request-370-2cb7963c@righttoknow.org.au](mailto:foi+request-370-2cb7963c@righttoknow.org.au)

ACMA file reference: ACMA 2013/1411

Dear Mr Wilson

### **Request for access under the *Freedom of Information Act 1982***

I refer to your *Freedom of Information Act 1982* (FOI Act) request to the Australian Communications and Media Authority (the ACMA) dated 2 September 2013, in which you sought access to:

- 1) Details of ACMA's internal procedures and procedural guidelines for review of complaints of the nature of that raised.
- 2) All ACMA internal memoranda, correspondence, minutes of meetings of ACMA "teams" or officers (including dates and details of those attending) reports and recommendations in relation to ACMA's investigation reference ACMA2013/794 - Investigation 3042, and the conclusions reached by ACMA as detailed in its above-referred advices of 18 July and 12 August 2013.

On 6 September 2013, you agreed to limit the scope of the request to exclude:

- ACMA internal procedures and procedural guidelines for review of complaints of the nature of that raised that were not in place at the time your complaint was made; and
- all duplicate documents.

### **Authorisation**

I am authorised, pursuant to subsection 23(1) of the FOI Act, to make decisions in respect of requests for access to documents.

## Decision on access

Attached is a schedule of documents which I consider fall within the terms of your request. Please note that I have identified that 50 documents fall within your request and that all 50 documents are being released to you as follows:

- Documents marked 'Released in full' are to be released to you in full.
- Documents listed in the schedule and marked 'Released with deletions' will be partially released to you – that is, you will receive the documents but information which I consider to be exempt or irrelevant will be deleted from them. The deletion of this information is in accordance with section 22 of the FOI Act. Kindly note that the only information deleted is the personal details of ABC and ACMA employees and irrelevant information from four documents (documents 3, 10, 11 and 16). More details in this regard are given below.

I have specified in the schedule the sections of the FOI Act upon which I rely to claim exemptions in relation to the documents marked for partial release.

## Material relied upon

In making my decision on access, I have had regard to your FOI request, the FOI Act, and the Guidelines issued by the Office of Australian Information Commissioner under section 93A of the FOI Act (the Guidelines), which can be found at this address: <http://www.oaic.gov.au/publications/guidelines.html>.

## Reasons for decision

### *Deletion of irrelevant information*

Section 22 of the FOI Act provides for the removal of information from a document that would reasonably be regarded as irrelevant to the request for access.

Document 3 is an internal procedure for broadcasting investigations which includes details of investigation matters that are not related to the ACMA's investigation of your complaint. I have deleted this information from the document as it falls outside the scope of your FOI request and can be reasonably regarded as irrelevant to your request.

Documents 10 and 11 are internal documents that formally commenced the investigation of your complaint. The documents include details of complainants in other investigation matters that are not related to the ACMA's investigation of your complaint. I have deleted this information from the documents as it falls outside the scope of your FOI request and can be reasonably regarded as irrelevant to your request.

Document 16 is an agenda for the ACMA's internal weekly investigation meeting, at which staff members discuss various investigation matters. The document includes details of other investigation matters that are not related to the ACMA's investigation of your complaint. I have deleted this information from the document as it falls outside the scope of your FOI request and can reasonably be regarded as irrelevant to your request.

### *Exemptions and conditional exemptions in the FOI Act*

A document which contains conditionally exempt information may be exempt from release under the FOI Act if giving access to that document would be, on balance, contrary to the public interest (see section 11A(5) of the FOI Act).

As specified in the schedule of documents, I consider that some of the information in the documents falls within the conditional exemptions in Part IV of the FOI Act, namely:

- documents subject to the conditional exemption for personal privacy (section 47F); and
- documents subject to the conditional exemption for certain operations of agencies (section 47E).

***Conditional exemption for personal privacy (section 47F)***

Section 47F of the FOI Act relevantly provides:

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

Section 11A(5) of the FOI Act requires that access be given to a conditionally exempt document, 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'.

Personal information is defined in section 4 of the FOI Act to mean 'information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained from the information or opinion.'

A person's name, email address and fax numbers are 'personal information' within the meaning of the FOI Act. This information would clearly identify the person and link that person to information disclosed in the document.

I have decided that documents 10, 11, 13, 33 and 35 contain personal information including names, personal phone numbers, personal mobile numbers, external or personal email addresses, external or personal mailing addresses of ABC employees and complainants to the ACMA. This amounts to 'personal information' within the meaning of the FOI Act.

In relation to documents 10 and 11, these documents contain the names of individuals who have made other broadcasting complaints to the ACMA which are unrelated to your matter. I consider it would be unreasonable to disclose this personal information as it would clearly identify members of the public who have made such complaints to the ACMA and would reasonably expect their personal information to remain private. I therefore consider that such information is conditionally exempt under the section 47F of the FOI Act.

I consider that the disclosure of personal details of complainants is, on balance, contrary to the public interest as disclosure of such details could discourage people from making complaints to the ACMA, the regulatory agency with wide range of responsibilities including investigation of complaints about broadcast content. The receipt of complaints plays a central role in the ACMA's regulation of broadcast content.

In relation to documents 13, 33 and 35, these documents contain the names and email addresses of ABC employees. I consider it would be unreasonable to disclose this personal information as these staff members are not in public facing roles, this information is not already well known, and they may reasonably expect their names and email addresses to remain private. I therefore consider that such information is conditionally exempt under section 47F of the FOI Act.

I consider the disclosure of personal details of the ABC employees is, on balance, contrary to the public interest as it could reasonably affect the willingness of ABC employees to cooperate in a full and frank manner with the ACMA's investigation of complaints about material broadcast by the ABC. Although the ACMA is able to rely on its formal powers to require the provision of information, the voluntary provision of information to the ACMA facilitates the timely investigation of complaints.

As I have identified that some information in documents 10, 11, 13, 33 and 35 is exempt from disclosure, section 22 of the FOI Act requires me to consider if I am able to delete the exempt material and release the rest of the documents. I consider that I am able to delete the exempt material and accordingly have decided to release the documents to you with the exempt material deleted.

***Conditional exemption for certain operations of agencies (section 47E)***

I have decided to exempt from release names, e-mail addresses and telephone numbers of the ACMA's staff, where these appear in the documents. I make these exemptions on the basis that the s 47E conditional exemption applies to the information and release would be contrary to the public interest.

Section 47E provides that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

...

- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of the agency.

Section 11A(5) of the FOI Act requires that access be given to a conditionally exempt document, 'unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest'.

*Would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the agency*

I consider that release of the names and contact details of individual ACMA staff could reasonably be expected to have a substantial adverse effect on the proper and efficient conduct of the operations of the ACMA. Staff members may receive frequent phone calls and emails from members of the public which may interfere with their ability to perform their day to day functions in a timely and efficient manner.

Members of the public can contact the ACMA on a variety of telephone numbers, email addresses and fax numbers available on the ACMA website. These mechanisms for the public to contact the ACMA ensure that inquiries are promptly and efficiently directed to the right area or person, and are not affected by staff absences or changes in staff.

This facilitates efficient and effective engagement with the public through centralised contact points and enables those staff with other responsibilities to undertake their assigned tasks in an efficient manner.

*Disclosure would be contrary to public interest*

In considering whether disclosure of this information would be contrary to the public interest, I have considered whether there are any factors favouring disclosure, including the factors identified in section 11B(3) of the FOI Act.

While there is a public interest in promoting the objects of the FOI Act which includes increased scrutiny and review of the Government's activities, I do not believe release of individual officer's names and contact details would enhance or promote such scrutiny in this case. I note that the direct contact details of individual officers are not otherwise publicly available. Release of this information would not inform debate on any matter or promote oversight of public expenditure, nor does this relate to the applicant's own personal information.

Accordingly, I am satisfied that the relevant parts of documents identified in the schedule are exempt under section 47E(d) and that disclosure would, on balance, be contrary to the public interest. I have decided that it is reasonably practicable to delete this information from the documents in accordance with section 22 of the FOI Act. As a result, I have decided to release the documents to you, but with the names and contact details of the ACMA's staff removed.

### **Access to documents**

Copies of the documents are included with this letter.

### **Disclosure log**

As required by the FOI Act, the documents which I release to you will also be published on the FOI Disclosure Log on the ACMA's website within 10 days of release to you.

It is the ACMA's policy to not make public the personal information of people who make complaints to the ACMA about broadcast content. To this end, where the ACMA publishes an investigation report, it ensures that complainants (and other affected third parties) are de-identified.

As a result, although your personal information appears in the documents that are released to you, they will not appear in the documents that we publish on the disclosure log.

### **Your rights of review**

Please find enclosed the *ACMA's Information Sheet* entitled Freedom of Information Act 1982 - Rights of Review of Applicants.

If you have any questions in this matter please contact me on (02) 9334 7915.

Yours sincerely



### **Sue Gabor**

Authorised decision maker pursuant to subsection 23(1) of the FOI Act

Email [sue.gabor@acma.gov.au](mailto:sue.gabor@acma.gov.au)

# 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:	<a href="mailto:foi@acma.gov.au">foi@acma.gov.au</a>

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
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Level 8, Piccadilly Tower, 133 Castlereagh Street,  
Sydney NSW

**Australian  
Communications  
and Media Authority**

[www.acma.gov.au](http://www.acma.gov.au)

Post: PO Box 2999, Canberra, ACT, 2601  
PO Box 5218, Sydney, NSW, 2001

E-mail: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

On-line: [www.oaic.gov.au](http://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).