

26 February 2014



Australian  
Broadcasting  
Corporation

Mr Daniel Nolan

Corporate Affairs

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Dear Mr Nolan

### FOI REQUEST - REFERENCE NUMBER 2013-055

I refer to the request for access to documents under the *Freedom of Information Act 1982* (the FOI Act) in your email of 16 December 2013. You have sought access to the following documents:

*“[a copy of the] email archive of John McTernan that has recently been given to the ABC”.*

As you are aware, the time period for making a decision in this matter has expired. Technically, this means that access to the above documents is deemed to have been refused. I note that you have requested an internal review of that deemed access refusal decision. I confirm that I have referred the matter to an alternative Officer within the ABC who has delegation to make internal review decisions.

Notwithstanding the deemed refusal, I have finalised a decision in this matter which I have set out below purely for your information. I confirm that the internal review decision maker will consider and determine the matter *ab initio*.

I have taken reasonable steps to identify and locate all relevant documents. My search for these documents involved contacting:

- Office of the Director, News; and
- Head of Policy and Staff Development in the News Division.

I requested that searches be conducted of all hard and soft copy records for documents which fall within the scope of your request. As a result of those searches, a bundle of approximately 5 000 documents has been identified.

Based on my correspondence with relevant office holders within the News division, I have formed the view that all of the documents are ‘program material’. The ABC is specifically excluded from the operation of the FOI Act in relation to its program material by virtue of s7(2) and Part II, Schedule 2 of the FOI Act. ‘Program material’ for the purposes of that Part has been interpreted to include:

*“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..”* (emphasis added)

The documents you have requested relate directly to the substantive content of various news stories broadcast on the ABC. Accordingly, I am satisfied that they fall within the definition of 'program material' and the ABC is exempt from the operation of the FOI Act in relation to them. In those circumstances, a decision regarding access is not required.

I note that if the documents were considered to be within the scope of the FOI Act (which the ABC considers they do not), it is likely that access to them would be refused on the basis that they are exempt. Given my finding that the documents are not within the scope of the FOI Act, it is not necessary to provide reasons for refusing access based on any exemptions which may apply. However, the ABC reserves the right to rely on any exemptions, including but not limited to the exemption in s45 and s47E(d), in the event that a decision regarding access is required.

The internal review decision maker will provide their own decision in due course.

Yours sincerely



**Judith Maude**  
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