



8 March 2019

Mr Jonathan Sequeira

By Email: foi+request-5152-794a413e@righttoknow.org.au

Dear Mr Sequeira

ABC FOI REQUEST – REFERENCE NUMBER 201819-044

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the **FOI Act**) in your email dated 1 December 2018.

Specifically, you sought access to the following:

*“...all documents including emails sent or received between 10 July 2018 and 31 August 2018 inclusive, concerning complaints made to the ABC relating to the ABC’s decision not to acquire the documentary film *Descent into the Maelstrom – The Radio Birdman Story* (also known as the *Radio Birdman film*, or *Radio Birdman documentary*) for broadcast, including [documents] relating to the ABC’s internal processing of complaints, either as individual complaints or as a group of complaints.*

Excluded are documents, correspondence and emails sent by Jonathan Sequeira to the ABC, or received by Jonathan Sequeira from the ABC.”

In subsequent correspondence you clarified that:

“...the request does not include documents or emails which are:

- the actual complaints received by the ABC*
- transcripts of oral/phone complaints made to the ABC*

It does include:

- any summary of complaints*
- any documents (including emails) that quote from complaints.”*

Authorisation

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.

Locating and identifying documents

Reasonable steps were taken to identify and locate all relevant documents. The search for documents included contacting the Director, ABC Entertainment & Specialist and the Head of ABC Audience & Consumer Affairs, who consulted with relevant managers and staff in their teams.

As a result of those searches, three documents were identified which fall within the scope of your request (see **Appendix A**).

Material taken into account

In making my decision I have had regard to:

- the terms of your request;
- the content of the document identified as relevant to your request;
- the FOI Act;
- guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**).

Decision

Access is granted in part to Documents 1–3. My reasons for refusal of access to some material in the documents are provided below.

Section 22

Section 22 of the FOI Act allows access to be granted to an edited copy of a document if it is reasonably practicable to remove irrelevant material. Accordingly, all three documents have been redacted to remove information that does not come within scope of your request, or information that I have found to be exempt under the FOI Act, so that the part of the documents containing relevant information can be released to you in full.

Access refusal – public interest conditional exemption – section 47F (personal privacy)

Access to parts of Documents 1-3 is refused on the basis that I have found those parts to contain information that is conditionally exempt under section 47F of the FOI Act, that is that providing access would constitute an unreasonable disclosure of personal information.

In making that decision I have considered firstly whether the documents contain personal information, and secondly whether it would be unreasonable to disclose that information. I have also had regard to the Guidelines. In my view, the elements of the exemption in section 47F are clearly met.

The conditionally exempt information is information about an identified individual that is not publicly known.¹ Further, it is my view that release would cause stress to a person, and no public purpose would be achieved through that disclosure.² The parts of Documents 1-3 that contain the personal information as described above are therefore conditionally exempt from disclosure under section 47F of the FOI Act.

¹ Paragraph 6.129 of the Guidelines.

² Paragraph 6.142 of the Guidelines

Public interest

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

I have had regard to the factors set out in section 11B(3) of the FOI Act which favour disclosure. I have not taken into account the irrelevant factors in section 11B(4). I consider there is negligible public interest in the disclosure of the personal information identified in Documents 1-3. I have found that disclosure would, by contrast, affect the public interest in maintaining individuals' privacy where disclosure of information would add nothing to the public discourse and would cause distress to an individual. The information has no effect on the nature of the information released to you.

Accordingly, the information is exempt from disclosure under section 47F of the FOI Act.

Review rights

You have rights in relation to this decision. Those rights are set out at **Annexure A**.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'P Longstaff', written in a cursive style.

Pamela Longstaff
ABC Company Secretary & FOI Coordinator
foi.abc@abc.net.au

Appendix A – Schedule of documents

Doc #	Description
1.	Email from ABC Audience & Consumer Affairs dated 23 July 2018
2.	Email from ABC Audience & Consumer Affairs dated 25 July 2018
3.	Email from ABC Audience & Consumer Affairs with attachment dated 14 August 2018

Annexure A – Review rights

If you are dissatisfied with this decision you can apply for Internal or Information Commissioner (IC) Review. You do not have to apply for Internal Review before seeking IC Review.

Application for Internal Review

You have the right to apply for an internal review of the decision refusing to grant access to documents in accordance with your request. If you make an application for review, the Managing Director will appoint an officer of the Corporation (not the person who made the initial decision) to conduct a review and make a completely fresh decision on the merits of the case.

You must apply in writing for a review of the decision within 30 days of receipt of this letter. No particular form is required to apply for review, although it would help if you set out the reasons for review in your application.

Application for a review of the decision should be addressed to:

The FOI Coordinator
ABC Legal Services
Building B Level 13
700 Harris Street
ULTIMO NSW 2007

Or sent to: foi.abc@abc.net.au

Application for Information Commissioner (IC) Review

Alternatively, you have the right to apply for a review by the Information Commissioner of the decision refusing to grant access to documents in accordance with your request. Your application must:

- be in writing
- be made within 60 days of receipt of this letter
- give details of how notices may be sent to you (for instance, by providing an email address)
- include a copy of the decision for which a review sought.

You should be aware that the Information Commissioner has a discretion not to undertake a review (see Division 5, FOI Act).

Please refer to the Oaic website FOI review process page for further information and/or to access the online form for applying for IC review:

<https://www.oaic.gov.au/freedom-of-information/foi-review-process>

Application for a review of the decision by the Information Commissioner should be addressed to:

Director of FOI Dispute Resolution
GPO Box 5218
Sydney NSW 2001

Or sent to: enquiries@oaic.gov.au

Complaints to the Information Commissioner

You may complain to the Information Commissioner about any action taken by the ABC in the performance of functions, or exercise of powers, under the FOI Act. The Information Commissioner may make inquiries for the purpose of determining whether or not to investigate a complaint.

Complaints should be made via the Oaic's online form <https://www.oaic.gov.au/freedom-of-information/foi-complaints>, or to the following address:

Office of the Australian Information Commissioner
GPO Box 5218
Sydney NSW 2001