



2 September 2019

Mr Christian Apedaile

E) foi+request-5545-4827794c@righttoknow.org.au

Dear Mr Apedaile

FOI REQUEST – REFERENCE NUMBER ABC FOI 201920-009

I refer to your email of 31 July 2019 in which you sought access to the following under the *Freedom of Information Act 1982* (the FOI Act):

- *“...[documents containing] data from the vote compass survey conducted. The ABC has only published selected responses and not all questions.”*

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.

Material taken into account

In making my decision I have had regard to:

- the terms of your request
- the information provided to me by relevant ABC staff in relation 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 refused under section 24A of the FOI Act, as no documents exist at the ABC that come in scope of your request.

Further information regarding the reasons for my decision are provided below.

Section 24A – documents do not exist

It is stated on the *Vote Compass* webpage (available at <https://votecompass.abc.net.au/>) the ABC does not collect or retain any data provided by the public when using the *Vote Compass* survey. Data is collected by Vox Pop Labs, the ABC's external survey partner.

The ABC staff member responsible for coordinating the 2019 *Vote Compass* survey project has confirmed the ABC does not hold any documents which contain data from the survey. Vox Pop Labs collected the data from the survey, provided the ABC with data analysis outlining the 'weighted' results of the survey (not the answers of every individual), and retained that data after the survey ended.

Documents containing these results comprised the information used in order to create reporting on the *Vote Compass* survey outcomes. These documents are also not available for release, as they constitute 'program material' for the purposes of section 7(2) of the FOI Act. More information on 'program material' is provided below.

Section 7(2) – program material

As discussed above, the ABC received analysis of the information obtained from the 2019 *Vote Compass* survey from Vox Pop Labs. It used this information for the sole purpose of creating content to publish on its platforms throughout the 2019 Federal Election period.

The ABC is specifically excluded from the operation of the FOI Act in relation to its program material, and documents in relation to its program material, by virtue of section 7(2) and Division 1 of Part II of Schedule 2 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

Documents containing any statistical analysis related to the *Vote Compass* survey are documents "acquired or created for the purpose of creating the program", as they only exist in a form held by the ABC for the purposes of creating ABC content for publishing or broadcast. The ABC is specifically excluded from the operation of the FOI Act in relation to those documents under section 7(2).

Review rights

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

Yours sincerely,



Pamela Longstaff

Head of Corporate Governance & FOI Coordinator

foi.abc@abc.net.au

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

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
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 in writing to the following address:

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