

16 July 2021

Ms Vanessa Teague

E) foi+request-7511-4e78c120@righttoknow.org.au

Dear Ms Teague

FOI REQUEST – REFERENCE NUMBER ABC FOI 202021-055

I refer to your request for access to documents under the *Freedom of Information Act 1982* (the FOI Act). Specifically, I refer to your correspondence dated 15 June 2021, in which you request:

Documents containing:

All data sharing agreements signed with all third parties who will be given access to iview data, including:

- *Google;*
- *Facebook;*
- *Tealium; and*
- *any others to whom the ABC has granted access to iview viewing data*

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.

Privacy

The ABC is strongly committed to protecting the public's privacy when interacting with the ABC. The ABC is governed by the Australian Privacy Principles (APPs) under the *Privacy Act 1988* (Cth).

The ABC Privacy Policy includes details of how the ABC manages and collects personal information. A copy of the ABC's Privacy Policy is available at:

<https://about.abc.net.au/abc-privacy-policy/>

The ABC has a dedicated Privacy Officer who welcomes feedback and complaints in relation to privacy issues.

Material taken into account

In making my decision I have had regard to:

- the terms of your request
- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**the Guidelines**).

Decision

Access is refused in full to the requested documents on the basis that all of the documents are subject to confidentiality.

My reasons for refusal of access to the documents are provided below.

Reasons for decision

Section 45(1) – material communicated in confidence

Access to the documents is refused on the basis that the material in those documents is exempt under section 45 of the FOI Act – that is, because disclosure under the FOI Act could found an action against the ABC for breach of confidence.

The Guidelines explain at [5.159] that to found an action for breach of confidence (and therefore for section 45 to apply), the following five criteria must be satisfied in relation to the information:

- it must be specifically identified;
- it must have the necessary quality of confidentiality;
- it must have been communicated and received on the basis of a mutual understanding of confidence;
- it must have been disclosed or threatened to be disclosed, without authority; and
- unauthorised disclosure of the information has or will cause detriment.

I have considered each of these criteria and I am satisfied that they are met in relation to the documents.

Staff consulted have advised that each of the agreements contain information which was given and received by the ABC on the understanding that it would be treated in confidence. The information in the documents has the necessary quality of confidentiality. It is only known to a limited group and is not common knowledge or in the public domain.¹ The information in the documents was communicated and received on the basis of a mutual understanding that it would be treated by the ABC as confidential. Each of the documents contain clauses requiring that confidence be maintained.

¹ The Guidelines [5.162]

None of the relevant third parties have consented to disclosure of the information in the documents. Accordingly, disclosure of the information would be unauthorised and may result in potential claims for damages for breach of the ABC's obligation to maintain confidentiality.

For the reasons set out above, I am satisfied that release of the information in the relevant documents could found an action against the ABC for a breach of confidence, and that the documents are therefore exempt under section 45 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
Head of Corporate Governance & FOI Coordinator
foi.abc@abc.net.au

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