

24 December 2021

Nathan

By email: foi+request-8019-6912629c@righttoknow.org.au

Dear Nathan

DECISION – FOI REQUEST REF. NO. 202122-032 – INDEPENDENT EXPERT REPORT

I refer to your email sent Thursday 26 October 2021 requesting access under the *Freedom of Information Act 1982* (the **FOI Act**) to:

The "external Review report" referred to at paragraph 65 of the FWO enforceable undertaking that was produced in accordance with the undertaking to provide a systems and processes review.

On 22 November 2021, we notified you that we were required to consult with a third party under the FOI such that a decision on your request is due by **Wednesday 29 December 2021**.

Authorisation

I am authorised by the Managing Director of the ABC to make decisions about FOI requests, under section 23 of the FOI Act.

Decision

I have identified one document that answers the scope of your request - **Document 1** which is described in **Schedule 1**. I have refused access to **Document 1** in full.

Material taken into account

In making my decision I have considered:

- the scope of your request
- the content of the documents requested
- the FOI Act
- the guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act (**the Guidelines**)
- case law
- third party

Locating and identifying documents

The search for documents included approaching senior staff within our People & Culture team. I consider that all reasonable steps were taken to identify and locate all relevant documents that answer your request. I am satisfied that the searches conducted were thorough and all reasonable steps have been taken to locate the documents relevant to your request.

Reasons for decision

Section 47E(c) – substantial adverse effect on the management of personnel

Section 47E(c) of the FOI Act conditionally exempts documents containing information the disclosure of which would, or could reasonably be expected to, have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency.

Management of personnel

Paragraph 6.114 of the Guidelines provides that for section 47E(c) to apply, the documents must relate to the management of personnel – which is defined to include the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety. The main object of work health and safety legislation is to protect workers and other persons against harm to their health, safety and welfare through elimination or minimisation of risks arising from work.

The document over which an exemption is being claimed under section 47E(c) contains information that if released, would have a substantial adverse effect on the ability of the ABC to manage and assess its employees effectively and efficiently.

The information comprises a review of ABC's payroll system which impacts compensation and the WHS of existing and previous ABC employees. The FOI Act places no limit on the dissemination of the information once it is released under FOI. The ABC has a duty of care to protect the wellbeing of its staff, and disclosure of information in **Document 1** in this context could result in a loss of trust by employees in the ability of the ABC to protect their interests and wellbeing. I find such effects to be both adverse and substantial on the operations of the ABC.

For these reasons, I find that **Document 1** is conditionally exempt under section 47E(c) of the FOI Act.

The public interest

Conditionally exempt material must be released unless, in the circumstances, access at this time would, on balance, be contrary to the public interest (section 11A(5) of the FOI Act).

I have considered the factors favouring access in section 11B(3) of the FOI Act and I have not taken into account factors that are irrelevant in section 11B(4). In balancing the public interest in this case, I have considered the following factors.

Factors in favour of disclosure

I have considered the following factors in favour of disclosure:

- a) promoting the objects of the Act, particularly in increasing scrutiny, discussion, comment and review of the Government's activities (section 3(2)(b) of the FOI Act)

- b) informing debate on a matter of public importance, namely compensation of Commonwealth employees; and
- c) facilitating access to information to members of the public that allows them to be satisfied that proper processes have been followed by the agency.

Factors against disclosure

I have considered the following factors against disclosure:

- a) protecting individuals from unreasonable interferences with their privacy
- b) protecting staff from occupational health and safety risks
- c) preserving reasonably held expectations of confidentiality and trust between employees and the ABC.

In this case, I have formed the view that disclosure of the information will make a limited contribution to those factors that favour disclosure. However, the factors against disclosure are, in my view, significant. Disclosure of the information will do little to further inform public debate or increase scrutiny of Government affairs (*Warren; Chief Executive Officer, Services Australia and (Freedom of information)* [2020] AATA 4557 at [136]). I find the public interest in protecting individuals from unreasonable interferences with their privacy and the obligation of the ABC to look after the wellbeing of its employees outweighs any public interest in the disclosure of the information.

Accordingly, I have concluded that disclosure would, on balance, be contrary to the public interest and **Document 1** in full under section 47E(c) of the FOI Act.

Alternate exemptions

I also consider that all or parts of **Document 1** would be unconditionally exempt under s47: commercially valuable information and/or conditionally exempt under s47(G)(1)(a): unreasonable adverse effect on the business affairs of an organisation. In order to issue this decision to you before ABC's annual shutdown, I have not detailed reasons for these alternate exemptions, noting my decision is that section 47E(c) applies to **Document 1** in full.

Review rights

Your review rights are set out in **Annexure A**.

Yours sincerely



Pamela Longstaff
Head of Corporate Governance & FOI Decision Maker
foi.abc@abc.net.au

Schedule 1

Document Schedule - FOI 202122-029

No.	Date	Description	Page/s	Access decision	Exemption/s
1	December 2020	Systems and Processes Review Report	1 - 14	Refused in full	s 47E(c) – management of personnel

Annexure A – Your Review Rights

If you are dissatisfied with this decision you can apply for Internal Review by the ABC, 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 apply for an internal 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 fresh decision.

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

Application for a review of the original decision should be emailed to ABC: foi.abc@abc.net.au

or addressed to: The FOI Coordinator
 ABC
 Level 13
 700 Harris Street
 ULTIMO NSW 2007

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); and
- include a copy of the decision for which a review sought.

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>

Alternatively, application for IC Review can be emailed to: enquiries@oaic.gov.au or

addressed to: Director of FOI Dispute Resolution
 GPO Box 5218
 Sydney NSW 2001

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 can be made in writing to: OAIC - GPO Box 5218 Sydney NSW 2001