



PARLIAMENT of AUSTRALIA  
HOUSE of REPRESENTATIVES

OFFICE OF THE CLERK OF THE HOUSE

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21 May 2013

Mr Luke Mansillo

Via email: [foi+request-91-7c2f8523@righttoknow.org.au](mailto:foi+request-91-7c2f8523@righttoknow.org.au)

Dear Mr Mansillo

**NOTICE OF INTERNAL REVIEW DECISION (S 54C(4))**

**Freedom of information request nos. 13/02-06**

The purpose of this letter is to advise you of my decision following your request for internal review of the Department of the House of Representatives' decision to refuse access to documents requested under the *Freedom of Information Act 1982* (FOI Act).

***Summary***

I, David Elder, Deputy Clerk, House of Representatives, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

You requested access to the following documents:

1. All documents of correspondents between the ABC and the Leader of the Opposition and his office regarding requests for interview on ABC News 24.
2. All documents of correspondents between the ABC and the Leader of the Opposition and his office regarding requests for interview on the ABC's Lateline programme.
3. All documents of correspondents between the ABC and the Leader of the Opposition and his office regarding requests for interview on the ABC's 7.30 programme.
4. Copies of the Leader of the Opposition's diary and calendar used with House of Representatives' resources between 16 August 2010 and 9 April 2013. This is not limited to electronic diaries, schedules and physical paper calendars.
5.
  - (i) All correspondence from the ABC to the Leader of the Opposition and his office requesting his appearance on Q&A since 16 August 2010;
  - (ii) all correspondence replying from his office detailing requests made regarding his appearance on Q&A since 16 August 2010; and
  - (iii) all correspondence between other Liberal and National Party members of the House of Representatives and their staff regarding the Leader of the Opposition and the ABC's Q&A in any way, shape or form since 16 August 2010.

You were advised on 6 May 2013 of the decision that the documents you requested were not in possession of the department. You asked for internal review of that decision on 7 May 2013.

***Decision and reasons for decision***

With regard to the documents you are seeking, I reaffirm the advice you received on 6 May 2013 that the Department of the House of Representatives does not hold in its possession any documents falling within the scope of your request.

This department is not in a position to provide access to the correspondence and other documents you seek as they are not in the possession of the department.

While such correspondence and documents may be stored on the parliamentary computer network, neither officers of this department nor of the Department of Parliamentary Services, which is responsible for the network, have created or received any such correspondence or documents.

Any such correspondence would be in the possession of the members and their staff, rather than the parliamentary departments. Members and their staff are not employees of the parliamentary departments. Members hold office under the Constitution. They are not agencies for the purposes of the FOI Act. The only manner in which the FOI Act contemplates access to documents held by a federal Member of Parliament and his or her staff is that access may be obtained to 'official documents of a Minister' as defined in section 4 of the FOI Act.

***Material taken into account***

The FOI Act (specifically section 4 – definition of 'document of an agency').

***Your review rights***

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <https://forms.australia.gov.au/forms/oaic/foi-review/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to:  
[www.oaic.gov.au/foi-portal/review\\_complaints.html#foi\\_merit\\_reviews](http://www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews).

*Questions about this decision*

If you wish to discuss this decision, please contact me on telephone (02) 6277 4222 or by email to [david.elder.reps@aph.gov.au](mailto:david.elder.reps@aph.gov.au).

Yours sincerely

A handwritten signature in black ink that reads "David Elder". The signature is written in a cursive, slightly slanted style.

DAVID ELDER  
Deputy Clerk

*Attachment:*  
Extract from section 4 of the *Freedom of Information Act 1982*.

- (e) Cabinet notebooks.

**document of an agency:** a document is *a document of an agency* if:

- (a) the document is in the possession of the agency, whether created in the agency or received in the agency; or
- (b) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document.

**edited copy** has the meaning given by section 22 (access to edited copies with exempt or irrelevant matter deleted).

**electronic communication** has the same meaning as in the *Electronic Transactions Act 1999*.

**enactment** means, subject to section 4A:

- (a) an Act;
- (b) an Ordinance of the Australian Capital Territory; or
- (c) an instrument (including rules, regulations or by-laws) made under an Act or under such an Ordinance and includes an enactment as amended by another enactment.

**engage in conduct** means:

- (a) do an act; or
- (b) omit to do an act.

**exempt content-service document** means:

- (a) a document containing content, or a record of content (within the meaning of Schedule 7 to the *Broadcasting Services Act 1992*), that:
  - (i) has been delivered by, or accessed using, a content service (within the meaning of that Schedule); and
  - (ii) was offensive content-service content when it was delivered by, or accessed using, that content service; or
- (b) a document that sets out how to access, or that is likely to facilitate access to, offensive content-service content (for example, by setting out the name of a website, an IP address, a URL or a password).

**exempt document** means:

- (a) a document that is exempt for the purposes of Part IV (exempt documents) (see section 31B); or