



25 July 2024

Mr Alex Pentland

By email: foi+request-10998-04814013@righttoknow.org.au

Dear Mr Pentland

DECISION – FOI REQUEST REF. NO ABC FOI 202425-002

I refer to your email sent to the Australian Broadcasting Corporation (the **ABC**) on Thursday 4 January 2024 seeking access to the documents under the *Freedom of Information Act 1982* (the **FOI Act**).

By email sent to you on 2 July 2024, it was confirmed that you withdraw your freedom of information (**FOI**) request dated 4 January 2024 (our reference: 202324-052). It was also agreed that the existing request will be processed as a new FOI request (our reference: **202425-002**). The scope of the new FOI request was confirmed to be as follows:

Under the *Freedom of Information Act* (Cth) 1982, I seek access to the Style Guides/Brand Guides/Writing Guides currently used for the Australian Broadcasting Corporation.

This request is primarily concerned with the corporate side of ABC's documents. I acknowledge the difficult and limited areas the FOI has in terms of ABC content for consumption, so I am largely excluding journalistic guides and instructional materials for this request.

A decision on your request is due by Thursday **1 August 2024**.

Authorisation

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

Decision

I have identified two documents that answer the scope of your request - **Documents 1 to 2**. These documents are described in **Schedule 1**, attached.

I have granted access to **Document 1** in full.

I have refused access to **Document 2**.

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 s 93A of the FOI Act (**the Guidelines**)

Locating and identifying documents

The search for documents included approaching the ABC's Commercial, Finance, Audiences, News, Marketing, Finance and Communications team.

I consider all reasonable steps were taken to identify and locate 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

s 47 – Commercially valuable information – unconditionally exempt

Section 47(1)(b) provides that a document is an exempt document if its disclosure under the FOI Act would disclose information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

To be exempt under s 47(1)(b), a document must satisfy two criteria:

- it must contain information that has a commercial value either to an agency or to another person or body; and
- the commercial value of the information would be, or could reasonably be expected to be, destroyed or diminished if it were disclosed.

The Guidelines, at paragraph 5.235, provide that it is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value, and can include information relating to the profitability or viability of a continuing business operation or commercial activity in which an agency or person is involved.

Information does not necessarily require 'exchange' value for it to be commercially valuable. However, the information must have some inherent value to an organisation that can properly be characterised as commercial in character.

I am of the view that Document 2 contain information which has commercial value to the ABC. The ABC operates in a highly competitive media landscape, in local and international markets, as a public broadcaster. It provides services contemplated by the *Australian Broadcasting Corporation Act 1983* (Cth) and the *Broadcasting Services Act 1982* (Cth).

The ABC Masterbrand Guide is provided to the commercial partners under a licence on a very clear, defined and limited basis with strict parameters on the use and application, with the ABC's approval. The access to the guide is provided to the third parties who may be required or entitled to use the ABC brand, such as agencies creating content or communications on behalf of the ABC. The access is provided under non-disclosure agreement and these persons must adhere to strict Terms and Conditions associated with access to, and use of, the guide.

The guide contains specific rules, approaches and methodologies used by the ABC and selected third parties on routine basis, so have relevance in commercial activities and remains valuable. These brand and style guidelines are not otherwise available. It is my view that the information contained within these guidelines would be valuable to competitors seeking an advantage over the ABC as well as unscrupulous parties wishing to impersonate impacting the profitability or viability of continuing the commercial activity of the ABC.

If this information became freely available to the public or competitors of the ABC, it could unfairly advantage competitors or detractors of the ABC. Further, it may lead to misuse of our brand mark and the ABC will then no longer have control on the future use of the style guidelines in the guide. Accordingly, the commercial value of the document would be destroyed or diminished if they were disclosed.

I have therefore found that the whole of **Documents 2** is unconditionally exempt under s 47(1)(b) of the FOI Act as the information is commercially valuable.

Review rights

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

Yours sincerely

Signed by:

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Vanessa MacBean
Chief of Staff to Director News
foi.abc@abc.net.au

Schedule 1 – Document Schedule – FOI 202425-002

No.	Date	Description	Page/s	Access grant decision	Exemption section/s
01	21 May 2024	ABC Naming Convention Guide	2	Full	N/A
02	Undated	The ABC Masterbrand Guide	33	Refused	47(1)(b) – commercially valuable

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: FOI coordinator

ABC Legal
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