



LS5638 ~ file 16/519

Tristan McLeay and Peter Serwylo
By email to

'foi+request-1992-7e0aabb5@righttoknow.org.au'

Dear Tristan McLeay and Peter Serwylo

YOUR FREEDOM OF INFORMATION REQUEST NO. LS5638

I refer to your dated 10 June 2016 11:11 AM to the Australian Electoral Commission ('AEC') in which you request (your 'FOI Request') access under the [Freedom of Information Act 1982](#) (the 'FOI Act') access to information about relating to software change required for upcoming federal election

SUMMARY

- 2 I, Paul Pirani, Chief Legal Officer of the AEC, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.
- 3 I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its size and complexity and the necessity to consult other agencies. This is called a 'practical refusal reason' (section 24AA of the FOI Act).
- 4 On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

Why I intend to refuse your request

5 In your request you sought documents relating to:

6 Specifically you sought access to:

- documents pertaining to the Senate vote counting software, and changes that would be required to support the new requirements introduced by the Commonwealth Electoral Amendment Act 2016 (No. 25, 2016);
- documents relating to acceptance criteria, which will be used to determine whether the voting software correctly implements the requirements of the new legislation including use cases, checklists for testing the software, and external test cases that are not part of the easy count software used to verify the correctness of the softwares new behaviour;
- any tenders relating to the changes modifications to the counting software required to support the changes in the act are implemented by external suppliers;
- communications with relevant government departments about the amendment, for example:
 - When [the AEC] were first made aware of the possibility the software may need to be changed for the upcoming federal election.
 - When [the AEC] were first made aware of the specific changes that would be required to be implemented before the upcoming federal election.
 - Any documents pertaining to the estimated time of completion for changing the senate vote counting software.

7 I decided that a practical refusal reason exists because:

- (a) the AEC is currently conducting the 2016 federal election (the 'Election')
- (b) conducting the Election is the AEC's core business and it is time critical in its performance;
- (c) the electoral period extends from the day the writs issue for the Election until at least 42 days after the return of writs during which the outcome of the Election may be contested in the Court of Disputed Returns established under section 354 of the *Commonwealth Electoral Act 1918* and longer if a petition to the Court of Disputed Returns is made to contest the outcome of the Election;
- (d) the first and second limb of your FOI Request seeks access to documents that the Administrative Appeals Tribunal in *Cordova and Australian Electoral Commission (Freedom of information) [2015] AATA 956* found are exempt under the FOI Act by reason:
 - (i) of the trade secret in respect of the source code of the relevant software which is known as EasyCount which is owned by the AEC;
 - (ii) disclosure of the source code would diminish the commercial value of the source code to the AEC,

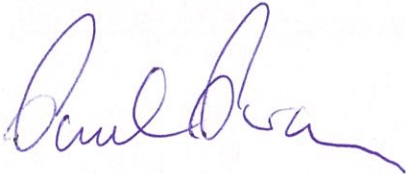
and that reopening this question is an inappropriate diversion of the AEC's resources;

Contact officer

- 12 If you would like to revise your request or have any questions, the contact officer for your request is Owen Jones, Senior Lawyer at:

email:	owen.jones@aec.gov.au
fax:	02 6293 7657
post:	Locked bag 4007, Canberra ACT 2601
telephone:	[insert]

Yours sincerely



Paul Pirani
Chief Legal Officer

23 June 2016.

- (e) the third limb of your FOI Request seeks information that is published for reference on the AusTender website at <https://www.tenders.gov.au/> and as a consequence is outside the scope of what may be requested as a document under subsection 15(1) of the FOI Act;
- (f) the fourth limb of your FOI Request of necessity requires the AEC to consult with departments or other agencies with whom the AEC has held communications about amendments to the software; and
- (g) even allowing for extensions to the processing time for this consultation and the further consultation mentioned in subparagraph 7(g) of this letter, the work required to process your FOI Request will need to be done during the electoral period identified in paragraph 7(c) thereby diverting resources from performing the AEC's core functions at this critical time.

Request consultation process

- 8 You now have an opportunity to revise your request to enable it to proceed.
- 9 Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, our agency will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.
- 10 Before the end of the consultation period, you must do one of the following, in writing:
 - (a) withdraw your request
 - (b) make a revised request
 - (c) tell us that you do not wish to revise your request.
- 11 The consultation period runs for 14 days and starts on the day after you receive this notice.
 - (a) During this period, you are welcome to seek assistance from the contact person I have listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)
 - (b) If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.