



LS5664 ~ file 16/566

Dr Peter Bell  
Griffith Criminology Institute  
By email to

[foi+request-2040-dbe7800c@righttoknow.org.au](mailto:foi+request-2040-dbe7800c@righttoknow.org.au)

Dear Dr Bell

**Your Freedom of information request no. LS56664**

I refer to your 5 July 2016 11:16 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 funding sources (and amounts) for One Nation Party in the 2016 Federal Senate election.

2 I am writing today to acknowledge receipt of your FOI Request and to give you a decision about access to documents that you requested in your FOI Request.

**Summary**

3 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.

4 Specifically you sought access to:

- details relevant to the funding sources (and amounts) of the One Nation Party in the 2016 Federal Election in particular the Senate Candidates running from the One Nation Party
- any information relevant to funding received by One Nation from overseas, ie the National Rifleman's Association (NRA) in the USA and the Sovereign Citizens Association also based in the USA

5 I identified that there are no documents that fall within the scope of your request. I explain why below.

6 Accordingly, I have refused your FOI Request.

7 More information, including my reasons for my decision, is set out below.

## DECISION AND REASONS FOR DECISION

### **Decision**

- 8 With regard to the documents specified in your FOI Request, I found that for the purposes of subparagraph 24A(1)(b)(ii) of the FOI Act, the documents that you requested about
- (a) the funding sources (and amounts) of the One Nation Party in the 2016 Federal Election in particular the Senate Candidates running from the One Nation Party; and
  - (b) to funding received by One Nation from overseas, ie the National Rifleman's Association (NRA) in the USA and the Sovereign Citizens Association also based in the USA
- do not exist – information about why they do not exist is given below.

9 Accordingly, I have refused your FOI Request.

### **Material taken into account**

- 10 I have taken the following material into account in making my decision:
- (a) the content of the documents that fall within the scope of the FOI Request;
  - (b) the *Commonwealth Electoral Act 1918* (the 'Electoral Act'), specifically sections
  - (c) the FOI Act, specifically sections 4, 15, 20 and 24A;
  - (d) the guidelines ('FOI Guidelines') issued by the Australian Information Commissioner under section 93A of the FOI Act, 2.25 – 2.373.80 – 3.84, 3.91 and 3.92;

### **Reasons**

#### **Documents non-existent (s 24A(1)(b)(ii) of the FOI Act)**

- 11 With respect to each limb of the FOI Request, I found that no return from the One Nation Party has been received by the AEC under:
- (a) Section 304 of the Electoral Act for the 2016 federal election; and
  - (b) section 314AB of the Electoral Act for the financial year ending on 30 June 2016
- 12 I made the finding because:
- (a) the One Nation Party is obliged to provide a return under section 314AB of the Electoral Act within 16 weeks after the end of the financial year for 2016;
  - (b) there is a disclosure threshold amount that applies to the disclosures made by candidates, Senate groups and donors to candidates at the 2 July 2016 federal election, namely gifts in excess of \$13 200;

- (c) as a consequence of the threshold amount the AEC will never receive a document that discloses all the funding sources and amounts for the One Nation Party
- (d) candidates and Senate groups and donors to candidates are obliged to provide a return under sections 304 of the Electoral Act within 15 weeks after the relevant polling day which in the case of the 2016 election was 2 July 2016.

**Other matters**

13 I draw to your attention that under paragraph 21(1)(c) of the FOI Act, an agency is able to defer the provision of access to a document.

14 Paragraph 21(1)(c) of the FOI Act provides:

**21 Deferment of access**

(1) An agency which, or a Minister who, receives a request may defer the provision of access to the document concerned:

...

(c) if the premature release of the document concerned would be contrary to the public interest—until the occurrence of any event after which or the expiration of any period of time beyond which the release of the document would not be contrary to the public interest; or

15 Paragraph 21(1)(c) of the FOI Act will apply to documents falling within the scope of your FOI Request that the AEC receives because 320 of the Electoral Act applies to such documents.

16 Section 320 of the Electoral Act provides:

**320 Inspection and supply of copies of claims and returns**

(1) The Electoral Commission shall keep, at its principal office in Canberra, a copy of:

- (a) each claim under Division 3; and
- (b) each return under Division 4 or 5; and
- (c) each return under Division 5A.

(2) Any person is entitled to peruse, at the principal office of the Electoral Commission in Canberra, a copy of a claim or return referred to in subsection (1).

(2A) The Electoral Commission shall, on request, make a copy of a claim or return referred to in subsection (1) available for inspection by a person at the principal office of the Commission in the capital city of a State or in Darwin.

(3) A person is entitled, on payment of a fee determined by the Electoral Commission to cover the cost of copying, to obtain a copy of a claim or return referred to in subsection (1).

(4) A person is not entitled under this section to peruse, or obtain a copy of, a return under Division 4 or 5 (other than section 305B) until after the end of 24 weeks after the polling day in the election to which the return relates.

(5) A person is not entitled under this section to peruse, or obtain a copy of:

- (a) a return under section 305B; or

(b) a return under Division 5A;

until February in the calendar year after the return is furnished.

- 17 The AEC for the purposes of section 320 of the Electoral Act publishes the returns on its website. See the webpage at [http://www.aec.gov.au/Parties\\_and\\_Representatives/financial\\_disclosure/index.htm](http://www.aec.gov.au/Parties_and_Representatives/financial_disclosure/index.htm) which will provide links to the relevant returns.
- 18 Once the AEC has published a return for the purposes of section 320 of the Electoral Act then the carve out in paragraph (d) of the definition of document provided by subsection 4(1) of the FOI Act will apply to the return. The consequence of this is that the return will be out of scope of what may be requested as a document under section 15 of the FOI Act.

### **Information Commissioner review**

- 19 Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. 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:    | <a href="https://forms.business.gov.au/aba/oaic/foi-review/">https://forms.business.gov.au/aba/oaic/foi-review/</a> |
| email:     | <a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>  |
| post:      | GPO Box 52189, Sydney NSW 2001  |
| in person: | Level 3, 175 Pitt Street, Sydney NSW  |

- 20 More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

### **QUESTIONS ABOUT THIS DECISION**

- 21 If you wish to discuss this decision, please contact Owen Jones at:

|            |  |
|------------|--|
| email:     | <a href="mailto:owen.jones@aec.gov.au">owen.jones@aec.gov.au</a> |
| fax:       | 02 6293 7657   |
| post:      | Locked bag 4007, Canberra ACT 2601                               |
| telephone: | 02 6271 4528   |

Yours sincerely



Paul Pirani  
Chief Legal Officer

6 July 2016