



LS5778 ~ file 16/813.

Mr Brendan Manning
By email to 'foi+request-2158-7b229cff@righttoknow.org.au'

Dear Mr Manning

Your Freedom of information request no. LS5778

I refer to your email of 25 November 2016 10:58 AM to the Australian Electoral Commission ('AEC') in which you revised your request (your 'FOI Request') access under the *Freedom of Information Act 1982* (the 'FOI Act') access to information contained in an AEC file.

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

Summary

3 I, Owen Jones, Senior Lawyer 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:

AEC file 2013/00187: FUNDING AND DISCLOSURE - Compliance Audit -Political Parties - National Party of Australia (Federal Secretariat)

5 I also refer to my letter to you, dated 1 December 2016, in which I notified you of the revised charges in relation to the revised FOI Request, namely \$92.50 which I note that you have paid.

6 I identified 6 documents that fell within the scope of your request.

7 I did this by arranging for the AEC Records Management Team to retrieve AEC file 2013/00187 from storage.

8 The schedule of retrieved documents in Attachment A provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

9 I consulted two third parties about your revised FOI Request as regards Document No. 4. Neither third party made a contention opposing access to Document No. 4.

- 10 With regard to the documents you requested (set out in Attachment A), I have decided to:
- (a) grant access to 2 documents;
 - (b) refused access to 3 documents and to offer in lieu to grant access to edited versions those documents; and
 - (c) refuse access to the remaining 1 document.

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

12 The processing time for this FOI Request was extended on two occasions, first when Mr Pirani notified you that we would consult certain third parties and second when I notified you of the imposition of charges. My email to you dated 1 December 2016 3:51 PM informed you that the outcome of the extensions was that you could expect a decision by 20 December 2016.

Decision and reasons for decision

Decision

- 13 With regard to the documents identified in Attachment A, I have decided:
- (a) to grant access in full to Documents Nos 1 and 4;
 - (b) to refuse access to Documents Nos 2, 3 and 5 under section 47F (*Public interest conditional exemptions – personal privacy*) and in lieu to offer to grant access in part to those documents with exempt matter deleted under section 22 of the FOI Act;
 - (c) to refuse access to Document No. 6 in part under:
 - (i) section 4 which provides a definition of ‘document’ that contains a carve-out of that which may be requested as a document under section 15 of the Act that applies to that part of Document No. 6;
 - (ii) section 37(*Documents affecting enforcement of law and protection of public safety*) of the FOI Act;
 - (iii) section 47C (*Public interest conditional exemptions – deliberative processes*) as providing access would be contrary to the public interest; and
 - (iv) under section 47E (*Public interest conditional exemptions – certain operations of agencies*) as providing access would be contrary to the public interest.

Material taken into account

- 14 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) your email of 25 November 2016 10:58 AM revising the scope of your FOI Request
- (c) the *Commonwealth Electoral Act 1918* (the 'CE Act'), specifically Part XX;
- (d) the FOI Act, specifically sections 3, 3A, 4, 15, 27, 47E, 47F and 47G;
- (e) the guidelines ('FOI Guidelines') issued by the Australian Information Commissioner under section 93A of the FOI Act, 2.26 – 2.28, 3.69 – 3.77, 3.85 – 3.90, 6.3 – 6.33, 6.56 – 6.77, 6.86 – 6.103, 6.109 – 6.135, 6.139 – 6.142, 6.157 – 6.183; and
- (f) that each third party consulted by the AEC under section 27 made no contention opposing access to Document No. 6.

Reasons

- 15 Attachment A indicates each document to which access is refused. My reasons for refusing access are given below.

Documents out of Scope of an FOI Request

- 16 I found that Document No. 6 contains an extract of material published by the AEC for reference that may be found at the URL indicated in the entry in Attachment A for Document No. 6.
- 17 Section 15 of the FOI Act enables a person to seek access, among other things, to a document of an agency. The AEC is an agency for the purposes of the FOI Act.
- 18 In so far as is material subsection 15(1) of the FOI Act provides:

15 Requests for access

Persons may request access

- (1) Subject to section 15A, a person who wishes to obtain access to a document of an agency or an official document of a Minister may request access to the document.

- 19 Section 15A of the FOI Act makes provision with respect to requests for access to personnel records and has no relevance to the FOI Request.
- 20 The expression 'document of an agency' is defined by subsection 4(1) of the FOI Act and depends on the definition given by that subsection to the word 'document'.
- 21 In so far as is material, subsection 4(1) of the FOI Act provides:

4 Interpretation

- (1) In this Act, unless the contrary intention appears:

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.

document includes:

- (a) any of, or any part of any of, the following things:
 - (i) any paper or other material on which there is writing;
 - (ii) a map, plan, drawing or photograph;
 - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
 - (v) any article on which information has been stored or recorded, either mechanically or electronically;
 - (vi) any other record of information; or
- (b) any copy, reproduction or duplicate of such a thing; or
- (c) any part of such a copy, reproduction or duplicate;

but does not include:

- (d) material maintained for reference purposes that is otherwise publicly available;
or
- (e) Cabinet notebooks.

22 It follows that the carve out in paragraph (d) of the definition of 'document' provided by subsection 4(1) of the FOI Act applies to that part of Document No. 6 that has been published with the outcome that none of those documents is included in the expression 'document of an agency' and thus cannot be requested under subsection 15(1) of the FOI Act.

23 For this reason, I refused access to that part of Document No. 6 that had been published for reference by the AEC.

Documents affecting enforcement of law and protection of public safety

24 With respect to Document No. 6, I found that:

- (a) Document No.6 is a risk matrix used to allocate resources appropriately for the choice of organisations or individuals warranting audit for compliance with Part XX of the CE Act which is a scheme for various forms of disclosure by registered political parties, associated entities and donors within the meaning of that Part of the CE Act;
- (b) the risk matrix has:
 - (i) purely factual material about the National Party of Australia; and
 - (ii) criteria that may be applied to that factual material to ascertain whether a compliance audit is warranted regarding the National Party of Australia's fulfilment of its disclosure obligations under Part XX of the CE Act.

(c) The application of the criteria mentioned in subparagraph 24(b)(ii) is a procedure for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law (namely compliance with Part XX of the CE Act);

(d) the procedures in Document No.6 are lawful;

(e) disclosure of the procedures in Document No.6:

(i) would; or in the alternative

(ii) would be reasonably likely to,

prejudice the effectiveness of the procedure specified in paragraph 24(c)(ii) of this letter.

25 In so far as is material, section 37 of the FOI Act provides:

37 Documents affecting enforcement of law and protection of public safety

(2) A document is an exempt document if its disclosure under this Act would, or could reasonably be expected to:

(b) disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures; or

...

(3) In this section, *law* means law of the Commonwealth or of a State or Territory.

26 Accordingly, I decided to refuse access to Document No. 6 under paragraph 37(2)(b) of the FOI Act.

Public interest conditional exemption – deliberative processes

27 With respect to Document No. 6, I found that:

(a) Document No. 6 relates to the deliberative processes involved in the functions of the AEC, to determine whether to audit the compliance of organisations or individuals with their disclosure obligations under Part XX of the CE Act;

(b) contains matter (deliberative matter) namely the risk matrix which is in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes specified in subparagraph 27(a) of this letter;

(c) the factual material contained in Document No. 6 which would otherwise be excepted by paragraph 47C(2)(b) of the FOI Act from the exemption provided by subsection 47C(1) of the FOI Act was out of scope of that which may be requested under subsection 15(2) of the FOI Act for the reasons explained at paragraphs

28 Subsection 47C(1) of the FOI Act conditionally exempts a document if its disclosure under the FOI Act would disclose matter in the nature of, or relating to, opinion,

advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the AEC (among other things).

29 Subsection 47C of the FOI Act provides:

47C Public interest conditional exemptions—deliberative processes

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would disclose matter (***deliberative matter***) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of:
- (a) an agency; or
 - (b) a Minister; or
 - (c) the Government of the Commonwealth.

Exceptions

- (2) Deliberative matter does not include either of the following:
- (a) operational information (see section 8A);
 - (b) purely factual material.

Note: An agency must publish its operational information (see section 8).

- (3) This section does not apply to any of the following:
- (a) reports (including reports concerning the results of studies, surveys or tests) of scientific or technical experts, whether employed within an agency or not, including reports expressing the opinions of such experts on scientific or technical matters;
 - (b) reports of a body or organisation, prescribed by the regulations, that is established within an agency;
 - (c) the record of, or a formal statement of the reasons for, a final decision given in the exercise of a power or of an adjudicative function.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

30 The deliberative processes in Document No. 6 is the making of a decision that a compliance audit of the National Party of Australia is justified in respect of its compliance with its disclosure obligations under Part XX of the CE Act;

31 In making my decision I had regard to:

- (a) the extent to which the information is well known;

I found that it is not well known.

- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

I found that the disclosure obligations of the National Party of Australia are well known but that the nexus of the party to Document No. 6 was not well known.

- (c) the availability of the information from publicly accessible sources;

I found that part of Document No. 6 is available from publicly accessible sources that are described in the entry for Document No. 6 in Attachment A.

- (d) the circumstance that each third party consulted by the AEC under section 27 made no contention opposing access to Document No. 6; and
- (e) FOI Guidelines, Part 6 (Exemptions), specifically paragraph 6.56 – 6.77.

32 Accordingly, I am satisfied that Document No. 6 falls within the scope of the conditional exemption for deliberative matter provided by section 47C of the FOI Act.

Public interest conditional exemptions—certain operations of agencies

33 With respect to Document No. 6, I found that:

- (a) Document No. 6 relates to effectiveness of procedures or methods for the conduct of tests, examinations or audits by the AEC, namely compliance by individuals or organisations with their disclosure obligations under Part XX;
- (b) Document No. 6 relates to the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by the AEC, namely compliance by individuals or organisations with their disclosure obligations under Part XX
- (c) Document No. 6 relates to the operations of the AEC in enforcing compliance with disclosure obligation imposed by Part XX of the CE Act; and
- (d) knowledge of the procedures in Document No. 6 has the potential to prejudice the attainment of the objects of particular audits, conducted or to be conducted by the AEC in establishing compliance with disclosure obligations imposed by Part XX of the CE Act, by allowing those subject to audit to arrange their affairs to avoid triggering an audit by application of the risk matrix in Document No. 6.

34 Subsection 47E of the FOI Act conditionally exempts a document if its disclosure under the FOI Act would or could reasonably be expected to:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by the AEC;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by the AEC;
- (c) have a substantial adverse effect on the management or assessment of personnel by the AEC;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of the AEC.

35 Subsection 47E of the FOI Act provides:

47E. Public interest conditional exemptions—certain operations of agencies

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to, do any of the following:

- (a) prejudice the effectiveness of procedures or methods for the conduct of tests, examinations or audits by an agency;
- (b) prejudice the attainment of the objects of particular tests, examinations or audits conducted or to be conducted by an agency;
- (c) have a substantial adverse effect on the management or assessment of personnel by the Commonwealth or by an agency;
- (d) have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

36 In making my decision I had regard to FOI Guidelines:

- (a) Part 5 (Exemptions), specifically paragraphs 5.19 and 5.20;
- (b) Part 6 (Conditional Exemptions), specifically paragraphs 6.86 -6.112; and
- (c) the matters that I considered relevant described in paragraph 33 of this letter.

37 Accordingly, I am satisfied that the document falls within the scope of the conditional exemption for deliberative matter provided by:

- (a) section 47C of the FOI Act; or, in the alternative;
- (b) paragraph 47E(a) of the FOI Act; or, in the alternative;
- (c) paragraph 47E(b) of the FOI Act; or, in the alternative;
- (d) paragraph 47E(d) of the FOI Act.

Weighing of public interest factors in relation to Document No. 6

38 Under subsection 11A(5) of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest.

39 My weighing of public interest factors follows.

- (a) I identified no harm that would affect the third party consulted.
- (b) I considered the following factors favouring disclosure:
 - (i) Document No. 6 relates to the disclosure obligations imposed on political parties, associated entities and donors within the meaning of Part XX of the CE Act imposed by that part.
- (b) I considered the following factors that militate against disclosure:
 - (i) The public have an expectation that the AEC will effectively enforce compliance by the individuals or organisations specified in subparagraph 39(b)(i) of this letter with Part XX of the CE Act;

- (ii) The appropriate use of the AEC's limited resources to ensure compliance by the individuals or organisations specified in subparagraph 39(b)(i) of this letter with Part XX of the CE Act, is to allocate those resources to auditing individuals or organisations identified as highly likely to be non-compliant; and
- (iii) The means of identifying individuals or organisations as highly likely to be non-compliant with Part XX of the CE Act, if known would give those individuals and organisations an opportunity to circumvent being audited to the detriment of the compliance regime necessary to support the operation of Part XX of the CE Act.

40 In accordance with subsection 11B(4) of the FOI Act I excluded from my consideration the following matters:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the document could result in confusion or unnecessary debate.

41 In considering the weighing of public interest factors I had regard to the FOI Guidelines at paragraphs 6.11 – 6.33.

42 In my view, the factors against disclosure of the document outweigh the factors in favour of disclosure for the following reason, namely the public interest is better served by the application of an effective regime for ensuring compliance by individuals and organisations

43 Accordingly, I am satisfied that Document No. 6 is conditionally exempt under:

- (a) section 47C of the FOI Act
- (b) paragraph 47E(a) and (b) of the FOI Act;
- (c) paragraph 47E(d) of the FOI Act; and

because disclosure would be contrary to the public interest, that the document should be treated as exempt from disclosure under the FOI Act.

Public interest conditional exemption – personal privacy

44 With respect to Document Nos 2, 3, 4 and 5, I found that each document contains personal information about individuals, namely:

- (a) the names and employment details of public servants or officials of a registered party; and
- (b) in the case of Document Nos 2, 3 and 5 only, facsimiles of the signatures of certain individuals.

45 Subsection 47F(1) of the FOI Act conditionally exempts personal information where it is unreasonable to give access under an FOI Request.

46 Subsection 47F(1) of the FOI Act provides:

47F Public interest conditional exemptions—personal privacy

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

47 No consultation was necessary with the relevant individuals because there is:

- (a) no exceptional circumstance that indicates that disclosure of the personal information described in subparagraph 44(a) is unreasonable;
- (b) an exceptional circumstance that indicates that disclosure of the personal information described in subparagraph 44(b) is unreasonable and the nature of that exceptional circumstance is such that it is obvious that access to the personal information, namely a facsimile of certain signatures should be refused.

48 In making my decision I had regard to:

- (a) the extent to which the information is well known;

I found that there was no basis to conclude that the signatures of the individual are well known.

- (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;

I found that that this consideration was irrelevant to the question whether access should be given to a facsimile of a signature.

- (c) the availability of the information from publicly accessible sources;

I found that there was no basis to conclude that the signatures of the individual are available for publicly accessible sources.

FOI Guidelines, Part 6 (Exemptions), especially paragraphs 6.139 – 6.142;

- (d) the following matters that I considered relevant:

- (i) as regards Document Nos 2, 3, 4 and 5, there is no exceptional circumstance that militates against giving access to the name and employment of:

- (A) public servants; and

- (B) by of analogy, employees of a political party;

- (ii) as regards Documents Nos 2, 3 and 5 only:

- (A) there is a risk of loss arising from identity theft that could be facilitated by giving access to a facsimile of an individual's signature;
- (B) the FOI Request has been made by email and disclosure of an document to which access is given will be by transmission of an electronic version of the relevant document;
- (C) giving access in electronic form to a facsimile of a signature exacerbates the risk identified in subparagraph 48(d)(ii) of this letter.

49 Accordingly, I am satisfied that Document Nos 2, 3 and 5 fall within the scope of the conditional exemption for personal privacy provided by section 47F of the FOI Act.

Weighing of public interest factors

50 Under subsection 11A(5) of the FOI Act, access to a document covered by a conditional exemption must be given unless it would be contrary to the public interest.

51 My weighing of public interest factors follows.

- (a) I identified the following harm that would affect the individuals the facsimiles of whose signatures appear in Documents Nos 2, 3 and 5, namely the risk of loss arising from identity theft being facilitated by access to those signatures.
- (b) I considered the following factors favouring disclosure:
 - (i) The public interest in knowing whom the AEC had had dealings with in enforcing compliance with Part XX of the CE Act.
- (c) I considered the following factors that militate against disclosure:
 - (i) The fact that the public interest identified in subparagraph 51(b)(i) of this letter is vindicated if access is given to the names of the relevant individuals; and
 - (ii) The harm to those individuals identified in paragraph 51(a) of this letter.

52 In accordance with subsection 11B(4) of the FOI Act I excluded from my consideration the following matters:

- (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made; and
- (d) access to the document could result in confusion or unnecessary debate.

53 In considering the weighing of public interest factors I had regard to the FOI Guidelines at paragraphs 6.11 – 6.33.

- 54 In my view, the factors against disclosure of Documents Nos 2, 3 and 5 outweigh the factors in favour of disclosure for the following reason, namely that the public interest in protecting the relevant individuals from harm identified in paragraph 51(a) of this letter by withholding access to the facsimiles of the signatures is greater than the public interest identified in subparagraph 51(b)(i) of this letter in having that access, given that the latter public interest is sufficiently vindicated by giving access to the names of the individuals
- 55 Accordingly, I am satisfied that Document Nos 2, 3 and 5 are conditionally exempt under subsection 47F of the FOI Act and because disclosure would be contrary to the public interest and that the documents should be treated as exempt from disclosure under the FOI Act.

Preparation of an edited copy of Document No. 6

- 56 In accordance with section 22 of the FOI Act I next considered whether it is both possible and practicable to prepare an edited copy of Document No. 6 from which the exempt and irrelevant material are redacted.
- 57 Section 22 of the FOI Act provides:

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an ***edited copy***) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
 - (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests the agency or Minister to give the applicant a notice in writing in accordance with that section.

58 I had regard to paragraphs 3.85 – 3.90 of the FOI Guidelines.

59 I found that it is neither possible nor, in the alternative, practicable to prepare an edited copy of Document No. 6 from which the following is redacted:

- (a) material out of scope of the FOI Request by operation of paragraph (d) of the definition of 'document' provided by subsection 4(1) of the FOI Act (as described in paragraph 16 of this letter;
- (b) material that is exempt under paragraph 37(2)(b) of the FOI Act (as described in subparagraph 24(a) of this letter);
- (c) material that is exempt under paragraph 47E(a), (b) and (d) of the FOI Act (as described in paragraph 33,

that would be meaningful.

Preparation of an edited copy of Documents Nos 2, 3 and 5

60 In accordance with section 22 of the FOI Act I next considered whether it is both possible and practicable to prepare an edited copy of Documents Nos 2, 3 and 5 from which the signatures of the relevant individuals are redacted.

61 See paragraph 57 of this letter for a description of section 22 of the FOI Act.

62 I had regard to paragraphs 3.85 – 3.90 of the FOI Guidelines.

63 I found that it is both possible and practicable to prepare an edited copy of Documents Nos 2, 3 and 5 from which the signatures of the relevant individuals are redacted.

64 The offer in paragraphs 65 and 66 of this letter is made for the purpose of the consultation required by paragraph 22(1)(d) of the FOI Act.

Offer of access to edited copies

- 65 In paragraph 13 of this letter I indicated that I would offer you access to edited copies of Documents Nos 2, 3 and 5 from which exempt or irrelevant matter had been redacted, the terms of that offer follow:
- (a) The offer remains open for 60 days from the dated of this letter;
 - (b) The offer is conditional that accept the edited copies in satisfaction of you FOI Request for the relevant documents; and
 - (c) the offer must be accepted in writing signed by you (this may be scanned and sent by email to me (my contact details are below).
- 66 If this offer is not accepted within the 60 day period, my decision to refuse access to Documents Nos 2, 3 and 5 will stand.

YOUR REVIEW RIGHTS

- 67 If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

- 68 Under section 54 of the FOI Act, you may apply in writing to the AEC for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.
- 69 Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

- 70 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:	https://forms.business.gov.au/aba/oaic/foi-review/
email:	enquiries@oaic.gov.au
post:	GPO Box 52189, Sydney NSW 2001
in person:	Level 3, 175 Pitt Street, Sydney NSW

- 71 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.

QUESTIONS ABOUT THIS DECISION

72 If you wish to discuss this decision, please contact me at:

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

Yours sincerely



Owen Jones
Senior Lawyer
Legal Services Section
Legal and Procurement Branch

20 December 2016

Attachments

Attachment A (Schedule of documents);
LS5778 Released Document No 1
LS5778 Released Document No 4

LS5788 FOI REQUEST BY BRENDAN MANNING

Revised scope of request for access to the following AEC files:

- 2013/00187: FUNDING AND DISCLOSURE - Compliance Audit - Political Parties - National Party of Australia (Federal Secretariat)

SCHEDULE OF RETRIEVED DOCUMENTS

Document No.	Description	Date
1	File Request Form Folio 1 of file 13/187 [LS5778 Document No 1.pdf]	25/02/2013
	<p>RECOMMENDATION/DECISION</p> <p>1.1 No exemption applies to Document No. 1.</p> <p>1.2 I recommend that access be given to Document No. 1</p>	
2	Notice to produce documentation directed to Ms Susanne Mitchell, Party Agent, National Party of Australia issued by Anna Jurkiewicz, Assistant Director, Funding and Disclosure under Section 316(2A) of the Commonwealth Electoral Act 1918 (the Act). Folios 2 – 5 of file 13/187 [Part of LS5778 Document No 2.pdf]	25/02/13

Document No.	Description	Date
	<p data-bbox="252 1355 284 1832">RECOMMENDATION/DECISION</p> <p data-bbox="320 1444 352 1765"><i>Personal information</i></p> <p data-bbox="395 224 475 1877">2.1 Document No. 2 contains personal information to which section 47F of the FOI Act applies, namely the name and a facsimile of the signature of an AEC employee and the name of the Party Agent.</p> <p data-bbox="507 280 587 1877">2.2 There is no exceptional circumstance to justify withholding the names of the AEC employee and the Party Agent.</p> <p data-bbox="619 212 730 1877">2.3 There is an exceptional circumstance to justify withholding the facsimile of the signature of the AEC employee, namely the risk of harm arising from identity theft being facilitated by giving access to an electronic facsimile of the employee's signature.</p> <p data-bbox="770 459 802 1877">2.4 I concluded that Document No. 2 was conditionally exempt under section 47F of the FOI Act.</p> <p data-bbox="842 1310 874 1765"><i>Public interest considerations</i></p> <p data-bbox="914 313 1026 1877">2.5 I am required by subsection 11A(5) of the FOI Act to consider whether, in the circumstances, access to Document No. 2 at any time would, on balance, be contrary to the public interest. This must be done in accordance with section 11B of the FOI Act taking into account the FOI Guidelines.</p> <p data-bbox="1066 571 1098 1877">2.6 The factors favouring access to Document No. 2 include whether giving that access:</p> <p data-bbox="1137 257 1217 1765">(a) would promote the objects of the FOI Act expressed in its long title and sections 3 and 3A namely the public interest in having access to Document No. 2.</p> <p data-bbox="1249 212 1313 1691">Public interest does not mean of interest to the public, but in the interest of the public: see <i>Johansen v City Mutual Life Assurance Society Ltd (1904) 2 CLR 186</i>. I failed to see how the public interest would be</p>	

Document No.	Description	Date
	<p>served by having access to a facsimile of a person's signature as distinct from knowing that the person had signed Document No. 2.</p> <p>(b) would inform debate on a matter of public importance.</p> <p>The disclosures made under Part XX of the CE Act are the matters that inform debate on a matter of public importance, namely who has by donations in cash or kind to a candidate or party has potential influence on the policies advocated by that candidate or party. In my view the public interest in knowing that the AEC audits compliance with Part XX of the CE Act would be vindicated by knowing that Document No. 2 had been sent without having access to a facsimile of the signature of the person sending Document No. 2.</p> <p>(c) would promote effective oversight of public expenditure.</p> <p>This factor is not relevant to the question whether on balance access to Document No. 2 should be given.</p> <p>(d) would allow a person to access his or her own personal information.</p> <p>This factor is not relevant to the question whether on balance access to Document No. 2 should be given.</p> <p>2.7 Subsection 11B(4) of the FOI Act forbids me taking into consideration the following factors in determining whether on balance access to Document No. 2 should be given, namely:</p> <p>(a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;</p> <p>(b) access to the document could result in any person misinterpreting or misunderstanding the document;</p>	

Document No.	Description	Date
	<p>(c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;</p> <p>(d) access to the document could result in confusion or unnecessary debate.</p> <p>2.8 Accordingly, I excluded these matters from my consideration.</p> <p>2.9 The factors against giving access to Document No. 2 include whether giving that access include the harm to the signatory of Document No. 2 arising from access to a facsimile of that person's signature, namely loss arising from identity theft facilitated by giving access to the signature. I noted that this harm would be exacerbated by giving access to Document No. 2 in electronic form;</p> <p>2.10 That risk is explained at item 2.3 of this entry.</p> <p>Consideration whether to offer access to an edited copy</p> <p>2.11 Section 22 of the FOI Act requires me to consider whether it is possible and practicable to prepare an edited copy of Document No. 2 from which any exempt material is redacted.</p> <p>2.12 It is open to me to find that it is possible and practicable to prepare an edited version of Document No. 2 from which the following is redacted:</p> <p>(a) material out of scope of the FOI Request (irrelevant material); and</p> <p>(b) exempt material.</p> <p>2.13 I found that it is possible to produce a meaningful copy of Document No. 2 given how small the redaction will be that is necessary to remove irrelevant or exempt material.</p>	

Document No.	Description	Date
	<p>Decision</p> <p>2.14 I have decided to refuse access to Document No. 2 and offer in lieu access to an edited copy of Document No. 2 from which the facsimile of the signature is redacted.</p>	25/02/13
3	<p>Letter from Anna Jurkiewicz, Assistant Director, Funding and Disclosure to Ms Susanne Mitchell, Party agent, National Party of Australia.</p> <p>Folios 6 – 7 of file 13/187</p> <p>[Part of LS5778 Document No 2.pdf]</p>	
	<p>RECOMMENDATION/DECISION</p> <p>Personal information</p> <p>3.1 Document No. 3 contains personal information to which section 47F of the FOI Act applies, namely the name and a facsimile of the signature of an AEC employee.</p> <p>3.2 There is no exceptional circumstance to justify withholding the names of the AEC employee.</p> <p>3.3 There is an exceptional circumstance to justify withholding the facsimile of the signature of the AEC employee, namely the risk of harm arising from identity theft being facilitated by giving access to an electronic facsimile of the employee's signature.</p> <p>3.4 I concluded that Document No. 3 was conditionally exempt under section 47F of the FOI Act.</p>	

Public interest considerations

- 3.5 I am required by subsection 11A(5) of the FOI Act to consider whether, in the circumstances, access to Document No. 3 at any time would, on balance, be contrary to the public interest. This must be done in accordance with section 11B of the FOI Act taking into account the FOI Guidelines.
- 3.6 The factors favouring access to Document No. 3 are the same as apply to Document No. 2 as set in item 2.6 of the entry for Document No. 2.
- 3.7 Subsection 11B(4) of the FOI Act forbids me taking into consideration the factors described in item 2.7 of the entry for Document No. 2 in determining whether on balance access to Document No. 3.
- 3.8 Accordingly, I excluded these matters from my consideration.
- 3.9 The factors against giving access to Document No. 3 include whether giving that access include the harm to the signatory of Document No. 3 arising from access to a facsimile of that person's signature, namely loss arising from identity theft facilitated by giving access to the signature. I noted that this harm would be exacerbated by giving access to Document No. 3 in electronic form;
- 3.10 That risk is explained at item 3.3 of this entry.

Consideration whether to offer access to an edited copy

- 3.11 Section 22 of the FOI Act requires me to consider whether it is possible and practicable to prepare an edited copy of Document No. 3 from which any exempt material is redacted.
- 3.12 It is open to me to find that it is possible and practicable to prepare an edited version of Document No. 3 from which the following is redacted:
- (a) material out of scope of the FOI Request (irrelevant material); and
 - (b) exempt material.

Document No.	Description	Date
3.13	<p>I found that it is possible to produce a meaningful copy of Document No. 3 given how small the redaction will be that is necessary to remove irrelevant or exempt material.</p> <p>Decision</p> <p>I have decided to refuse access to Document No. 3 and offer in lieu access to an edited copy of Document No. 3 from which the facsimile of the signature is redacted.</p>	3/06/13
4	<p>Compliance Review Report – National Party of Australia – June 2013</p> <p>Folios 8 – 12 of file 13/187</p> <p>[LS5778 Document No 3.pdf]</p> <p>RECOMMENDATION/DECISION</p> <p>Personal Information</p> <p>4.1 Document No. 4 contains personal information to which section 27A of the FOI Act applies, namely:</p> <p>(a) the names of AEC employees;</p> <p>(b) the names of the Party Agent of the National Party of Australia and another representative of the party.</p> <p>4.2 There is no exceptional circumstance to justify withholding the name of the AEC employee.</p> <p>4.3 Similarly, there is no exceptional circumstance to justify withholding the names of the party's Party Agent and other representative.</p>	

Business Information

- 4.4 Document No. 4 contains business information to which section 27 of the FOI Act applies, namely information concerning the business, commercial or financial affairs of an organisation, namely:
- (a) the National Party of Australia; and
 - (b) John McEwan House Pty Ltd.
- 4.5 The AEC consulted the organisations specified in item 4.4 in accordance with an undertaking to political parties and their associated entities that they will be consulted about any FOI Requests relating to their disclosure obligations under Part XX of the CE Act.
- 4.6 No contentions were received opposing giving access to Document No. 4.
- 4.7 I concluded that it was unreasonable to give access to the business information thereby finding that the Document No. 4 was conditionally exempt.
- 4.8 I turned my mind to whether the public interest factors favouring giving access to Document No. 4 outweighed the public interest factors against giving that access.
- 4.9 Having found that Document No. 4 was conditionally exempt, I:
- (a) had regard to:
 - (i) the objects of the FOI Act, specifically the long title and sections 3 and 3A of the FOI Act;
 - (ii) whether access to the document would inform debate on a matter of public importance, namely the relationships between a registered political party, its associated entities and donors;
 - (iii) the scheme of Part XX of the CE Act 1918, that favours disclosures by political parties and their associated entities and donors;
 - (iv) the lack of opposition by the parties consulted; and

Document No.	Description	Date
	<p>(v) paragraphs 6.3 – 6.33 of the FOI Guidelines; and</p> <p>(b) had no regard to the irrelevant considerations listed in subsection 11B(4) of the FOI Act, in deciding for the purposes of how to apply the public interest test for the purposes of subsection 11A(5) and section 11B of the FOI Act.</p> <p>4.10 I found that access to the business information identified in item 4.4 would contribute to informing debate on the matter of public importance identified in item 4.9(a)(ii).</p> <p>4.11 I concluded that the balance of public interest in accessing the business information identified in item 4.4 outweighed the possible harm to the relevant organisations from giving access to that business information.</p> <p>4.12 I decided to give access to Document No. 4.</p>	3/06/13
5	<p>Letter from Anna Jurkiewicz, Assistant Director, Funding and Disclosure to Ms Susanne Mitchell, Party agent, National Party of Australia.</p> <p>Folio 13 of file 13/187</p> <p>[LS5778 Document No 4.pdf]</p> <p>RECOMMENDATION/DECISION</p> <p>5.1 Document No. 5 contains personal information to which section 47F of the FOI Act applies, namely the name and a facsimile of the signature of an AEC employee.</p> <p>5.2 There is no exceptional circumstance to justify withholding the names of the AEC employee.</p>	

Document No.	Description	Date
5.3	There is an exceptional circumstance to justify withholding the facsimile of the signature of the AEC employee, namely the risk of harm arising from identity theft being facilitated by giving access to an electronic facsimile of the employee's signature.	
5.4	I concluded that Document No. 5 was conditionally exempt under section 47F of the FOI Act.	
	Public interest considerations	
5.5	I am required by subsection 11A(5) of the FOI Act to consider whether, in the circumstances, access to Document No. 5 at any time would, on balance, be contrary to the public interest. This must be done in accordance with section 11B of the FOI Act taking into account the FOI Guidelines.	
5.6	The factors favouring access to Document No. 5 are the same as apply to Document No. 2 as set in item 2.6 of the entry for Document No. 2.	
5.7	Subsection 11B(4) of the FOI Act forbids me taking into consideration the factors described in item 2.7 of the entry for Document No. 2 in determining whether on balance access to Document No. 5.	
5.8	Accordingly, I excluded these matters from my consideration.	
5.9	The factors against giving access to Document No. 5 include whether giving that access may cause a harm, to the signatory of Document No. 5, arising from access to a facsimile of that person's signature, namely loss arising from identity theft facilitated by giving access to the signature. I noted that this harm would be exacerbated by giving access to Document No. 5 in electronic form;	
5.10	That risk is explained at item 5.3 of this entry.	
	Consideration whether to offer access to an edited copy	
5.11	Section 22 of the FOI Act requires me to consider whether it is possible and practicable to prepare an edited copy of Document No. 5 from which any exempt material is redacted.	

Document No.	Description	Date
5.12	<p>It is open to me to find that it is possible and practicable to prepare an edited version of Document No. 5 from which the following is redacted:</p> <p>(a) material out of scope of the FOI Request (irrelevant material); and</p> <p>(b) exempt material.</p> <p>5.13 I found that it is possible to produce a meaningful copy of Document No. 5 given how small the redaction will be that is necessary to remove irrelevant or exempt material.</p> <p>Decision</p> <p>5.14 I have decided to refuse access to Document No. 5 and offer in lieu access to an edited copy of Document No. 5 from which the facsimile of the signature is redacted.</p>	24/10/12
6	<p>Annual Return Profile - National Party of Australia</p> <p>Folios 14 - 17 of file 13/187</p> <p>[LS5778 Document No 5.pdf]</p> <p>RECOMMENDATION/DECISION</p> <p>Material out of scope of FOI</p> <p>6.1 Document No. 6 includes factual material about the National Party of Australia that is published by the AEC for reference on its website at: http://periodicdisclosures.aec.gov.au/Party.aspx.</p> <p>6.2 Consequently the carve-out in paragraph (d) of the definition of 'document' provided in subsection 4(1) of the FOI Act applies to this factual material with the outcome that it is not included in the scope of the FOI Request.</p>	24/10/12

Documents affecting enforcement of law and protection of public safety

- 6.3 Paragraph 37(2)(b) of the FOI Act applies to Document No. 6 because its disclosure under the FOI Act would disclose lawful methods or procedures for preventing, detecting, investigating, or dealing with matters arising out of, breaches or evasions of the law (namely compliance with Part XX of the CE Act) the disclosure of which would, or would be reasonably likely to, prejudice the effectiveness of those methods or procedures.
- 6.4 Document No.6 is a risk matrix used to allocate resources appropriately for the choice of organisations or individuals warranting audit for compliance with Part XX of the CE Act which is a scheme for various forms of disclosure by registered political parties, associated entities and donors within the meaning of that Part of the CE Act.

Public interest conditional exemptions—deliberative processes

- 6.5 Subsection 47C(1) of the FOI Act applies to Document No. 6 because its disclosure under the FOI Act would disclose matter (deliberative matter) in the nature of, or relating to, opinion, advice or recommendation obtained, prepared or recorded, or consultation or deliberation that has taken place, in the course of, or for the purposes of, the deliberative processes involved in the functions of the AEC, namely the application of a risk matrix to determine whether to audit the compliance of organisations or individuals with their disclosure obligations under Part XX of the CE Act.

- 6.6 The material excepted from the concept of deliberative matter by paragraph 47C(2)(b) is the factual material about the National Party of Australia that is published by the AEC for reference on its website at: <http://periodicdisclosures.aec.gov.au/Party.aspx> to which the carve-out in paragraph (d) of the definition of 'document' provided by subsection 4(1) of the FOI Act applies as explained in items 6.1 to 6.2.

Public interest conditional exemptions—certain operations of agencies

- 6.7 Paragraph 47E(a) of the FOI Act applies to Document No. 6 because its disclosure under the FOI Act would, or could reasonably be expected to prejudice the effectiveness of procedures or methods for the conduct of compliance audits by the AEC with respect to disclosure obligations imposed by Part XX of the CE Act on candidates, parties, associated entities and donors (the 'Reporters').

<p>6.8 Document No. 6 contains financial data obtained through both annual disclosure returns and compliance reviews.</p> <p>6.9 The financial data is used by the AEC to identify which risk factors specified in Document No. 6 are triggered.</p> <p>6.10 The risk factors specified in Document No. 6 are used to determine a risk rating that the AEC uses as part of the criteria to determine which returns by Reporters are selected for compliance reviews.</p> <p>6.11 Knowledge of the risk factors would allow Reporters to structure the returns provided under Part XX of the CE Act to lessen the likelihood that the relevant Party or Related Entity is selected for compliance reviews.</p> <p>Public interest conditional exemptions—business</p> <p>6.12 Document No. 6 contains business information to which section 47G of the FOI Act applies, namely the bank account details of the National Party of Australia.</p> <p>6.13 It is open to me to find that there is no need to consult the National Party of Australia under section 27 of the FOI about whether it wishes to make an exemption contention about their business information because the reasons why the document is conditionally exempt under section 47G (business information) and access to the document would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) is self-apparent, namely the risk of harm arising from misuse of the bank details to attack the bank account.</p> <p>Balancing public interests</p> <p>6.14 I am required by subsection 11A(5) of the FOI Act to consider whether, in the circumstances, access to Document No. 6 at any time would, on balance, be contrary to the public interest. This must be done in accordance with section 11B of the FOI Act taking into account the FOI Guidelines.</p> <p>6.15 The factors favouring access to Document No. 6 include whether giving that access:</p> <p>(a) would promote the objects of the FOI Act expressed in its long title and sections 3 and 3A.</p> <p>Public interest does not mean of interest to the public, but in the interest of the public: see <i>Johansen v City Mutual Life Assurance Society Ltd</i> (1904) 2 CLR 186. The dominant interest of the public is being</p>	
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assured that disclosures in returns required by Part XX of the CE Act are complete and accurate. There is a lesser public interest in knowing that there is a system of compliance auditing that depends on a risk assessment to target returns that are less likely to be complete and accurate. There is no public interest in knowing how the risk assessment is applied.

(b) would inform debate on a matter of public importance.

The disclosures made under Part XX of the CE Act are the matters that inform debate on a matter of public importance, namely who has by donations in cash or kind to a candidate or party has potential influence on the policies advocated by that candidate or party. How those disclosures are audited is outside the debate in as much as it provides a foundation for the public being able to conduct the debate in the confidence that it has a complete and accurate knowledge of these matters from the disclosures by Reporters under Part XX of the CE Act.

(c) would promote effective oversight of public expenditure.

This factor is not relevant to the question whether on balance access to Document No. 6 should be given.

(d) would allow a person to access his or her own personal information.

This factor is not relevant to the question whether on balance access to Document No. 6 should be given.

6.16 Subsection 11B(4) of the FOI Act forbids taking into consideration the following factors in determining whether on balance access to Document No. 6 should be given, namely:

(a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;

(b) access to the document could result in any person misinterpreting or misunderstanding the document;

(c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;

(d) access to the document could result in confusion or unnecessary debate

6.17 The factors against giving access to Document No. 6 include whether giving that access include:

(a) The public interest in being assured that there is an effective system to audit compliance with the disclosure obligations imposed by Part XX of the CE Act;

(b) The risk that an effective system to audit compliance with the disclosure obligations imposed by Part XX of the CE Act would be undermined by disclosing the risk factors taken into account in deciding whether to audit a particular return provided under Part XX of the CE Act by enabling candidates parties and entities.

That risk is explained at items 6.7 to 6.11 of this entry.

Consideration whether to offer access to an edited copy

6.18 Section 22 of the FOI Act requires you to consider whether it is possible and practicable to prepare an edited copy of Document No. 6 from which any exempt material is redacted.

6.19 It is open to me to find that it is impossible and impracticable to prepare an edited version of Document No. 6 from which is redacted:

(a) material out of scope of the FOI Request (irrelevant material); and

(b) exempt material.

6.20 I doubt that it is possible to produce a meaningful copy of Document No. 6 given the magnitude of the redactions necessary to remove irrelevant or exempt material.

Findings

6.21 I found that:

- (a) factual information about the finance of the National Party of Australia include in Document No. 6 is out of scope of the FOI Request because it is material published by the AEC for reference on its website;
- (b) there is a risk (explained at items 6.7 to 6.11 of this entry) that an effective system to audit compliance with the disclosure obligations imposed by Part XX of the CE Act would be undermined by disclosing the risk factors taken into account in deciding whether to audit a particular return provided under Part XX of the CE Act by enabling candidates parties and entities;
- (c) disclosure of Document No. 6 under the FOI Act would, or could reasonably be expected to prejudice the effectiveness of procedures or methods for the conduct of compliance audits by the AEC with respect to disclosure obligations imposed by Part XX of the CE Act on Reporters;
- (d) the balance of consideration of public interest in giving or withholding access to Document No. 6 is that the considerations for withholding access outweigh the considerations favouring access; and
- (e) Document No. 6 is exempt from disclosure under the FOI Act because giving access would be contrary to public policy; and
- (f) it is impossible and impracticable to prepare a meaningful edited version of Document No. 6 after the redaction of irrelevant and exempt material.

Decision

6.22 Accordingly, I decided to **refuse access to Document No. 6.**

End

