



LS5879 ~ file 16/0932.

Cail Young  
By email to:

foi+request-2712-e7494214@righttoknow.org.au

Dear Mr Young

### Your Request for internal review of the decision about your FOI Request No. LS5827

1. I refer to your emails of 15 November 2016 2:27 PM, 15 November 2016 2:20 PM and 15 November 2016 1:00 PM, to the Australian Electoral Commission ('AEC') in which you requested (your 'FOI Request') access under the *Freedom of Information Act 1982* (the 'FOI Act') to documents relating to procedures for enrolment of itinerant electors and your enrolment details.
2. I also refer to your email of 16 December 2016 8:29 AM, to the AEC in which you request (your 'Internal Review Request') an internal review of the decision that no documents were identified that fell within the scope of the second part of your FOI request no. LS5827, made by Owen Jones, Senior Lawyer of the AEC, which was notified to you on 15 December 2016 (the 'FOI decision').
3. I am writing today to give you a decision about your Internal Review Request as required under subsection 54C(4) of the FOI Act.

### Summary

4. I, Paul Pirani, Chief Legal Officer of the AEC, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to the internal review of a decision about an FOI request.
5. Specifically you sought a review of the FOI decision that no documents were identified that fell within the scope of the second limb of your FOI Request. Your Internal Review Request was for 'a thorough search of training materials that exist for polling place staff', specifically in relation to what was the second part of your FOI Request which was for '*copies of any procedures for polling place staff in processing itinerant electors on polling day, especially as it relates to voting out of state.*'
6. I note that you make specific reference in your Internal Review Request to the fact that in Mr Jones' decision letter dated 15 December 2016, he states that he directed enquiries to the Roll Management Branch. I have reviewed the document searches undertaken by Mr Jones and examined the training materials that the AEC produces

for polling place officials. I have concluded that, there was an oversight in the drafting of the correspondence from Mr Jones, and in fact searches for relevant documents were directed to all relevant business areas in the AEC, including the Roll Management Branch, and the Elections Planning, Policy and Operations Branch. The schedule to the decision letter from Mr Jones lists all of the relevant documents that fell within the scope of your request.

7. Accordingly, I have found no documents which fall within the scope of your Internal Review Request and as such I am refusing your Internal Review Request under section 24A of the FOI Act. This therefore affirms the FOI decision made by Mr Jones on 15 December 2016.
8. More information, including my reasons for my decision, is set out below.

### ***Decision and reasons for decision***

#### **Decision**

9. With regard to your Internal Review Request, I have decided that no documents fall within the scope of your request and as such am refusing your Internal Review Request under section 24A of the FOI Act.

#### **Material taken into account**

10. I have taken the following material into account in making my decision:
  - (a) your contentions in your email of 16 December 2016 8:29 AM;
  - (b) the documents and FOI decision letter in relation to your original FOI Request;
  - (c) information provided by business areas in the AEC in relation to your FOI Request and your Internal Review Request and relevant searches undertaken;
  - (d) the FOI Act, specifically sections 24A, 26 and Part VI.
  - (e) the guidelines ('FOI Guidelines') issued by the Australian Information Commissioner under section 93A of the FOI Act, specifically paragraphs 3.80-3.84 and 9.1-9.39.

#### **Reasons**

11. Under sections 53A and 54 of the FOI Act, an FOI applicant may apply for internal review of an access refusal decision. In the original FOI decision, at paragraph 5, Mr Jones refused access to the second limb of your FOI Request on the basis that he 'did not identify any documents that fell within the scope of the second limb of your FOI request.'
12. Under subsection 24A(1) of the FOI Act, an agency may refuse a request if it has taken 'all reasonable steps' to find the document requested, and is satisfied that the document cannot be found or do not exist.
13. In the internal review I have undertaken, I have consulted all relevant business areas in the AEC regarding your Internal Review Request, that being the Roll Management Branch and the Elections Planning, Policy and Operations Branch who undertook relevant searches in relation to your Internal Review Request. I have not identified

any documents that fall within the scope of your Internal Review Request. This substantially affirms Mr Jones' original FOI decision.

14. The AEC does not have specific procedures for polling officials in issuing ballot papers to itinerant electors on polling days. The reason for this is that the certified lists and approved lists of voters that are available to polling place officials does have an address allocated to each itinerant elector. That address may or may not be within the actual Division for which the itinerant elector is enrolled having regard to the matters set out in subsection 96(2A) of the *Commonwealth Electoral Act 1918* (Electoral Act). Accordingly, a polling official will not be able to identify whether or not an elector is an itinerant elector. This results in the procedures that apply for issuing votes to electors found on the certified list or approved list of voters applying equally to itinerant electors. If the itinerant elector's details are not found on the certified list or approved lists of voters, or the address details are not the same as on those lists, then the elector will be issued a provisional vote under section 235 of the Electoral Act just the same as any other elector whose details are not found. Accordingly, there are no additional or specific procedures for polling place staff in issuing ballot papers to itinerant electors on polling day.
15. For background, as you may know, itinerant electors are enrolled as an elector with no fixed address and can enrol:
  - (a) for the address which they were last eligible to enrol; or
  - (b) for the address where their next of kin is enrolled, or
  - (c) in the division where they were born; or
  - (d) for those born outside Australia, on the division which they are most closely connected.
16. Itinerant electors are then able to vote in federal elections at any polling place within the Division for which they are enrolled and may cast an absent vote at any other polling place provided it is within their state or territory. Otherwise, if they are not in the state or territory for which they are enrolled on election day, the individual may vote at any early (pre-poll) voting centre or by post. An itinerant elector must advise the AEC if they establish a permanent place of living or live at a place for more than one month.
17. Additional information on itinerant electors can be found on the AEC website at: [http://www.aec.gov.au/Enrolling\\_to\\_vote/Special\\_Category/Enrolment\\_with\\_no\\_fixed\\_address.htm](http://www.aec.gov.au/Enrolling_to_vote/Special_Category/Enrolment_with_no_fixed_address.htm)
18. Accordingly, I have found no documents which fall within the scope of your Internal Review Request and I am therefore refusing your Internal Review Request under section 24A of the FOI Act.

## **YOUR REVIEW RIGHTS**

19. If you are dissatisfied with my decision, you may apply for Information Commissioner review of the decision.
20. Under section 54N 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

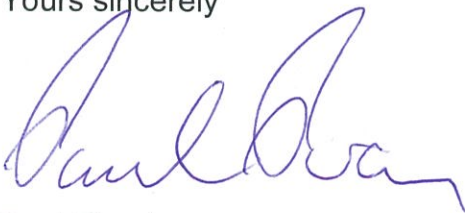
21. More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

#### QUESTIONS ABOUT THIS DECISION

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

email:	<a href="mailto:paul.pirani@aec.gov.au">paul.pirani@aec.gov.au</a>
fax:	02 6293 7657
post:	Locked bag 4007, Canberra ACT 2601
telephone:	02 6271 4474

Yours sincerely



Paul Pirani  
Chief Legal Officer

12 January 2017