



Our Ref: LS4451 ~ file 12/1152

Ms Margo Kingston
By email to foi+request-32-a8c83d8c@righttoknow.org.au

Dear Ms Kingston

Re LS4451 Your freedom of information request

I refer to your email of 2 January 2013 4:34 PM addressed to the three Commissioners of the Australian Electoral Commission ('AEC') in relation to your freedom of information request.

I am writing in response to your letter to point out that section 10A of the *Freedom of Information Act 1982* (the 'FOI Act') does not confer functions on the Commissioners acting as the AEC in relation to the FOI Act. The FOI Act confers those functions only on Mr Killesteyn in his capacity as the principal officer of the AEC and I am authorised to perform those functions on his behalf in accordance with section 10A(1)(b) of the FOI Act. Accordingly, I am responding to your email as the authorised decision-maker in this matter under the FOI Act.

As mentioned in my letter to you dated 17 December 2012, the AEC has only made two decisions in relation to whether the Australians for Honest Politics trust fund is an "associated entity" as defined in subsection 287(1) of the *Commonwealth Electoral Act 1918*. Both of these decisions concluded that there were no reasonable grounds for the AEC to treat this trust as an "associated entity" with reporting obligations under Part XX of the Electoral Act. A copy of the notice of the second AEC decision dated 15 July 2004 was appended to my letter to you of 17 December 2012.

In your email of 2 January you repeatedly refer to the AEC being somehow "materially misled" by the contents of Mr Abbott's letter to the AEC of 20 October 1998. I am having some difficulties in accepting your characterisation that something in the contents of that letter misled the AEC in a material particular about exercising its statutory powers under

Part XX of the Electoral Act. In this regard I once again note that the relevant statutory test that was being applied by the AEC was whether or not the trust was operating in a manner that met the requirements of the definition of an associated entity contained in subsection 287(1) of the Electoral Act. Whether or not Mr Abbott had obtained legal advice before seeking donations to the trust is a matter of conjecture and had no relevance to the statutory functions with which the AEC was charged under Part XX of the Electoral Act.

The AEC finds general allegations that somehow Mr Abbot misled the AEC in the exercise of its statutory functions to be unhelpful in identifying possible documents relevant to your FOI request. Please clarify your request by identifying the relevant statutory function with which the AEC was charged and the facts that you claim give rise to the suspicion that Mr Abbot misled the AEC in relation to that function. The conclusion that the trust was not an associated entity was based solely on the AEC's consideration of the trust deed, information provided by a number of trustees and legal advice obtained by the AEC.

As explained in Mr Jones's email to you of 2 January 2012 11:26 AM, the AEC requires this information to be provided by 4 January 2013.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Pirani', with a long horizontal flourish extending to the right.

Paul Pirani
Chief Legal Officer

3 January 2013