

Mr Richard Smith

By email: foi+request-4033-3222c563@righttoknow.org.au

Dear Mr Richard Smith

LS6223 – FOI Request – Decision record and reasons

I refer to your email received Wednesday 16 August 2015 5:08 PM, sent via the Right to Know website, in which you request ('your FOI Request') the Australian Electoral Commission ('AEC') under the [Freedom of Information Act 1982](#) ('FOI Act') for access to documents relating to the nomination of Mr Barnaby Thomas Gerard Joyce at the 2004 Federal election.

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

Summary

3. I, Saskia Rosenblatt, Lawyer, of the AEC, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

4. I have interpreted your FOI Request as seeking:

- (a) "A copy of the Nomination Form for Senate Candidates in use by the AEC immediately prior to the writs being issued for the 2004 Federal Election;
- (b) A copy of any Information for Senate Candidates documents produced by or provided by the Commonwealth and in use immediately prior to the writs being issued for the 2004 Federal Election;
- (c) Documents, received by the AEC relating to the Nomination of Mr Barnaby Thomas Gerard Joyce to run for election in Queensland to The Senate in the 2004 Federal Election, being documents relating to his nomination and not to his campaign for election;
- (d) A copy of the completed nomination form relating to the Nomination of Mr Barnaby Thomas Gerard Joyce to run for election in Queensland to The Senate in 2004 Federal Election; and
- (e) Documents, including any receipts issued, relating to the refund of the deposit made in relation to the Nomination of Mr Barnaby Thomas Gerard Joyce to run for election in Queensland to The Senate in 2004 Federal Election."

5. I coordinated searches for relevant documents to be conducted of files held by the QLD State Office, Elections Branch and the Finance & Business Services Branch of the AEC.

6. Following these searches I have identified 2 documents that fall within the scope of your request.

7. I have included as **Attachment A** to this decision the schedule of relevant documents. This provides a description of each document that falls within the scope of your request and the access decision for each of those documents.

Decision

8. Having considered the documents outlined in Attachment A, I have decided to:

- grant access in full to Document No. 1; and

- grant access to an edited copy of Document No. 2.

Reasons for decision

Access to an edited copy

9. Document No. 2 is a table setting out the Senate Candidate Refunds for the State of Queensland for the half-Senate election held in 2004. Only one entry within the table is relevant to your FOI Request.

10. Section 22 of the FOI Act allows for the deletion of exempt or irrelevant material from a document so that the remainder of the document can be released. Subsection 22(1) provides

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 Document Nos. 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.

11. In accordance with section 22 of the FOI Act I have considered whether it is both possible and practicable to prepare an edited copy of Document Nos. 2 from which the exempt material has been removed.

12. Paragraph 3.88 of the FOI Guidelines advises that a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant.

13. I have considered whether the purpose of the FOI Act will still be served if an edited copy of Document No. 2 were to be given. As this document only contains one relevant entry the extensive editing required will leave only a skeleton of the former document.¹
14. While access could be refused for this reason I have decided that the single entry so directly relates to FOI Request LS6223 that the release of the heavily edited document will still be of value to the applicant and keep with the purpose of the FOI Act.
15. Further, I have found that it is reasonably practicable for an edited copy of the document to be prepared having regard to the size of the document and the nature and extent of the modifications required in accordance with subsection 22(c) of the FOI Act.
16. Accordingly, I have decided to **grant access to an edited copy** of Document No. 2 from which irrelevant information has been removed in accordance with section 22 of the FOI Act.

Disposal and destruction of Commonwealth records

17. I note the following information for your information.
18. Section 24 of the *Archives Act 1983* (Archives Act) regulates the disposal and destruction of Commonwealth records. The AEC can destroy or transfer records by using legal instruments issued by the National Archives of Australia, called Records Authorities. These Authorities cover agency-specific core business, as well as common administrative business activities performed by many Australian Government agencies.
19. Further to the regulation provided by section 24 of the Archives Act, section 393A of the *Commonwealth Electoral Act 1918* ('Electoral Act') provides for the preservation and destruction of 'electoral documents.'
20. Subsection 393A(1) provides a definition for 'electoral documents'
 - (1) In this section, electoral documents includes:
 - (a) ballot papers; and
 - (b) certified lists of voters; and
 - (ba) approved lists of voters; and
 - (c) certified copies of the Roll; and
 - (d) declarations; and
 - (e) postal vote certificates; and
 - (f) pre-poll vote certificates for declaration voting; and
 - (g) lists prepared under section 245.
21. Relevant to your FOI Request I note that subsection 393A(10) provides that the Electoral Commissioner may direct that electoral documents be destroyed if:
 - (a) not less than 6 months have elapsed since the declaration of the poll in the election in which the documents were used; and
 - (b) the documents are no longer required by the Electoral Commission for the performance of its functions.

¹ FOI Guidelines, part 3, paragraph 3.88 and *Parnell & Dreyfus and Attorney-General's Department* [2014] ALCmr 71 - Full decision available here: <http://www.austlii.edu.au/au/cases/cth/ALCmr/2014/71.html>.

22. Accordingly, the majority of documents that may have fallen within the scope of your request and relating to the 2004 Federal Election would have been destroyed pursuant to section 24 of the Archives Act or subsection 393A(10) of the Electoral Act.

Your review rights

23. If you are dissatisfied with my decision, you may apply for internal review or for review by the Information Commissioner of my 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

24. Under section 54 of the FOI Act, you may apply in writing to the AEC for an internal review of my decision. In accordance with section 54B of the FOI Act an internal review application must be made in writing, within 30 days of receipt of this letter.

25. No particular form is required for an application for internal review, but to assist the decision-maker who will conduct the review, please attach the reasons why you believe review of the decision is necessary.

26. Applications for internal review can be lodged in one of the following ways:

By email info@aec.gov.au

By post Attention: FOI Officer - Locked Bag 4007, Canberra ACT 2601

27. The internal review will be carried out by another officer within 30 days of receipt of your application.

Information Commissioner review

28. 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 receipt of this decision, and be lodged in one of the following ways:

Online <https://forms.business.gov.au/aba/oaic/foi-review-/>

By email enquiries@oaic.gov.au

By fax +61 2 9284 9666

By post: GPO Box 52189, Sydney NSW 2001

In person: Level 3, 175 Pitt Street, Sydney NSW

29. 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

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

email	legal@aec.gov.au
fax	02 6293 7657
post	Locked bag 4007, Canberra ACT 2601
phone	(02) 6271 4593

Yours sincerely

Saskia R. | Lawyer and FOI Officer

Legal Services Section | Legal & Procurement Branch

Australian Electoral Commission

T: (02) 6271 4593

8 September 2017.

SCHEDULE OF RETRIEVED DOCUMENTS – FOI REQUEST LS6223 – RICHARD SMITH VIA RIGHT TO KNOW

FOI Request for:

- *A copy of the Nomination Form for Senate Candidates in use by the AEC immediately prior to the writs being issued for the 2004 Federal Election;*
- *A copy of any Information for Senate Candidates documents produced by or provided by the Commonwealth and in use immediately prior to the writs being issued for the 2004 Federal Election;*
- *Documents, received by the AEC relating to the Nomination of Mr Barnaby Thomas Gerard Joyce to run for election in Queensland to The Senate in the 2004 Federal Election, being documents relating to his nomination and not to his campaign for election;*
- *A copy of the completed nomination form relating to the Nomination of Mr Barnaby Thomas Gerard Joyce to run for election in Queensland to The Senate in 2004 Federal Election; and*
- *Documents, including any receipts issued, relating to the refund of the deposit made in relation to the Nomination of Mr Barnaby Thomas Gerard Joyce to run for election in Queensland to The Senate in 2004 Federal Election.*

Doc. no.	File page No.	Description	Decision on relevance	Exemption
1	28	Candidates' Handbook: A handbook for candidates standing for election for the Senate and House of Representatives – August 2004	Full access	N/A
2	1	Undated document setting out 'Senate Candidate Refunds' for 2004	Access granted to an edited copy	s22(1)(a)(ii)