

Mr Richard Smith

By email: [foi+request-4033-3222c563@righttoknow.org.au](mailto:foi+request-4033-3222c563@righttoknow.org.au)

Dear Mr Richard Smith

## LS6224 – FOI Request – Decision record and reasons

I refer to your email received Wednesday 16 August 2015 5:29 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 2013 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 copy of the Nomination Form for House of Representatives Candidates in use by the AEC immediately prior to the writs being issued for the 2013 Federal Election;
- A copy of any Information for House of Representatives Candidates documents produced by or provided by the Commonwealth and in use immediately prior to the writs being issued for the 2013 Federal Election;
- Documents received by the AEC relating to the Nomination of Mr Barnaby Thomas Gerard Joyce to run for election in the seat of New England to the House of Representatives in the 2013 Federal Election, being documents relating to his nomination and not 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 the seat of New England to the House of Representatives in the 2013 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 the seat of New England to the House of Representatives in the 2013 Federal Election."

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

6. Following these searches I have identified 9 documents (10 files in total) that fall within the scope of your request.

- 1 document relates to request part (a);
  - 3 documents relate to request part (b);
  - 3 documents relate to request part (c); and
  - 2 documents, including 1 attachment, relates to request part (d).
7. I have included as **Attachment A** to this decision the schedule of relevant documents. This schedule provides a description of each document that falls within the scope of your request and the access decision for each of those documents.
8. Having considered the documents outlined in Attachment A, I have decided to:
- Grant access in full to 6 documents;
  - Grant access in part to edited copies of 3 documents; and
  - Refuse access to 1 document.

### Material considered

9. In reaching my decision, I have taken the following information into account:
- (a) the content of the documents that fall within the scope of your FOI Request;
  - (b) the FOI Act, specifically sections 4, 11A, 11B, 22 and 47F;
  - (c) the *Privacy Act 1988* (the Privacy Act), specifically section 6 and the Australian Privacy Principles (APPs) at schedule 1 to the Privacy Act.
  - (d) the guidelines (the “FOI Guidelines”) issued by the Australian Information Commissioner under section 93A of the FOI Act (available here: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>) specifically;
    - Part 2 – Scope of application of the Freedom of Information Act, specifically paragraphs 2.29 to 2.44, relating to the *Meaning of ‘document’*;
    - Part 3 – Processing and deciding on requests for access, specifically paragraphs 3.78 and 3.85 to 3.90, relating to *Deleting exempt or irrelevant content from a document*;
    - Part 6 – Conditional exemptions, specifically paragraphs 6.127 to 6.179, relating to *Documents affecting personal privacy (s 47F)*.

### Decision – access granted in full

10. Having considered the documents outlined in Attachment A, I have found Document Nos. 1, 2, 3, 4, 8 and 9 to be relevant to parts (a), (b) and (e) of your FOI Request.
11. I have decided to grant access in full to Document Nos. 1, 2, 3, 4, 8 and 9.

## Decision – access granted to edited copy

12. Having considered the documents outlined in Attachment A, I have found Document Nos. 5, 6, and 7 to be relevant to parts (c) and (d) of your FOI Request.
13. I have decided to grant access in part by way of an edited copy of Document Nos. 5, 6, and 7.

## Decision – access refused

14. Having considered the documents outlined in Attachment A, I have found Document No. 8.1, being an attachment to Document 8, to be relevant, in part, to part (e) of your FOI Request.
15. I have decided to refuse access to Document 8.1.

## Reasons for decision

### *Personal privacy conditional exemption*

16. Section 47F of the FOI Act provides that a document is conditionally exempt from disclosure to the extent that it contains personal information; the disclosure of which would be unreasonable.
17. Personal information in the context of the FOI Act has the same meaning as in the Privacy Act. Subsection 6(1) of the Privacy Act provides

**personal information** means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

18. Paragraph 6.130 of the Guidelines provides:

Personal information can include a person's name, address, telephone number, date of birth, medical records, bank account details, taxation information and signature.

19. In determining whether the disclosure of a document would involve an unreasonable disclosure of personal information, subsection 47F(2) of the FOI Act provides that an agency must have regard to the following matters (the unreasonableness test):

- the extent to which the information is well-known;
- 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;
- the availability of the information from publically accessible sources; and
- any other information that the agency considers is relevant.

20. Further, paragraph 6.138 of the FOI Guidelines states the following about the unreasonableness test in section 47F:

The personal privacy exemption is designed to prevent the unreasonable invasion of third parties' privacy. The test of 'unreasonableness' implies a need to balance the public interest in disclosure of government-held information and the privacy interest in the privacy of individuals.

21. I have considered the conditional exemption as outlined by section 47F of the FOI Act and the relevant parts, extracted above, from the FOI Guidelines, and have found that it applies to aspects of Documents Nos. 5, 6 and 7.
22. With the respect to these documents I found that:
- Document No. 5 contains a facsimile of the signature of the Mr Gregory Dezman, the Registered Officer of the National Party of Australian – NSW, Mr Barnaby Joyce MP and the AEC officer who processed the application. Additionally, it contains the personal contact details for Mr Barnaby Joyce MP;
  - Document No. 6 contains a facsimile of the signature of the AEC officer who processed the payment of the candidacy fee; and
  - Document No. 7 contains a facsimile of a signature of two AEC officers, Mr Barnaby Joyce MP and also contains the personal contact details for Mr Barnaby Joyce MP.
23. I accept that both Mr Gregory Dezman and Mr Barnaby Joyce MP have a public presence and so this personal information may already be in the public domain. However, I do need to balance this against principles established by the Privacy Act, in particular Australian Privacy Principle (APP) 6 at schedule 1 to the Privacy Act, which prevents the disclosure of personal information except for in specific circumstances.
24. I am satisfied that it would be unreasonable to disclose a facsimile of an individual's signature and the personal contact details for Mr Joyce because this personal information relates to the personal affairs of third parties to this request and you do not have consent from the relevant individuals for the release of their personal information.
25. Further, this information clearly constitutes personal information that identifies an individual not being the applicant which is prevented from disclosure by APP 6 except for in specific circumstances.
26. Accordingly, I am satisfied that the identified documents fall within the scope of the conditional exemption for personal privacy provided by section 47F of the FOI Act.
27. Having found that Document Nos. 5, 6 and 7 are conditionally exempt I am required, in accordance with subsection 11A(5) of the FOI Act, to consider whether it would be contrary to the public interest to give access to these documents.

### ***Public interest considerations***

28. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless (in the circumstances) access to the document would, on balance, be contrary to the public interest (the public interest test).

29. Paragraph 6.5 of the FOI Guidelines provides a definition of the public interest test with reference to relevant case law. That is, the public interest test is something that is of serious concern or benefit to the public, not merely of individual interest and not something of interest to the public, but in the interest of the public.
30. When weighing up the public interest factors for and against disclosure under subsection 11A(5) of the FOI Act, I have taken the following factors into consideration in favour of disclosure, reflecting on the extent to which disclosure would:
- promote the objects of the FOI Act;
  - inform debate on a matter of public importance; and
  - promote agency transparency.
31. I have also consider the following against disclosure, reflecting on the extent to which disclosure would:
- reasonably be expected to prejudice an individual's right to privacy;
  - release into the public forum information which is not otherwise well-known;
  - be contrary to the circumstances in which the information was obtained; and
  - be limited in its application to a matter of public, as opposed to private, concern.
32. In accordance with subsection 11B(4) of the FOI Act I excluded from my consideration the following matters:
- access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
  - access to the document could result in any person misinterpreting or misunderstanding the document;
  - 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;
  - access to the document could result in confusion or unnecessary debate.
33. In making my decision I had regard to:
- the extent to which the information is well known;
  - 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;
  - the availability of the information from publicly accessible sources;
  - FOI Guidelines, Part 6 (Conditional Exemptions) specifically paragraphs 6.1 – 6.28 and 6.124 – 6.179;
  - the following matters that the I considered relevant:

- (i) access to documents has been requested by email with the consequence that electronic copies of documents will be given; and
- (ii) a signature authenticates the acts of the actor; and
- (iii) there is a risk of harm arising from identity theft facilitated by access to a facsimile of a signature; and
- (iv) that the AEC has a duty to an individual in dealing with their personal information to take all reasonable measures to protect that individual from harm arising from its dealings with that personal information.

#### *Public interest and facsimiles of signatures*

34. Document Nos. 5, 6 and 7 contain facsimiles of signatures of Mr Gregory Dezman, Mr Barnaby Joyce MP as well as four different AEC officers.
35. I have identified that harm could be suffered by these individuals as a result of identity theft should the facsimiles of their signatures contained with Document Nos. 5, 6 and 7 be released.
36. Specific to the disclosure of a facsimile of Mr Barnaby Joyce's MP signature and Mr Gregory Dezman's signature I have considered in favour of disclosure the positions in which they hold in the public domain and it is reasonable to believe that an electronic facsimile of each of their signatures may already be available on a public forum.
37. To the contrary, I have considered the risk of harm arising from identity theft and the AEC's obligations under the Privacy Act to protect the personal information of those in which we interact. I further note that a signature authenticates the acts of the actor and this authentication can still be gleaned from the documents.
38. In my view the factors against disclosure a facsimile of signatures within Document Nos. 5, 6 and 7 outweigh the factors in favour of disclosure.
39. According, I am satisfied that disclosure of parts of Document Nos. 5, 6, and 7 would be contrary to the public interest. I have then considered whether an edited copy of these documents could be prepared in accordance with section 22 of the FOI Act so as to protect the personal information and allow the remainder of the document to be released.

#### *Public interest and contact details*

40. Document Nos. 5 and 7 contain the residential address, postal address, mobile and landline phone numbers of Mr Barnaby Joyce MP.
41. I note that in making a valid nomination of a candidate, the nomination must set out the name, place of residence and occupation of the candidate, (see section 166 of the *Commonwealth Electoral Act 1918* (the Electoral Act) and schedule 1 to the Electoral Act, in particular Forms D and DA relating to the Nomination of a Member of the House of Representatives).

42. As part of the nomination process, candidates are asked what information they authorise for release to the public, see Document No. 4 as a copy of the 2013 House of Representatives nomination form. I note that Mr Barnaby Joyce MP has expressly identified that he does not consent to the release of his residential address to the public but has consented to the release of his postal address. For completeness I note that even where consent has been given that consent to publish is limited by the circumstances in which it was given, being the 2013 Federal Election.
43. While Mr Barnaby Joyce MP has a public profile, and as such much of his personal information is in the public domain, this needs to be balanced against his right to privacy and a private life separate to that public profile.
44. I have identified that Mr Barnaby Joyce MP may suffer harm by way of a loss of his personal privacy should his personal contact information be disclosed.
45. When weighing public interest factors I have formed the view that the factors against disclosure outweigh any factors in support of disclosure.
46. According, I am satisfied that disclosure of parts of Document Nos 5 and 7, namely personal contact information for Mr Barnaby Joyce MP, would be contrary to the public interest. I have then considered whether an edited copy of the documents could be prepared in accordance with section 22 of the FOI Act so as to protect the personal information and allow the remainder of the document to be released.

## Access to an edited copy

47. 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.
48. 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 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.

*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.

***Personal privacy exemption***

49. 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. 5, 6 and 7 from which the exempt material has been removed.

50. Having regard to section 22 of the FOI Act and paragraphs 3.85-3.90 of the FOI Guidelines I have found it is both possible and practical for an edited copy of the Document Nos. 5, 6 and 7 to be prepared

51. Accordingly I have decided to **grant access to an edited copy** of Document Nos. 5, 6 and 7 with the following information redacted:

- Facsimiles of signatures; and
- Personal contact information including, residential address, postal address, mobile and landline phone numbers, for Mr Barnaby Joyce MP.

***Irrelevant information***

52. In considering Document No. 8.1 I have had regard to paragraph 3.88 of the FOI Guidelines which 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.

53. Document No 8.1, being the attachment to Document No. 8, is an excel spreadsheet setting out all of the NSW House of Representative candidates entitled to a refund following the 2013 federal election.
54. Of the 51 rows of cells only one row is relevant to your FOI Request and one sets out the headings for each of the columns.
55. Taking a common sense approach I have found that while it is possible to provide an edited copy of Document No. 8.1, it is not practicable to prepare an edited copy, having regard to the nature and extent of the modification required. Further, the remaining document would contain so little information it would be of little to no value to the applicant.
56. I have considered whether the purpose of the FOI Act will still be served if an edited copy of Document No. 8.1 were to be given and whether the extensive editing required will leave only a skeleton of the former document.<sup>1</sup>
57. I have found that the extensive editing will result in a document of little to no value. Accordingly I have decided to **refuse access** to this document.

## Disposal and destruction of Commonwealth records

58. I note the following information for your information.
59. 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.
60. 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.'
61. 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

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<sup>1</sup> 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>.

(g) lists prepared under section 245.

62. 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.

63. Accordingly, the majority of documents that may have fallen within the scope of your request and relating to the 2013 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

64. 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*

65. 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.

66. 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.

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

By email        [info@aec.gov.au](mailto:info@aec.gov.au)

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

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

### *Information Commissioner review*

69. 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](mailto: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

70. 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

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

email	<a href="mailto:legal@aec.gov.au">legal@aec.gov.au</a>
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

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08 September 2017.

### SCHEDULE OF RELEVANT DOCUMENTS – FOI REQUEST LS6224 – RICHARD SMITH VIA RIGHT TO KNOW

Request for:

- A copy of the Nomination Form for House of Representatives Candidates in use by the AEC immediately prior to the writs being issued for the 2013 Federal Election;
- A copy of any Information for House of Representatives Candidates documents produced by or provided by the Commonwealth and in use immediately prior to the writs being issued for the 2013 Federal Election;
- Documents received by the AEC relating to the Nomination of Mr Barnaby Thomas Gerard Joyce to run for election in the seat of New England to the House of Representatives in the 2013 Federal Election, being documents relating to his nomination and not 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 the seat of New England to the House of Representatives in the 2013 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 the seat of New England to the House of Representatives in the 2013 Federal Election.

Doc. no.	File page no.	Description	Decision on release	Exemption
1	1	Candidates' Handbook: Federal elections and By-election	Access granted in full	N/A
2	85	Candidates' Handbook: 2013 Addendum	Access granted in full	N/A
3	87	Nomination guide candidates	Access granted in full	N/A
4	92	House of Representatives (HoR) nomination form	Access granted in full	N/A
5	94	2013 Bulk HoR Nomination – National Party of Australia	Access granted to an edited copy	s47F – signature and personal contact information
6	96	2013 National Party of Australia – receipt of payment for 10 HoR candidate nominations	Access granted to an edited copy	s47F - signature
7	97	Declaration of Division of New England Poll – Mr Barnaby Joyce	Access granted to an edited copy	s47F - signature and personal contact information
8	99	Email from Enrolment Management NSW to Accounts mailbox regarding the refund of nomination deposits relating to the 2013 federal election	Access granted in full	N/A

		8.1 – Attachment to Document No. 8 – spreadsheet of NSW HoR candidates entitled to a refused.	Access refused	s22 – Irrelevant material
9	100	Extract from Account Payables software showing the payment of candidates fees received from the Nationals Party of Australia and refund of candidates fees from the AEC to the Nationals Party of Australia	Access granted in full	N/A