



Our Ref: LS4882 ~ file 13/1060

Mr Andrew Donnellan

By email to foi+request-469-7a2a4fc9@righttoknow.org.au

Dear Mr Donnellan

Re Your Freedom on Information request No. LS4882

I refer to your request dated 8 November 2013 under the *Freedom of Information Act 1982* (FOI Act) for access to documents held by the Australian Electoral Commission (the AEC). I acknowledge receipt of your request and of your further email dated 10 November 2013.

I, Paul Pirani, the AEC's Chief Legal Officer, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of this agency from its other operations due to its size and the broad scope of the request. This is called a 'practical refusal reason' (section 24AA of the FOI Act).

On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act.

Why I intend to refuse your request

In your request you sought access to the following documents:

- 1 In relation to the half-Senate election for Western Australia conducted on 7 September 2013, any documents prepared prior to any requests for a recount anticipating a recount;
- 2 In relation to the half-Senate election for Western Australia conducted on 7 September 2013, all documents relating to the requests for a recount lodged by Senator Scott Ludlam and Mr Wayne Dropulich, including but not limited to:
 - the original requests to the AEO Western Australia

- documents relating to the consideration of those requests by the AEO Western Australia
 - the record of and reasons for decision by the AEO Western Australia
 - the appeals to the Electoral Commissioner
 - documents relating to the consideration of those appeals by the Electoral Commissioner
 - the record of and reasons for decision by the Electoral Commissioner
 - legal advice obtained by the AEC in relation to the request for a recount (including documents subject to legal professional privilege insofar as the documents fall within the definition of operational information as given in section 8A of the FOI Act, or the AEC is prepared to waive legal professional privilege);
- 3 In relation to the half-Senate election for Western Australia conducted on 7 September 2013, all documents relating to the loss of 1,375 ballot papers as announced in an AEC media release of 31 October 2013, including but not limited to:
- memoranda prepared by AEC staff (whether in Western Australia or elsewhere) in relation to the loss of ballot papers
 - reports prepared in relation to the loss of ballot papers
 - documents (including memoranda, reports, presentations or evidentiary material) provided to Mr Mick Keelty in the course of his inquiry
 - legal advice obtained by the AEC in relation to the lost ballots (including documents subject to legal professional privilege insofar as the documents fall within the definition of operational information as given in section 8A of the FOI Act, or the AEC is prepared to waive legal professional privilege); and
- 4 In relation to the Federal election conducted on 7 September 2013, and in relation to all House of Representatives and half-Senate elections conducted at that election: any documents relating to complaints by members of the public, scrutineers, candidates or AEC staff relating to the conduct of the election.

I decided that a practical refusal reason exists because of the broad scope of your request, that the terms of your request appears to include a very large volume of documents, and that the processes involved in responding to your request will represent a substantial and unreasonable diversion of the AEC's resources having regard to:

- (i) the need to identify, locate and collate relevant documents;

- (ii) the decision making process required to decide whether to grant, refuse or defer access to a document to which the request relates, or to grant access to an edited copy of such a document (including resources that would have to be used for examining the document or consulting with any person or body in relation to the request);
- (iii) the work required in making a copy or an edited copy, of each document to be released; and
- (iv) notifying you of the decision (either as an interim decision or a final decision) in relation to each document identified as relevant to your request.

In view of the substantial resources that would be required to give effect to your current request, the AEC would need to consider the imposition of charges in accordance with section 29 of the FOI Act. I note your request for waiver of all fees and charges for the reasons stated in your email of 8 November 2013, which is one factor that the AEC would need to take into account when determining appropriate charges. Please be advised that the scope of your current request is so broad that the AEC is not at this stage able to give an indicative estimate of the charges that are likely to be incurred by you in responding to your request.

Request consultation process

You now have an opportunity to revise your request to enable it to proceed.

Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by narrowing the terms of your request to those documents in which you have a particular interest, the AEC will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents in which you are not interested.

The consultation period runs for 14 days and starts on the day after you receive this notice.

Before the end of the consultation period, you must do one of the following, in writing:

- withdraw your request
- make a revised request
- tell us that you do not wish to revise your request.

During this period, you are welcome to seek assistance from the contact person I have listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)

If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Contact officer

If you would like to revise your request or have any questions, the contact officer for your request is:

Andrew Kristjanson

Senior Lawyer

Telephone: 02 6271 4638

Email: andrew.kristjanson@aec.gov.au

Yours sincerely



Paul Pirani
Chief Legal Officer

20 November 2013