



Our Ref: LS4932 ~ file 14/96

Mr Andrew Owens  
By email to [foi+request-510-25c345bb@righttoknow.org.au](mailto:foi+request-510-25c345bb@righttoknow.org.au)

Dear Mr Owens

**Re FOI Request No LS4932 for statistics relating to certain by-elections**

I refer to your email of 28 January 2014 5:40 PM in which you make a request under the *Freedom of Information Act 1982* (the 'FOI Act') for statistics held by the Australian Electoral Commission relating to certain by-elections (the 'FOI Request'). I also refer to your email to Owen Jones, Senior Lawyer of the AEC dated 28 February 2014 10:58 PM complaining about the delay in processing your FOI Request.

- 2 The purpose of this letter is to give you a decision about access to documents that you requested under the FOI Act. I also apologise for the delay in giving you that decision. The delay arose from the effort made to retrieve relevant documents.

**SUMMARY**

- 3 I, Paul Pirani, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

- 4 I took your FOI Request to be a request for access to:

1. documents comprising the booth level voting statistics for the following federal by-elections which are not covered by any currently available publication of the AEC:
  - Groom, 9 April 1988
  - Oxley, 8 October 1988
  - Gwydir, 15 April 1989
  - Wills, 11 April 1992
  - Werriwa, 29 January 1994

- Mackellar, 26 March 1994
  - Warringah, 26 March 1994
  - Canberra, 25 March 1995
  - Fraser, 1 February 1997
  - Isaacs, 12 August 2000
  - Cunningham, 19 October 2002; and
2. a level of data requested is a similar level to that provided for general elections by the V3\_4 files on the AEC 1993-1998 CD-ROM, or the "Election Statistics" 1984-1993 statistics books.

5 I identified ten documents that fell within the scope of your request. I did this by directing the following inquiries:

(a) The Elections Management System (ELMS).

A substantial tranche of data from before 1996 was purged from ELMS due to storage constraints then applying to the system.

(b) the AEC Records Management Section;

The Records management team conducted an independent search and retrieved files.

(c) the AEC Library

Checked **Library catalogue** and searched through all published material.

Searched **TRIM Records Management System** and requested retrieval of those files of relevance to this enquiry.

Examined all files and extracted relevant information.

Searched through boxes of historical documents which are as yet uncatalogued. Archiving and cataloguing historical material is an ongoing and continuous project.

(d) National Archives of Australia

Lodged an enquiry with NAA Reference Section to conduct a search of AEC files from 1988-2000 and requested a Holdings Report from NAA of AEC Records held in Archives custody. None of the files contained information relevant to the FOI Request.

(e) State Offices

The relevant State Offices (NSW, Victoria and Queensland) were asked to search for relevant documents held either at State Office level or by the relevant Divisional Offices.

- 6 The attached schedule of documents (Attachment A) provides a description of each document that falls within the scope of your request and the access decision for each of those documents.
- 7 With regard to the ten documents that you requested (set out in Attachment A), I have decided:
- (a) to give you access in full to eight of those documents;
  - (b) to refuse access to two of those documents and to offer in lieu access to edited versions of each document.
- 8 I explain the reasons for this decision below.

## **DECISION AND REASONS FOR DECISION**

### **Decision and findings**

- 9 With regard to the documents identified in the attached schedule, I have decided:
- (a) to give you access in full to Document Nos 1, 2 and 5-10 for the reasons given in paragraph 16;
  - (b) to refuse access to Documents Nos 3 and 4 and to offer in lieu access to edited versions of each document with exempt matter deleted under section 22 of the FOI Act for the reasons given in paragraphs 17 to 27.
- 10 In addition I found that:
- (a) an unascertainable number of records no longer exist as an outcome of data purges and, in accordance with the *Archives Act 1983*, destruction of records (section 24A(1)(b)(ii)) for the reasons given in paragraph 5; and
  - (b) an unascertainable number of records could not be found (section 24A(1)(b)(i)) – information about the searches we carried out to locate them was given in paragraph 5,
- for the reasons appearing in paragraphs 13 to 15.

### **Material taken into account**

- 11 I have taken the following material into account in making my decision:
- (a) the content of the documents that fall within the scope of your request;
  - (b) the FOI Act (specifically sections 4, 11A, 22, 24A, 47F and 93A); and

- (c) the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

### **Reasons**

- 12 The schedule in Attachment A indicates each document to which access is refused. My reasons for refusing access follow.

### ***Destruction under RDA***

- 13 The primary records from which the statistics kept by the AEC in relation to the several by-elections:
- (a) fall within Class 11741 of the Records Disposal Authority (No. 2005/210284 as amended by No. 2008/00194021) issued by the National Archives of Australia (the 'RDA'); and
  - (b) have been destroyed in accordance with the RDA.

- 14 The description of records falling with class 11741 of the RDA follows:

Records documenting the scrutiny process for the House of Representatives.  
Includes:

- summary of the result of the scrutiny
- records of divisional advice of the final figure of first preference voters
- scrutiny sheets.

- 15 The RDA gives the following authorisation to destroy records falling within class 11741:

Destroy after next electoral event completed.

### ***No exempt material***

- 16 Document Nos 1, 2 and 5-10 do not contain exempt or conditionally exempt material.

### ***Unreasonable disclosure of personal information***

- 17 Document Nos 3 and 4 contain facsimiles of the signatures of the relevant Divisional Returning Officer but otherwise do not contain exempt or conditionally exempt material.
- 18 I considered whether release of Documents Nos 3 and 4 would be an unreasonable disclosure of personal information for the purposes of section 47F of the FOI Act.



19 In so far as is material, section 47F of the FOI Act provides:

**47F Public interest conditional exemptions—personal privacy**

*General rule*

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
  - (a) the extent to which the information is well known;
  - (b) 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;
  - (c) the availability of the information from publicly accessible sources;
  - (d) any other matters that the agency or Minister considers relevant.

20 Subsection 4(1) of the FOI Act defines the expression 'personal opinion' in the following terms:

**personal information** means information or an opinion (including information forming part of a database), whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

21 In the recent decision in 'BA' and Merit Protection Commissioner [2014] AICmr 9 the Australian Information Commissioner said:

The FOI Act contains no mechanism or procedure for controlling the use or dissemination of information provided to an FOI applicant. The possibility therefore exists that an applicant may transmit the information to other people or even publish it on the web.

22 In the same case the Australian Information Commissioner also said:

Two other suggested limitations on the phrase 'personal information' should also be noted. One is that information is only 'about an individual' (as required by s 4(1) of the FOI Act) if it says something about the individual.<sup>1</sup> The other is that a person's name is not of itself personal information.

23 However, a signature is more than a mere name. It is the manuscript expression of the individual's name by the individual and its purpose is to identify the relevant individual for the purpose of authenticating an act done by that individual.

24 Section 47F of the FOI Act provides that a document is conditionally exempt if its disclosure under the FOI Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

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<sup>1</sup> For example, *Kristoffersen v Department of Employment Workplace Relations and Small Business* [2002] FCA 55 at [27] per Keifel J; and *Re Veale and Town of Bassenden* [1994] WAICmr 4 at [34].

- 25 Considerations of the risk of identity theft militate against allowing access to documents that contain the signature of an individual. This triggers the 'unreasonable' test in section 47F of the FOI Act causing documents that have originals or facsimiles of signatures of individuals to be conditionally exempt documents. This is because such signatures fall within the scope of the expression 'personal information' as defined by section 4 of the FOI Act.
- 26 The outcome of my consideration of the unreasonable test in section 47F of the FOI Act was my conclusion that it would be unreasonable to release a facsimile of each Divisional Officer's signature and that the balance of competing public interest considerations in favour of release required to be reached under section 11A of the FOI Act did not outweigh the unreasonableness of disclosing the facsimiles each signature. Accordingly it was appropriate to refuse access in full to Document Nos 3 and 4.

### **OFFER TO PROVIDE EDITED COPIES**

- 27 However, section 22 of the FOI Act provides for access being given to edited copies of documents with exempt or irrelevant matter deleted where the applicant agrees to this course. I therefore offer to provide you with access to an edited version of Document Nos 3 and 4 in which the signature of each Divisional Returning Officer is redacted.
- 28 I would be grateful if you would advise by email to Mr Jones (his contact details are below) within the next seven days whether you accept this offer. If you do not accept the offer then my decision to refuse all access to Document Nos 3 and 4 will apply.

### **PROVISION OF ACCESS TO THE RELEASED DOCUMENTS**

- 29 When I receive your response to the offer in paragraph 28 or the seven day period mentioned in that paragraph expires, I will provide you with the Released Documents.

### **Your review rights**

- 30 If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the 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**

- 31 Under section 54 of the FOI Act, you may apply in writing to AEC for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.
- 32 Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

### Information Commissioner review

- 33 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 date of this letter, and be lodged in one of the following ways:

online: <https://forms.australia.gov.au/forms/oaic/foi-review/>  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
in person: Level 3, 175 Pitt Street, Sydney NSW

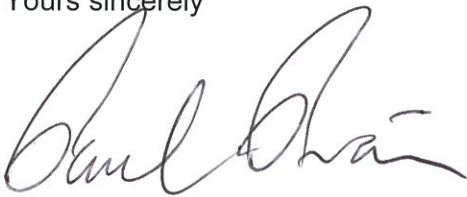
- 34 More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/foi-portal/review\\_complaints.html#foi\\_merit\\_reviews](http://www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews).

### Questions about this decision

- 35 If you wish to discuss this decision, please contact Mr Owen Jones, Senior Lawyer whose contact details follow:

Email: [owen.jones@aec.gov.au](mailto:owen.jones@aec.gov.au)  
Post: PO Box 6162 Kingston ACT 2604

Yours sincerely



Paul Pirani  
Chief Legal Officer

5 March 2014

Attachment: Schedule of documents (Attachment A)

**LS4932 FOI REQUEST BY ANDREW OWENS**

Originally

3. documents comprising the booth level voting statistics for the following federal by-elections which are not covered by any currently available publication of the AEC:
  - Groom, 9 April 1988
  - Oxley, 8 October 1988
  - Gwydir, 15 April 1989
  - Wills, 11 April 1992
  - Werriwa, 29 January 1994
  - Mackellar, 26 March 1994
  - Warringah, 26 March 1994
  - Canberra, 25 March 1995
  - Fraser, 1 February 1997
  - Isaacs, 12 August 2000
  - Cunningham, 19 October 2002; and
4. a level of data requested is a similar level to that provided for general elections by the V3\_4 files on the AEC 1993-1998 CD-ROM, or the "Election Statistics" 1984-1993 statistics books.



## RELEVANT DOCUMENTS

Document No.	Description	Date	Recommendation/Decision
1	<p>Excel workbook containing booth level voting statistics, where available, for the following House of Representatives by-elections:</p> <ul style="list-style-type: none"> <li>(a) Groom, 9 April 1988</li> <li>(b) Oxley, 8 October 1988</li> <li>(c) Gwydir, 15 April 1989</li> <li>(d) Wills, 11 April 1992</li> <li>(e) Werriwa, 29 January 1994</li> <li>(f) Mackellar, 26 March 1994</li> <li>(g) Warringah, 26 March 1994</li> <li>(h) Canberra, 25 March 1995</li> <li>(i) Fraser, 1 February 1997</li> <li>(j) Isaacs, 12 August 2000</li> <li>(k) Cunningham, 19 October 2002.</li> </ul>		<p>Document No 1 does not contain any exempt or conditionally exempt material.</p> <p>I <b>recommend</b> that you decide to give <b>access in full</b> to Document No. 1.</p> <hr/> <p>I decided to give <b>access in full</b> to Document No. 1.</p>
2	Statement showing result of Scrutiny of First Preference Votes for the Division of Groom by-election 9 April 1988		<p>Document No 2 does not contain any exempt or conditionally exempt material.</p> <p>I <b>recommend</b> that you decide to give <b>access in full</b> to Document No.2.</p> <hr/> <p>I decided to give <b>access in full</b> to Document No. 2.</p>

3	Return by the Divisional Returning Officer, Division of Oxley of the votes counted in the fresh scrutiny for the by-election on 8 October 1988	<p>Document No 3 is a return signed by the Divisional Returning Officer.</p> <p>Consideration of the risk of identity theft indicates that it would be unreasonable to release a facsimile of the signature. This is so. Despite a lapse of 26 years from the date the document was signed.</p> <p>Document No 3 contains no other exempt or conditionally exempt material.</p> <p><b>I recommend</b> that you decide to refuse to release Document No 3 and offer in lieu to issue an edited version in which the facsimile of the signature of the Divisional Returning Officer is redacted.</p> <hr/> <p><b>I decide to refuse access to</b> Document No 3 and <b>to offer in lieu</b> access to an edited version of the document in which the facsimile of the signature of the Divisional Returning Officer is redacted.</p>
4	Return by the Divisional Returning Officer, Division of Gwydir of the votes counted in the fresh scrutiny for the by-election on 14 April 1989	<p>Document No 4 is a return signed by the Divisional Returning Officer.</p> <p>Consideration of the risk of identity theft indicates that it would be unreasonable to release a facsimile of the signature. This is so. Despite a lapse of 26 years from the date the</p>

			<p>document was signed.</p> <p>Document No 4 contains no other exempt or conditionally exempt material.</p> <p>I <b>recommend</b> that you decide to refuse to release Document No 4 and offer in lieu to issue an edited version in which the facsimile of the signature of the Divisional Returning Officer is redacted.</p>
			<p>I <b>decide to refuse access</b> to Document No 4 and <b>to offer in lieu</b> access to an edited version of the document in which the facsimile of the signature of the Divisional Returning Officer is redacted.</p>
5	Return by the Divisional Returning Officer, Division of Wills of the votes counted in the fresh scrutiny for the by-election on 11 April 1992 with manuscript annotation.	16/05/1994	<p>Document No 5 does not contain any exempt or conditionally exempt material.</p> <p>I <b>recommend</b> that you decide to give <b>access in full</b> to Document No. 5.</p> <p>I decided to give <b>access in full</b> to Document No. 5.</p>
6	Return by the Divisional Returning Officer, Division of Mackellar of the votes counted in the fresh scrutiny for the by-election on 26 March 1994 with manuscript annotation.	16/05/1994	<p>Document No 6 does not contain any exempt or conditionally exempt material.</p> <p>I <b>recommend</b> that you decide to give</p>

			<p><b>access in full</b> to Document No. 6.</p> <hr/> <p>I decided to give <b>access in full</b> to Document No. 6.</p>
7	Return by the Divisional Returning Officer, Division of Canberra of the votes counted in the fresh scrutiny for the by-election on 25 March 1995 with manuscript annotation.	17/02/1997 07:22:04	<p>Document No 7 does not contain any exempt or conditionally exempt material.</p> <p>I <b>recommend</b> that you decide to give <b>access in full</b> to Document No. 7.</p> <hr/> <p>I decided to give <b>access in full</b> to Document No. 7.</p>
8	Return by the Divisional Returning Officer, Division of Fraser of the votes counted in the fresh scrutiny for the by-election on 1 February 1997 with manuscript annotation.		<p>Document No 9 does not contain any exempt or conditionally exempt material.</p> <p>I <b>recommend</b> that you decide to give <b>access in full</b> to Document No. 9.</p> <hr/> <p>I decided to give <b>access in full</b> to Document No. 9</p>
9	Return by the Divisional Returning Officer, Division of Isaacs of the votes counted in the fresh scrutiny for the by-election on 12 August 2000 with manuscript annotation.	29/08/2000 13:34:22	<p>Document No 9 does not contain any exempt or conditionally exempt material.</p> <p>I <b>recommend</b> that you decide to give <b>access in full</b> to Document No. 9.</p> <hr/> <p>I decided to give <b>access in full</b> to</p>

			Document No. 9.
10	Return by the Divisional Returning Officer, Division of Cunningham of the votes counted in the fresh scrutiny for the by-election on 12 August 2000 with manuscript annotation.	28/10/202 16:06:05	Document No 10 does not contain any exempt or conditionally exempt material.  I <b>recommend</b> that you decide to give <b>access in full</b> to Document No.10. <hr/> I decided to give <b>access in full</b> to Document No. 10.

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End<sup>2</sup>

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<sup>2</sup> T:\Legal & Compliance\Legal Services\Legal Matters\FOI\LS4932 FOI Request By A Owens For By-Election Results 1988 - 2002 2014 Q3\LS4932 Letter To A Owens Notifying Decision.Docx



