

LS7620

Mr Ben Fairless  
Right To Know  
By email to

foi+request-5406-50a1acc6@righttoknow.org.au

Dear Mr Fairless

## **YOUR PURPORTED FREEDOM OF INFORMATION REQUEST NO. LS7620**

I refer to your electronic request dated 9 May 2019 3.55am to the Australian Electoral Commission ('AEC') in which you request (your 'purported FOI Request') access under the [Freedom of Information Act 1982](#) (the 'FOI Act') to documents relating to a pre-poll voting centre in the Division of Gladstone.

- 2 I, Owen Jones, Senior Lawyer of the AEC, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to valid requests under the FOI Act for access to documents ('FOI Requests').
- 3 I have three purposes in writing to you. First, I write to acknowledge receipt of your purported FOI Request. Second, I write to discuss matters contained in your purported FOI Request that make your purported FOI Request defective and to assist you in making a valid FOI Request. Third, I write to alert you that your purported FOI Request can only apply to existing documents. Fourth, I write to foreshadow the possibility that a practical refusal reason may apply to your purported FOI Request and to consult with you about resolving that reason.

## **ACKNOWLEDGEMENT OF YOUR PURPORTED FOI REQUEST**

- 4 I have taken your purported FOI Request to be seeking access to:
  - internal documents related to a tweet by someone claiming to work at the AEC pre-poll voting centre in Gladstone and saying that he or she were ripping up forms; and
  - internal documents related to other complaints related to vote tampering made in the 2019 election period.
- 5 I have taken your use of the phrase "the 2019 election period" to mean the period between the day on which writs in the 2019 federal election were issued (11 April

2019) and the day on which the last writ in the 2019 federal election is returned (not yet occurred).

- 6 We will contact you using the email address that you provided. Please advise if you would prefer us to use an alternative means of contact.

## **DEFECT IN YOUR PURPORTED FOI REQUEST**

### ***Failure to adequately scope your purported FOI Request***

- 7 The fundamental defect is that your purported FOI Request, on its face, gives insufficient information to enable a retrieval of relevant documents.

- 8 Insofar as is material, subsection 15(2) of the FOI Act provides:

#### **15 Requests of access**

- (2) The request must:

...

- (b) provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it; and ...

- 9 I therefore ask you to clarify the following aspects of your purported FOI Request:

- (a) Are you able to provide a copy of the tweet?
- (b) Who is the person who posted the tweet?
- (c) When was the tweet posted?
- (d) What forms does the author of the tweet say they were “ripping up”?

### ***Processing time has not started***

- 10 As you have not made a valid FOI Request, the 30-day period for processing your purported FOI Request has not started. If you appropriately amend your request to make a valid FOI Request, I will write to you acknowledging that occurrence and outlining how that FOI Request will be processed.

## **DOCUMENTS IN EXISTENCE**

- 11 I draw to your attention that a valid FOI Request can only seek documents in existence at the time of the FOI Request.

- 12 Your right to receive access to documents under an FOI Request arises under section 11 of the FOI Act.

- 13 Insofar as is material, section 11 of the FOI Act provides:

#### **11 Right of access**

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:

- (a) A document of an agency, other than an exempt document; or ...

- 14 Subsection 4(1) of the FOI Act defines what a ‘document of an agency’ is.

15 Insofar as is material, section 4 of the FOI Act provides:

#### **4 Interpretation**

(1) In this Act, unless the contrary intention appears:

**Document of an agency:** a document is a document of an agency if:

- (a) The document is in the possession of the agency, whether created in the agency or received in the agency; or
- (b) In order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document.

16 It follows from the definition of “document of an agency” that there must be an actual document in existence at the time the FOI Request was made.

17 It follows that your purported FOI Request, if re-submitted as a valid FOI Request (and subject to what I say at paragraphs 18 to 21 below), can only capture relevant documents in existence as at 9 May 2019.

### **PRACTICAL REFUSAL REASON**

18 I believe that the work involved in your purported FOI Request (if re-submitted as a valid FOI Request without a substantial narrowing in its scope) would substantially and unreasonably divert the resources of the AEC from its other operations due to your purported FOI Request being made at a time when the AEC’s resources are applied to delivering the 2019 federal election. Retrieval of documents during this period would distract staff from attending to delivering the 2019 federal election, which is a core function of the AEC.

19 This circumstance, if it arises in relation to a valid FOI Request, is called a ‘practical refusal reason’.

20 Insofar as is material, subsection 24AA(1) of the FOI Act provides:

#### **24AA When does a *practical refusal reason* exist?**

(1) For the purposes of section 24, a ***practical refusal reason*** exists in relation to a request for a document if either (or both) of the following applies:

- (a) the work involved in the processing the request:
  - (i) in the case of agency—would substantially and unreasonably divert the resources of the agency from its other operations;
  - ...
- (b) the request does not satisfy the requirement in paragraph 15(2)(b) (identification of documents).

21 On this basis, if your purported FOI Request is re-submitted as a valid FOI Request without a substantial reduction in its scope, it is likely that I would refuse access to the documents you requested.

### **REVISION OF PURPORTED FOI REQUEST**

22 Therefore, I invite you to confine the scope of your purported FOI Request to enable it to proceed as a valid FOI Request.

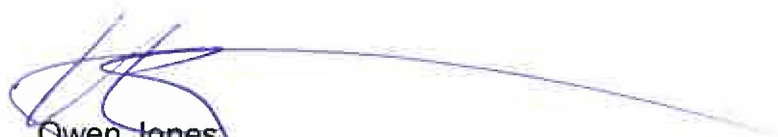
- 23 Revising your purported FOI Request can mean narrowing its scope to make it more manageable or explaining in more detail the documents you wish to access. For example, providing more specific information about exactly what documents you are interested in may enable the AEC to pinpoint the documents more quickly and avoid using excessive resources to process other documents.

#### **CONTACT OFFICER**

- 24 If you would like to revise your purported FOI Request or have any questions, please contact me at:

email:	owen.jones@aec.gov.au
fax:	02 6293 7657
post:	Locked bag 4007, Canberra ACT 2601
telephone:	02 6271 4528

Yours sincerely



Owen Jones  
Senior Lawyer  
Legal Services  
Legal and Procurement Branch

14 May 2019