



Our Ref: LS5069 ~ file

Mr Michael Cordover  
By email to [foi+request-648-a2719702@righttoknow.org.au](mailto:foi+request-648-a2719702@righttoknow.org.au)

Dear Mr Cordover

### Re Your FOI Request No. 5069

I refer to your request ('FOI Request') to the Australian Electoral Commission ('AEC') for access to documents relating to the schedule of relevant documents under the Freedom of Information Act 1982 (the 'FOI Act'). I have taken your request to be for:

Attachment B ("schedule of the relevant documents") to the letter from Owen Jones at the AEC to Tania Strathearn at the OAIC dated 17 April 2014, AEC ref LS4944 ~ file 13/945.

- 2 I, Paul Pirani, Chief Legal Officer of the AEC, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.
- 3 I have two purposes in writing to you today. First, to acknowledge receipt of your FOI Request. Second, to consult you about a practical refusal reason that applies to your FOI Request.

### Receipt of your FOI Request

- 4 We received your request on 13 June 2014 and the 30 day statutory period for processing your request commenced from the day after that date. You should therefore expect a decision from us by 14 July 2014 in the ordinary course of events.
- 5 Please note that information released under the FOI Act may later be published online on our disclosure log at [http://www.aec.gov.au/About\\_AEC/foi/foi.htm](http://www.aec.gov.au/About_AEC/foi/foi.htm), subject to certain exceptions. (For example, personal information will not be published where this would be unreasonable.)

## Practical refusal reason

- 6 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 the AEC from its other operations due to the complexity of the contentions made by you about access to the documents listed in the schedule of the relevant documents that is the subject of your request. This is called a 'practical refusal reason' (section 24AA).
- 7 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. You have 14 days to respond to this notice in one of the ways set out below.

## Why I intend to refuse your request

- 8 I decided that a practical refusal reason exists because:
- (a) Your latest FOI Request relates to a Schedule of Documents provided to the Office of the Australian Information Commissioner for use in its review of your request for IC Review (as that expression is defined in the FOI Act) of the access refusal decision affirmed on internal review by Mr Tom Rogers, the then Deputy Electoral Commissioner in respect of your FOI Request No. LS4849.
  - (b) I note Mr Tom Rogers in his letter to you dated 13 December 2013 notifying you of his decision of your request for internal review of your FOI Request No. LS4849 gave his reasons for refusing you access to the schedule of relevant documents. Mr Rogers said:
    - 11 My reasons for refusing access and declining to provide you with a schedule of relevant documents and deciding that two documents were out of scope of your request follow.
    - 12 I decided that the requested documents are exempt from release under the FOI by reason of either limb of section 47 of the FOI Act, namely:
      - (a) paragraph 47(1)(a) which exempts documents that disclose trade secrets; and
      - (b) paragraph 47(1)(b) which exempts documents that contain any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
  - (c) You applied to the Information Commissioner for an IC review of the AEC's decision to refuse your FOI Request No. LS4841 and in support of that application you submitted two documents setting out your contentions in support of being given access to the requested documents, namely the Senate EasyCount
- 9 When considering your current FOI Request I am obliged to take into account contentions made by you about why you should have access to a schedule of the

documents identified as relevant to your FOI Request No. LS4849. This is appropriate because the schedule of relevant documents that was provided to the Australian Information Commissioner in respect of your request for IC Review of the AEC's decision to refuse your FOI Request No. LS4849 is the subject of your current FOI.

- 10 Considering your contentions involve in part replicating work done in responding to your initial contentions to the Information Commissioner and new work in responding to your further contentions provided as a rebuttal to contentions against release of the schedule of documents. I note that your further contentions raise issues that will require legal research to properly assess their soundness.
- 11 It is entirely unnecessary to do this in relation to your current FOI Request as these matters are canvassed in relation your FOI Request No. LS4849 which completely overlaps this request as regards access to the schedule of documents. I regard your current FOI Request to be vexatious.
- 12 I note that the Australian Information Commissioner has terminated his review of the AEC's decision in respect of your FOI Request LS4849 opening the way for you to apply to the Administrative Appeals Tribunal to review the AEC's decision. I am of the view that this is the appropriate way forward to resolve the question whether you have access to the schedule of documents relevant to your FOI Request LS4849 prepared by the AEC.

#### **Request consultation process**

- 13 You now have an opportunity to revise your request to enable it to proceed.
- 14 Revising your request can mean revising the scope of the request to avoid the overlap between it and your FOI Request No. LS4849. This will permit the AEC not to unnecessarily commit its resources to processing under this FOI Request documents that are properly being processed under your FOI Request No. LS4849.
- 15 Before the end of the consultation period, you must do one of the following, in writing:
  - (a) withdraw your request
  - (b) make a revised request
  - (c) tell us that you do not wish to revise your request.
- 16 The consultation period runs for 14 days and starts on the day after you receive this notice.
- 17 During this period, you are welcome to seek assistance from the contact person I have named 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.)



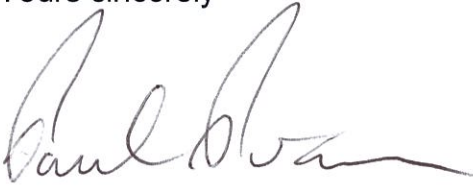
- 18 If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

**Contact officer**

If you would like to revise your request or have any questions, the contact officer for your request is Owen Jones, Senior Lawyer whose contact details follow:

Telephone: 02 6271 4528  
Fax: 02 6293 7657  
Email: [owen.jones@aec.gov.au](mailto:owen.jones@aec.gov.au)

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Pirani', with a long horizontal flourish extending to the right.

Paul Pirani  
Chief Legal Officer

26 June 2014