

Reasons for decision

What you requested

"Documents held by the Commission in relation to the 2020 electronic voting system.

Specifically, I request:

- the independent audit certificate,
- the independent audit certification report, and
- any other documents on which the commissioner based his assessment that the program will not allow a person to find out how a particular elector cast his or her vote."

What I took into account

In reaching my decision, I took into account:

- Your original access application dated 25 September 2020
- The documents containing the information that fall within the scope of your access application
- Consultations with third parties about information concerning them
- Consultations with agency officers about the nature of the documents and the agency's operating environment and functions
- The FOI Act
- The ACT Ombudsman's FOI guidelines documentation

Reasons for my decision

I am authorised to make decisions under section 18 of the FOI Act.

I have decided that some documents or parts of some documents that contain the information you requested contain information that is either out of scope in relation to your access information or includes personal contact information such as mobile phone numbers or email address that are unnecessary for your application. Accordingly, where applicable, I have redacted this information in accordance with s 50 of the FOI Act and have notated as such via pinned comments within the relevant pdf copy of the document.

I have decided that some documents or parts of some documents that contain the information you requested contain information that is taken to be contrary to the public interest to disclose under the test set out in section 17 of the FOI Act. My findings of fact and reasons are discussed below.

Schedule 2, section 2.2(a)(ii)

I have decided that the prejudice to individuals' privacy is the determinative factor in favour of non-disclosure of parts of documents 5.

Schedule 2, section 2.2(a)(ii) is a factor favouring nondisclosure if:

disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.

I am satisfied the disclosure of some information contained in this document could reasonably be expected to prejudice the protection of an individual's right to privacy.

The information I have decided not to disclose includes an individual's personal contact phone numbers.

The public interest test set out in section 17 of the FOI Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure to decide whether, on balance, disclosure would be contrary to the public interest.

When weighing up the public interest for and against disclosure under Schedule 2 of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act and promote open discussion of public affairs and enhance the government's accountability.

Based on the above, I have decided that in this instance, the public interest in disclosing this private contact information in these documents is outweighed by the public interest against disclosure because the disclosure of information of this nature would significantly prejudice the relevant individual's privacy.

On this basis, I am satisfied disclosure of some information contained in this document could reasonably be expected to prejudice the protection of an individual's right to privacy.

Schedule 2, section 2.2(a)(xi)

I have decided that the prejudice to trade secrets or business affairs of a person is the determinative factor in favour of non-disclosure of parts of documents 4.

Section 2.2 of schedule 2 of the FOI Act provides that:

The following are factors favouring nondisclosure in the public interest:

- (a) Disclosure of the information could reasonably be expected to do any of the following:...
- (xi) prejudice trade secrets, business affairs or research of an agency or person.

I am satisfied the disclosure of some information contained in these documents could reasonably be expected to prejudice trade secrets or business affairs of an agency.

The information I have decided not to disclose includes details that could reasonably be expected to impact the commercial interests of the company who developed the business system on behalf of Elections ACT.

The public interest test set out in section 17 of the FOI Act involves a process of balancing public interest factors favouring disclosure against public interest factors favouring nondisclosure to decide whether, on balance, disclosure would be contrary to the public interest.

When weighing up the public interest for and against disclosure under Schedule 2 of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act and promote open discussion of public affairs and enhance the organisation's accountability.

Based on the above, I have decided that in this instance, the public interest in disclosing this commercial-in-confidence information, central to the functioning of proprietary software, in these documents is outweighed by the public interest against disclosure because the disclosure of information of this nature would significantly prejudice the relevant companies commercial interests should this information be made publicly available on Elections ACT's FOI disclosure log, as is required under the FOI Act.

On this basis, I am satisfied disclosure of some information contained in these documents could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person.

However, this matter has been discussed with the relevant company who has agreed that for the purposes of research, the documents in their entirety could be made available to you, outside of this FOI application request and under the terms of an agreed non-disclosure agreement (NDA). While the release of the information currently redacted under section 2.2(a)(xi) would remain 'contrary to the public interest' if disclosed by the agency, we understand that the provision of a signed NDA on your behalf outside of the FOI process may ensure adequate protection of those commercial in confidence elements of the system and would allow you to conduct your review into the 2020 electronic voting system. If such an arrangement is of interest to you, please contact me and I can provide you with the company's relevant contact information.

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