

Reasons for decision

What you requested

"Documents held by the Commission in relation to the design, implementation, and approval of electronic voting for the 2020 legislative assembly election.

The specific documents I request are:

- Documents related to the following determinations:
 1. Electoral (Computer Program) Approval 2020 (No 1)
 2. Electoral (Computer Program) Approval 2020 (No 2)
 3. Electoral (Electronic Devices) Approval 2020

which were relied upon by the commissioner to determine that Computer Programs and Devices used for the 2020 election satisfy section 118A 2(d) of the Electoral Act 1992:

"the program will... not allow a person to find out how a particular elector cast his or her vote".

- Documents (including internal and external correspondence, procedures, software requirements, designs, and code) regarding electronic vote secrecy in the 2020 election, concerning:

1. any decisions or changes to electronic voting made by the commission in response to the vote secrecy issues disclosed by T Wilson-Brown in 2018, or any other voting secrecy issues disclosed to Elections ACT from the 2016 election to the date of this request
2. the collection, transmission, and storage of detailed timestamps of individual voter roll mark-offs
3. the collection, transmission, and storage of detailed timestamps of each individual vote cast
4. limiting the number of people who have access to the detailed voter and vote data in 2. and 3., limiting the risk of data breaches, and ensuring that any accesses are discovered and reported (excluding designs and code)
5. the publicly released summary voter frequency data
6. any publicly released detailed vote preference data, including any shuffling or randomisation of that data, and any analysis of data fields which would allow members of the public to restore the original order, or otherwise link this data to individual voters

What I took into account

In reaching my decision, I took into account:

- Your original access application dated 3 October 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

What I ask you to take into account

OSEV system design documents 14-18 do not necessarily fully aligned to the final deployed system. Final documents to align with the deployment are currently being finalised following the conclusion of the election.

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 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 Schedule 1 of the FOI Act OR would, on balance, 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 1 section 1.11

I have decided that document 2 contains ‘contrary to public interest information’ by virtue of section 1.11 of Schedule 1 of the FOI Act and therefore disclosure of document 2 is refused in accordance with s 35(1)(c) of the FOI Act.

Section 1.11 (1)(f) of Schedule 1 of the FOI Act provides that “a document derived from an electoral roll setting out particulars of enrolled people”, is taken to be contrary to the public interest to disclose unless the information identifies corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

In reaching my decision to withhold disclosure of this document I formed the view that the document is derived from a roll of electors kept under the *Electoral Act 1992* and sets out particulars of enrolled people.

Section 35(1)(b)

I have decided to refuse part of your access application under section 35(1)(b) of the FOI Act on the basis that the information sought is not held by our agency.

You have sought information regarding the collection, transmission, and storage of detailed timestamps of each individual vote cast. The version of eVACS® used during the 2020 ACT election does not include timestamps against each individual vote cast. Accordingly, Elections ACT is unable to provide information regarding the collection, transmission and storage of timestamps associated with the system.

You have also sought documents in relation to 'limiting the number of people who have access to the detailed voter and vote data' in relation to the 'collection, transmission, and storage of detailed timestamps of each individual vote cast'. As discussed above, the version of eVACS® used during the 2020 ACT election does not include timestamps against each individual vote cast and therefore, Elections ACT is unable to provide information regarding the collection, transmission and storage of voter timestamps.

In relation to documents limiting the number of people who have access to the collection, transmission, and storage of detailed timestamps of individual voter roll mark-offs, while the LAPPERDS system does maintain voter roll mark-off timestamp data, and the agency is making available the database file within LAPPERDS that captures this data, the agency does not maintain any further documents that outline the information you have requested. Accordingly, no documents are being released that meet the scope of this particular element of the application request.

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.

Out of scope

I have redacted information to parts of documents 19 and 22, due to the redacted information being out of scope in relation to this access application.

In making this decision I have made contact with the FOI section of the ACT Ombudsman's office to ensure such activity is in accordance with the FOI Act. The ACT Ombudsman's office advised that redaction of information on this basis is in compliance with the FOI Act.

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, 9, 10, and 11.

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.

Schedule 1, section 1.13

I have decided that parts of documents 12 and 13 and all of documents 7 and 8 contain 'contrary to public interest information' by virtue of Schedule 1, section 1.13 of the FOI Act and therefore disclosure of document 2 is refused in accordance with s 35(1)(c) of the FOI Act.

Section 1.13 of Schedule 1 of the FOI Act provides that:

- (1) Information the disclosure of which would, or could reasonably be expected to damage the security of the Commonwealth, the Territory or a State.
- (2) For subsection (1), the security of the Commonwealth includes—
 - (a) matters relating to detecting, preventing or suppressing activities, whether within or outside Australia, that are subversive of, or hostile to, the interests of the Commonwealth or a country allied or associated with the Commonwealth; and
 - (b) the security of a communications system or cryptographic system of the Commonwealth or another country used for—
 - (i) the defence of the Commonwealth or a country allied or associated with the Commonwealth; or
 - (ii) the conduct of the international relations of the Commonwealth.
- (3) For subsection (1), the security of the Territory or State includes matters relating to detecting, preventing or suppressing activities within or outside the Territory or State, that are subversive of, or hostile to, the interests of the Territory or a State.

Section 6.1 of the Ombudsman FOI Guidelines *Considering the public interest* states that "a decision can be made not to disclose information where it is considered to be included in a category listed in Schedule 1, without the need to weigh up any competing public interest factors for and against disclosure.

You have sought documents concerning limiting the risk of data breaches and ensuring that any accesses are discovered and reported. Elections ACT worked closely with the Australian Signals Directorate (ASD) to ensure sufficient cybersecurity of its electoral systems.

The above listed documents have been denied because they would, or could, reasonably be expected to damage the security of the Commonwealth and the Territory.

While Schedule 1, section 1.13 has been applied to these documents the Australia Signals Directorate has released the following statement:

"The Australian Cyber Security Centre provided an initial network assessment and cooperative monitoring throughout the 2020 Australian Capital Territory election period."

The ACT Electoral Commission values the transparency of its electoral ICT systems; acknowledging and supporting the view that transparency contributes to the public's confidence in the integrity of the ACT's democratic systems and processes. This has been a long-held view evidenced through the provision of the source code for the Electronic Voting and Counting System (eVACS®) since the system's inception in 2001. However, the Commission also understands the importance of withholding critical design and infrastructure elements so as to limit access to important information that could be used by malicious actors to infiltrate the system. The ACT Electoral Commission holds the view that a suitable balance is required to deliver both a secure and trusted system.

While the applicant has lodged this access application on the basis of “general public interest in maintaining election integrity and confidence in the results of elections...[and] the general public interest in maintaining confidence in the security of Australian government information systems in light of increasing domestic and foreign cybersecurity threats which have targeted a number of politically-sensitive Australian institutions”, the ACT Electoral Commission is of the view that disclosure of the information that has been redacted under Section 1.13 of Schedule 1, could, by the very act of disclosure, weaken the election integrity and security that this application is seeking to assure.

On this basis, I am satisfied disclosure of some information contained in these documents could reasonably be expected to damage the security of the Commonwealth and the Territory and has accordingly been withheld.

Ro Spence | Deputy Electoral Commissioner
ACT Electoral Commission

Phone: 02 6205 0224 | Mobile: 0434 906 940

rohan.spence@act.gov.au | www.elections.act.gov.au | [facebook](#) | [twitter](#) | [youtube](#)

Level 6, 221 London Circuit, Canberra City