



Our Ref: LS5096 ~ file 14/652

Brendan Molloy
Councillor
Pirate Party Australia
By email to

foi+request-680-99251caf@righttoknow.org.au

Dear Mr Molloy

Re Your FOI Request No. LS5096

I refer to your emails dated 15 July 2014 6:41 p.m. and 15 July 2014 6:48 p.m. in which you request ('FOI Request') access to documents relating to correspondence and briefings about Senate Order 330 (10 July 2014) under the *Freedom of Information Act 1982* (the FOI Act'). I also refer to your email of 27 August 2014 11:40 AM inquiring about progress of your request.

2 I am writing today to give you a decision about your FOI Request.

SUMMARY

3 I, Michael Ross, Acting Chief Legal Officer of the Australian Electoral Commission ('AEC'), am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

4 You specifically requested access to copies of the following documents:

- a) Correspondence between the AEC and any MP, Senator or Minister or their office regarding Senate Order 330 (10 July 2014); and
- b) Documents from technical personnel that helped to inform the recommendation to the Minister that the release of the source code referred to in Senate Order 330 would "leave the voting system open to hacking or manipulation."^[1]

[1] http://lee-rhiannon.greensmps.org.au/sites/default/files/ronaldson_response.pdf

5 You also requested that no names of personnel are censored where not otherwise required by relevant legislation.

6 I ascertained that no documents fall within the scope of your request. More information, including my reasons for decision follow.

DECISION AND REASONS FOR DECISION

Decision

7 I decided to refuse your FOI Request under subsection 24A(1) of the FOI Act.

Material taken into account

8 I have taken the following material into account in making my decision:

- (a) The likely content of the documents that could fall within the scope of the FOI Request;
- (b) Your emails of 15 July 2014 6:41 p.m. and 15 July 2014 6:48 p.m.
- (c) the FOI Act (specifically sections 3, 3A, 11, 11A, 15, 24A and 93A);
 - the guidelines (the 'Guidelines') issued by the Australian Information Commissioner under section 93A of the FOI Act (specifically paragraphs 1.5 – 1.9, 1.27 – 1.28, 2.1 – 2.5, 2.28, 3.6 – 3.16, 3.28 – 3.56, 8.1 – 8.35, 8.40 – 8.43, 8.47 – 8.65).

Reasons

- 9 I directed inquiries to the Acting Electoral Commissioner, Acting Deputy Electoral Commissioner and senior executives of the AEC who would have provided a briefing that fell within the scope of the FOI Request. I also directed inquiries to the AEC's Ministerial and Parliamentary Services ('MPS'). MPS is the channel through which briefing and correspondence between the AEC and the Special Minister of State pass about traffic that may fall within the scope of your FOI Request.
- 10 I ascertained from those inquiries that there are no documents that fall within the scope of the FOI Request.
- 11 Specifically, there was no correspondence between the AEC and any MP, Senator or Minister or their office regarding Senate Order 330 of 10 July 2014. It follows that no recommendation was made to the Minister that the release of the source code referred to in Senate Order 330 would "leave the voting system open to hacking or manipulation"xc. Consequently no documents were produced by technical personnel for that purpose.
- 12 On that basis I found that no documents exist that fall within the scope of your FOI Request. The FOI Request was refused for that reason.

Your review rights

- 13 You were informed by Mr Owen Jones, Senior Lawyer by email dated 21 August 2014 3:01 PM of your review rights in respect of the operation of section 15AC of the FOI Act. You do not seem to have exercised those rights.

- 14 You therefore have fresh review rights in relation to my decision. 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

- 15 Under section 54 of the FOI Act, you may apply in writing to the AEC for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.
- 16 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

- 17 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

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

- 18 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.

Questions about this decision

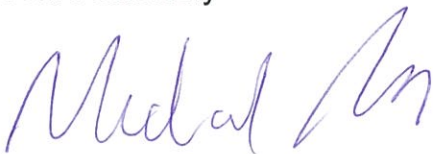
- 19 If you wish to discuss this decision, please contact Owen Jones, Senior Lawyer whose contact details are:

Email: owen.jones@aec.gov.au

Telephone: 02 6271 4528

Fax: 02 6293 7657

Yours sincerely



Michael Ross
Acting Chief Legal Officer

29 August 2014

