

## Reasons for decision

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### What you requested

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“access to documents held by the Commission, including correspondence, relating to paper vote scanning accuracy in the 2020 election. I apply for access to documents about:

Manual checking of scanned paper ballots, including:

- The number of scans flagged for manual checking
- The number of votes considered formal and informal after manual checking
- Estimates or discussion of the number of ballot papers which were actually ambiguous, but were not flagged by the scanner for manual checking

Audits of paper ballot scanning, including:

- The number of formal and informal ballots audited
- The number of errors found
- Any reviews or changes to the audit method or process

The overall accuracy of the process, including:

- Comparisons of the ACT’s electronic scanning and counting accuracy with the accuracy of scanned or manual recounts in other jurisdictions
- Any errors discovered in paper ballot scans or counts”

### What I took into account

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In reaching my decision, I took into account:

- Your original access application dated 22 February 2021
- The documents containing the information that fall within the scope of your access application
- Consultations with ACT government officers about the nature of the documents
- Consultations with third parties about information concerning them
- The FOI Act
- The ACT Ombudsman’s FOI guidelines documentation

### Reasons for my decision

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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, on balance, 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)(xi) and Out of scope**

I have redacted information to parts of document one (1), due to the redacted information being both out-of-scope in relation to this access application and also that the determinative factor in favour of non-disclosure to parts of this same document, under Section 2.2(a)(xi) of schedule 2 of the FOI Act relate to prejudice to trade secrets or business affairs of a person.

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

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 this document 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, considered to be the intellectual property specific to the processes that the vendor operates, together with the fact that the redacted information does not fall within the scope of your access request, 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 this document could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person.

## **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 'estimates or discussion of the number of ballot papers which were actually ambiguous, but were not flagged by the scanner for manual checking'. Under the process employed by Elections ACT with the assistance of the ballot paper scanning software vendor, all paper ballot papers are included in the manual checking process. Any ballot paper that does not meet the business rules for a formal 'error free' ballot paper, that is, a ballot paper that contains 'errors' in its formality or consecutive numbering, or a ballot paper that contains ambiguous numbering, is identified during verification stage 1 and moves to verification stage 2 for manual checking. Accordingly, Elections ACT is unable to provide information regarding estimates or discussions on ballot papers that were not manually checked as part of the ballot paper scanning process.

You have also sought documents in relation to 'the number of votes considered formal and informal after manual checking'. While the Commission does not hold documents that directly provide this data, it can be derived by accessing the publicly available election statistics available from the Elections ACT website. Document 3 provides the number of ballot papers that were scanned at verification stage 1 (77,885). Subtracting the number of formal paper ballots admitted to the count (77,674), indicates 211 ballot papers entered the scanning system as formal but were deemed informal as part of the verification process.

You have also sought documents in relation to 'any reviews or changes to the audit method or process'. Elections ACT has not reviewed or changed the audit method or process. Accordingly, Elections ACT is unable to provide information in relation to this matter.

You have also sought documents in relation to 'comparisons of the ACT's electronic scanning and counting accuracy with the accuracy of scanned or manual recounts in other jurisdictions.' Elections ACT has not conducted any comparisons of this nature as no errors have been discovered in paper ballot scan audits since the system was introduced. Accordingly, Elections ACT is not able to provide comparison documents as sought, nor any documents detailing errors discovered in paper ballot scans or counts.

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