



Our Ref: LS5102 ~ file14/663

Mr Ben Fairless
By email to foi+request-713-62422306@righttoknow.org.au

Dear Mr Fairless

Re Your FOI Request No. LS5102 for IT Network Documentation - IPv4/v6 Public Facing addresses

I refer to your emails dated 17 July 2014 4:42 PM in which you respectively request ('FOI Request') for access to documents relating to IT Network Documentation - IPv4/v6 Public Facing addresses under the *Freedom of Information Act 1982* (the 'FOI Act').

- 2 A decision was due on your FOI Request on 18 August 2014. I apologise for the delay in providing that decision.
- 3 I am writing today to give you a decision about your FOI Request as an outcome of the internal review.

SUMMARY

- 4 I, Paul Pirani, 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.
- 5 You specifically requested access to copies of the following documents:
 - (a) records detailing the IPv4 (and if relevant, IPv6) addresses used to access the public internet from within the AEC network, being the public facing addresses of your private network that are used to access the general public internet that would be found in network documentation, or at the very least in configuration files of your router and firewall equipment.

- (b) In addition, if it is such that a particular IP address serves a particular area within your department (for example, one IP address is used for Media Relations, while another is used for Ministerial Communications), I also request access to this information.

6 I directed inquiries to the AEC's IT Branch about the whereabouts of documents that fell within the scope of your FOI Request. I received on 15 September 2014 information that the AEC does not hold relevant documents and a clarification the contractual arrangements relating to the provision of internet service provider ('ISP') services (see paragraphs 10, 15 and 16 of this letter) that explains that information.

DECISION AND REASONS FOR DECISION

Decision

7 I decided to refuse your FOI Request because no documents are held (or have ever been held) by the AEC that fall within the scope of your request.

Material taken into account

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

- (a) Your emails of 17 July 2014 4:42 PM and 11 September 2014 5:08 PM.
- (b) the FOI Act (specifically sections 6C, 15, 24A and 93A);
- (c) the guidelines (the 'Guidelines') issued by the Australian Information Commissioner under section 93A of the FOI Act (specifically paragraphs 1.26, 2.1 – 2.5, 3.6 – 3.16, 3.54 – 3.56, 8.1 – 8.35, 8.40 – 8.43, 8.47 – 8.65).

Reasons

9 The AEC's outward facing IPv4 and IPv6 addresses are provided by the AEC's internet service provider ('ISP') at the time of transmission of each package of information.

10 The AEC's ISP:

- (a) until 22 August 2014 was Fujitsu; and
- (b) since 22 August 2014 is the Department of Human Services ('DHS').

11 I note that you have applied separately to DHS for the requested information and have been given a decision on that request.

12 Subsection 24A of the FOI Act provides:

24A Requests may be refused if documents cannot be found, do not exist or have not been received

Document lost or non-existent

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and

- (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found;
or
 - (ii) does not exist.

Document not received as required by contract

- (2) An agency may refuse a request for access to a document if:
 - (a) in order to comply with section 6C, the agency has taken contractual measures to ensure that it receives the document; and
 - (b) the agency has not received the document; and
 - (c) the agency has taken all reasonable steps to receive the document in accordance with those contractual measures.

13 Section 6C of the FOI Act provides:

6C Requirement for Commonwealth contracts

- (1) This section applies to an agency if a service is, or is to be, provided under a Commonwealth contract in connection with the performance of the functions or the exercise of the powers of the agency.
- (2) The agency must take contractual measures to ensure that the agency receives a document if:
 - (a) the document is created by, or is in the possession of:
 - (i) a contracted service provider for the Commonwealth contract;
or
 - (ii) a subcontractor for the Commonwealth contract; and
 - (b) the document relates to the performance of the Commonwealth contract (and not to the entry into that contract); and
 - (c) the agency receives a request for access to the document.

14 Section 6C of the FOI Act was inserted into the Act by item 19 of Schedule 6 to the *Freedom of Information Amendment (Reform) Act 2010*, which item commenced on 1 November 2010.

15 The contract under which Fujitsu provided ISP services was entered into on 5 August 2009 and is silent on the AEC's rights to documents for the purposes of the FOI Act.

16 The arrangement between the AEC and DHS is not a contract.

17 It follows that section 6C of the FOI Act does not apply to your FOI Request. The outcome is that, as the AEC does not hold relevant documents and has no right to obtain such documents from its ISP. Therefore subparagraph 24A(1)(b)(ii) applies to your FOI Request. As a consequence your FOI Request is refused on that ground.

Your review rights

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

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.

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

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

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](http://www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews).

Questions about this decision

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



Paul Pirani
Chief Legal Officer

15 September 2014