



Our Ref: LS5105 ~ file 14/667

Mr Sam Silvester
By email to foi+request-715-eff61704@righttoknow.org.au

Dear Mr Silvester

Re Your FOI Request No. LS5105 for documentation relating to the operation, backup and disaster recovery of EasyCount® Software

I refer to your email of 12 August 2014 9:46 AM in relation to your request under the *Freedom of Information Act 1982* (the 'FOI Act') for documentation for operation, backup and disaster recovery of EasyCount® Software (the 'FOI Request') held by the Australian Electoral Commission ('AEC').

CLARIFICATION OF FOI REQUEST

2 In that email you clarified that your FOI Request seeks:

- Documentation relating to the operation and data entry procedures for the EasyCount Senate vote counting software;
- Documentation relating to the backup procedure for the EasyCount Senate vote counting software;
- Disaster recovery plans and procedures for the EasyCount Senate vote counting.

PURPOSE OF THIS LETTER

3 The purpose of this letter is to give you a decision about access to documents that you requested under the FOI Act.

SUMMARY

4 I, Paul Pirani, Chief Legal Officer of the AEC, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

- 5 I identified 6 documents that fell within the scope of your request. I did this by inquiring from the Elections Branch which is the business owner for the EasyCount[®] Software.
- 6 The schedule of documents in Annexure 1 provides a description of each document that falls within the scope of your request and the access decision for each such document.
- 7 With regard to the documents listed in Annexure 1 I have decided to:
- (a) grant access in full to one document; and
 - (b) refuse access in full to 5 documents and offer in lieu access to edited versions of those documents from which conditionally exempt material is redacted.

DECISION AND REASONS FOR DECISION

Decision

- 8 With regard to the documents identified in the attached schedule, I have decided to:
- (a) grant access in full to Document No. 3 (copy enclosed);
 - (b) refuse access to Document Nos 1, 2, 4, 5 and 6 and to offer access to edited versions of those documents from which conditionally exempt material has been redacted on the terms described in paragraph 28.
- 9 As regards the third limb of your request for access to documents about the disaster recovery plan, I have been informed that the backing up arrangement described in Document No. 5 and 6 obviate the need for a separate disaster recovery plan. In the event of a malfunction in the operation of the EasyCount[®] Software on a particular day, recovery would be effected by repeating the set up steps outlined in Document No. 1.

Material taken into account

- 10 I have taken the following material into account in making my decision:
- (a) the content of the documents that fall within the scope of your FOI Request;
 - (b) Part XX of the Electoral Act;
 - (c) the FOI Act, specifically its long title and sections 3, 3A, 11A, 11B, 22, 47D, 47F and 93A; and
 - (d) the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the 'Guidelines'), specifically paragraphs 1.13 – 1.17, 3.37 – 3.38 and 6.1 – 6.196.

Reasons

- 11 Annexure 1 indicates each document to which access is refused. My reasons for refusing access follow.

Findings

- 12 I found, on the grounds appearing in column 4 of Annexure 1, that:
- (a) Document Nos 1, 2 and 4 contain material that is conditionally exempt by reason of paragraph 47E(d) of the FOI Act (Public interest conditional exemptions—certain operations of agencies);
 - (b) Document Nos 1 and 2 contain material that is conditionally exempt by reason of section 47F of the FOI Act (Public interest conditional exemptions—personal privacy); and
 - (c) Document Nos 5 and 6 contain irrelevant material for the purposes of section 22 of the FOI Act.

Substantial adverse effect on the proper and efficient conduct of the operations of the AEC

- 13 As regards Document No. 1, I believe that:
- (a) identification of a generic system administrator's title and user name is contrary to good practice in keeping such information secret so that unauthorised users are denied attack points for hacking into the AEC computer system. The consequences of a successful attack on the AEC's computer system would have a substantial adverse effect of the proper and efficient operations of the AEC. If the attack was directed to the AEC's operations in the conduct of elections then the attack would affect the AEC's core business;
 - (b) identification of individual user and their user names is also contrary to good practice in keeping such information secret for the reasons explained in paragraph 13(a).
- 14 As regards Document No. 4, I believe that disclosure of a Uniform Resource Locator ('URL') would compromise the security of the AEC's computer system because it would provide an unauthorised user with an attack point in trying to effect unauthorised entry into the AEC computing system. A successful unauthorised entry into the AEC computing system would constitute a substantial adverse effect on the proper and efficient conduct of the operations of the AEC.

Unreasonable disclosure of personal information

- 15 As regards Document Nos 1 and 2, I believe that disclosure of the personal details of AEC personnel involved in the development of the EasyCount[®] Software would be an unreasonable disclosure of personal information, namely the identity of AEC staff that have worked on the EasyCount[®] Software.
- 16 Paragraph 6.149 of the Guidelines provide:
- 6.140 Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties.⁹⁶ Such information may often also be publicly available, such as on an agency website.
- 17 I believe that the disclosure of the names of AEC personnel would be unreasonable because the relevant personnel are IT professionals. The IT professional community is relatively small and the controversy surrounding the access to the EasyCount[®] Software means that the capacity of the AEC personnel to participate in IT forums would be diminished as they could be exposed to unwelcome inquiries for details that they are required to keep secret with the consequential risk of impairing their standing in such forums.
- 18 The circumstances narrated in paragraph 16 of this letter therefore constitute an exceptional circumstance for the purposes of paragraph 6.149 of the Guidelines.

Irrelevant material

- 19 As regards Document No. 5, I found that the screenshots included information that fell outside the terms of the FOI Request and thus were irrelevant to the FOI Request.
- 20 As regards Document No. 6, it is an extract of pages 8 and 9 of the Election procedures manual (State Office) [EPM(SO)] which dealt with matters that fell outside the scope of your FOI Request and with matters relevant to the third limb of your FOI Request (disaster recovery plans).

Feasibility of offering edited versions

- 21 Section 22 of the FOI Act requires me to consider the feasibility of producing edited versions of requested documents that contain conditionally exempt or irrelevant material from which such material has been redacted.

22 Section 22 of the FOI Act provides:

22 Access to edited copies with exempt or irrelevant matter deleted

Scope

- (1) This section applies if:
- (a) an agency or Minister decides:
 - (i) to refuse to give access to an exempt document; or
 - (ii) that to give access to a document would disclose information that would reasonably be regarded as irrelevant to the request for access; and
 - (b) it is possible for the agency or Minister to prepare a copy (an **edited copy**) of the document, modified by deletions, ensuring that:
 - (i) access to the edited copy would be required to be given under section 11A (access to documents on request); and
 - (ii) the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request; and
 - (c) it is reasonably practicable for the agency or Minister to prepare the edited copy, having regard to:
 - (i) the nature and extent of the modification; and
 - (ii) the resources available to modify the document; and
 - (d) it is not apparent (from the request or from consultation with the applicant) that the applicant would decline access to the edited copy.

Access to edited copy

- (2) The agency or Minister must:
- (a) prepare the edited copy as mentioned in paragraph (1)(b); and
 - (b) give the applicant access to the edited copy.

Notice to applicant

- (3) The agency or Minister must give the applicant notice in writing:
- (a) that the edited copy has been prepared; and
 - (b) of the grounds for the deletions; and
 - (c) if any matter deleted is exempt matter—that the matter deleted is exempt matter because of a specified provision of this Act.
- (4) Section 26 (reasons for decision) does not apply to the decision to refuse access to the whole document unless the applicant requests

the agency or Minister to give the applicant a notice in writing in accordance with that section.

23 Subsection 11A of the FOI Act applies Document Nos 1, 2 and 4 in as much as they contain conditionally exempt material.

24 In so far as is material, subsection 11A(5) of the FOI Act provides:

11A Access to documents on request

Exemptions and conditional exemptions

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

25 For the purposes of paragraph 22(1)(b) of the FOI Act, I found that it is possible for the AEC to prepare an edited copy of Document Nos 1, 2, 4 and 5 modified by deletions which ensure:

- (a) as regards Document Nos 1, 2 and 4, access to the edited copy would be required to be given under section 11A (access to documents on request) as a consequence of the redaction of the exempt material causing subsection 11A(5) of the FOI Act to cease to apply to those Documents; and
- (b) as regards Document No. 5, the edited copy would not disclose any information that would reasonably be regarded as irrelevant to the request as a consequence of the redaction of the irrelevant material.

26 For the purposes of paragraph 22(1)(c) of the FOI Act, I found that, having regard to:

- (a) the nature and extent of the modification; and
- (b) the resources available to modify,

Document Nos 1, 2, 4 and 5, it is reasonably practicable for the AEC to prepare an edited copy of each document.

27 For the purpose of paragraph 22(1)(d) of the FOI Act it is appropriate to offer you access to edited versions of Document Nos 1, 2, 4, 5 and Table 1(a)6 modified by deletions described in paragraph 25 of this letter on the terms set out in paragraph 28.

OFFER TO PROVIDE EDITED VERSIONS OF CERTAIN DOCUMENTS

- 28 I indicated above that it is appropriate to offer you access to edited versions of the documents listed in paragraph 8(b) of this letter. If you choose to accept the offer, I will provide you with versions of those documents where the names and other personal information of the individuals are redacted.
- 29 This offer remains open for 30 days from the date of this letter. If you do not accept the offer then my decision to refuse access to the documents listed in paragraph 8(b) of this letter stands.

YOUR REVIEW RIGHTS

- 30 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

- 31 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.
- 32 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

- 33 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.

QUESTIONS ABOUT THIS DECISION

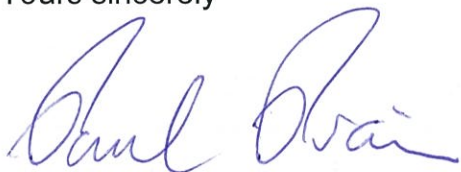
If you wish to discuss this decision, please contact Owen Jones, Senior Lawyer whose contact details are:

Email: owen.jones@aec.gov.au

Telephone: 02 6271 4528

Fax: 02 6293 7657

Yours sincerely



Paul Pirani
Chief Legal Officer

11 November 2014

Enclosures:

- Annexure 1; and
- LS5105 Released Document No. 3.