

Our reference: LEX418

By email to: foi+request-7394-4c4bb7a0@righttoknow.org.au

Dear Ms Teague

YOUR FREEDOM OF INFORMATION REQUEST NO. LEX418

I refer to your online request made 8 June 2021 10:30 AM to the Australian Electoral Commission ('AEC') in which you request (your 'FOI Request') access under the [Freedom of Information Act 1982](#) (the 'FOI Act') access to information about for access to documents relating to the Senate Counting Solution.

2 I also refer to your email dated 8 June 2021 1:52 PM in response to my letter to you dated 8 June 2021 inviting you to withdraw your FOI Request.

Summary

3 I, Owen Jones, Senior Lawyer of the AEC, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

4 I am writing to tell you that I believe that the work involved in processing your request in its current form would substantially and unreasonably divert the resources of the AEC from its other operations/ due to its potential size arising from its broad scope both in the breadth of the documents sought and the period of time within which such documents must be sought. This is called a 'practical refusal reason' (section 24AA).

5 On this basis, I intend to refuse access to the documents you requested. However, before I make a final decision to do this, you have an opportunity to revise your request. This is called a 'request consultation process' as set out under section 24AB of the FOI Act. You have 14 days to respond to this notice in one of the ways set out below.

Why I intend to refuse your request

6 In your request you sought documents relating to:

all documents related to this other "suitable arrangement" for the Senate Counting Solution referred to in the released email dated Friday October 12, 2018.

7 In your email dated 8 June 2021 1:52 PM you further said my request, which is for "all documents related to this solution," not for the source code.

8 I have taken you to mean that you do not seek the source code itself. However the scope of your request remains troublesome both in terms of its breadth and the need to search records going back over a substantial period of time.

9 I decided that a practical refusal reason exists because:

Breadth of the request

(a) The request for all documents related to the 'Senate Counting Solution' constituted by the EasyCount software seems to require retrieval of the following classes of documents:

- (i) documents relating to the development of the EasyCount software (other than the source code itself)
- (ii) This includes computer records relating to work done by the AEC's information and communications technicians showing the time spent in development, support and maintenance for each of the different EasyCount editions since the redevelopment of that software to migrate it to the Microsoft.NET framework;
- (iii) procurement and contracting documents relating to the engagement of information and communication contractors and contract staff to undertake projects relating to the development of the EasyCount software;
- (iv) documents relating to the use of the EasyCount software by:

(A) the AEC itself.

The AEC uses the EasyCount software in elections it conducts under:

- (I) the *Commonwealth Electoral Act 1988* (the 'Electoral Act');
- (II) the *Fair Work (Registered Organisations) Act 2009* and the legislation that it replaced; and
- (III) fee for service arrangements undertaken in accordance with section 7A of the Electoral Act;

(B) licensees of the AEC under arrangements made in accordance with section 7A of the Electoral Act;

(C) external software testing consultants engaged to independently validate and verify the Senate Counting Solution; and

(v) documents relating to the proceedings in the Administrative Appeals Tribunal in the matter reported as Cordover and Australian Electoral Commission (Freedom of information) [\[2015\] AATA 956](#) (11 December 2015).

Each document retrieved will need to be examined to ascertain whether it contains information that would contribute to a mosaic of information that could disclose the trade secret in the EasyCount software.

Retrieval of historical records

(b) The request for all documents related to the 'Senate Counting Solution' constituted by the EasyCount software seems to require retrieval of the documents created in the period from 1988 to date.

- 10 The EasyCount software was first developed in 1988 in COBOL (a business-oriented computer programming language) for use in non-parliamentary elections. The first Senate version of EasyCount was developed in 1996 using PowerBuilder (an integrated development environment owned by a division of SAP).
- 11 EasyCount has since undergone numerous changes, and was redeveloped between 2000 and 2002 when the software was upgraded to use the Visual Basic programming language.
- 12 Where there has been a change made to the EasyCount software since its last use at a federal election, the AEC has engaged an external software consultant ahead of next federal election to independently test and validate the software. This has occurred from time to time since the 1996 federal election held 2 March 1996.

Request consultation process

- 13 You now have an opportunity to revise your request to enable it to proceed.
- 14 Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access. For example, by providing more specific information about exactly what documents you are interested in, our agency will be able to pinpoint the documents more quickly and avoid using excessive resources to process documents you are not interested in.
- 15 Before the end of the consultation period, you must do one of the following, in writing:
 - (a) withdraw your request
 - (b) make a revised request
 - (c) tell us that you do not wish to revise your request.
- 16 The consultation period runs for 14 days and starts on the day after you receive this notice.
 - (a) During this period, you are welcome to seek assistance from the contact person I have listed below to revise your request. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it. (Please note that the time taken to consult you regarding the scope of your request is not taken into account for the purposes of the 30 day time limit for processing your request.)

- (b) If you do not do one of the three things listed above during the consultation period or you do not consult the contact person during this period, your request will be taken to have been withdrawn.

Contact officer

17 If you would like to revise your request or have any questions, please contact me at:

email:	legal@aec.gov.au
fax:	02 6293 7657
post:	Locked bag 4007, Canberra ACT 2601
telephone:	02 6271 4528

Yours sincerely



Owen Jones
Senior Lawyer
Legal Services Section
Legal and Procurement Branch

16 June 2021