

Our reference: LEX418

28 June 2021

Ms Vanessa Teague

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

Dear Ms Teague

FOI Request No. LEX418: Notice of intention to refuse access to documents

1. I refer to your request for access to documents under the *Freedom of Information Act 1982* (FOI Act) dated 8 June 2021. You have sought access to documents relating to the Senate Counting Solution.
2. The purpose of this letter is to provide you with a further opportunity to revise the scope of your request so that a practical refusal reason does not exist.

First request consultation process

3. On 16 June 2021, I provided you with a notice to advise you of an intention to refuse access to documents in accordance with your request on the grounds that a practical refusal exists under s 24AA of the FOI Act.
4. A practical refusal reason exists because the work involved in processing your request would substantially and unreasonably divert the resources of the Australian Electoral Commission (AEC) from its other operations.
5. Mr Jones invited you to narrow the scope of your request by providing more specific detail about the nature of the documents you seek.
6. You responded on 18 June 2021 advising you request documents (excluding source code) dated 2016, 2017 or 2018 which:
 - relate to the development of the EasyCount software, other than the source code
 - are 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
 - are authored by external software testing consultants engaged to independently validate and verify the Senate Counting Solution (**revised request**).

Estimate of documents likely to be relevant to the scope of the request

7. I have conducted preliminary searches for documents potentially coming within the scope of your revised request and have identified there are approximately 655 files and 90 folders that may contain documents relevant to the scope of your revised request.



8. The documents are likely to contain a significant amount of third party personal and business information. I would expect processing the request will require consulting a large number of individuals and organisations.

Estimate of work involved to process request

9. The work involved in processing your revised request will require:
1. conducting more detailed searches and identifying relevant documents
 2. considering whether documents or parts of documents can be released or if exemptions apply
 3. consulting third parties
 4. consulting internal AEC staff
 5. drafting a schedule of relevant documents
 6. making any necessary redactions to documents
 7. drafting a statement of reasons
 8. drafting third party statements of reasons.
10. I estimate the time to undertake the above work will be approximately 70 hours comprising:
- 5 hours to search and retrieve relevant documents
 - 45 hours to review documents, identify relevant documents, identify documents for release or exemption and redact documents for partial release
 - 10 hours to consult approximately 3 internal staff and 5 external individuals and organisations including drafting letters, considering responses and preparation of relevant documents
 - 10 hours to draft a schedule of documents, a statement of reasons and 5 third party decisions.

The work to process the request is substantial and unreasonable

11. A decision on whether a practical refusal reason exists is dependent on a number of factors, including the size of the agency and its available resources.
12. In *VMQD and Commissioner of Taxation (Freedom of information)* [2018] AATA 4619 at [84], the Tribunal held that the processing burden is reduced where an agency is large and well resourced. Conversely, the processing burden is greater if the agency is small and less well resourced.
13. The AEC has 3 lawyers who process FOI requests along with other work. If your request was processed, it would take one full time person approximately 14 days full time. Processing FOI requests comprise a small portion of the work of those lawyers. If the AEC was to process your request, it would divert the lawyers from their other functions and duties.



What you can do

14. You are invited to revise your request further so that a practical refusal reason no longer exists. To assist you, I have attached with this notice an affidavit deposed on 30 October 2014 and filed in the *Cordova* Administrative Appeals Tribunal proceeding. The affidavit contains background and other information about the EasyCount software relevant to your revised request which may provide you with some information you seek and assist with identifying specific documents.
15. You may also wish to consider reframing your request to identify the types of matters, issues or concerns you are interested in. Alternatively, you could consider reframing your request by identifying the types of documents (reports, assessments, analysis for example), you think are likely to contain information of particular interest to you. Another option would be to significantly reduce the time period.

Who to contact

16. Should you wish to discuss this matter, including other ways to revise your request so that a practical refusal reason does not exist, you should contact: Louise Parrott. You can contact Louise Parrott by:

email: legal@aec.gov.au

telephone: 02 6271 4662

Timeframe for responding

17. You have 14 days after the day you receive notice to respond to this notice. If you require more time, you can agree additional time with the contact person named above.
18. Before the end of the 14 days (or further time as agreed), you must by written notice do one of the following:
 1. Make a revised request
 2. Withdraw the request
 3. Indicate you do not wish to revise the request.
19. Your request will be taken to have been withdrawn if you do not contact the contact before the end of the 14 day period or you do not write to the contact person to advise which of the above 3 options you have decided to take.
20. The statutory time period for processing your request ceases from the day you receive this notice and recommences on the day you notify the AEC of one of the above 3 options.

Yours sincerely



Louise Parrott

Principal Government Lawyer

