

15 July 2024

Our reference: EACTFOI-20240509-02

T Wilson-Brown

Via email: [foi+request-11396-70d11e23@righttoknow.org.au](mailto:foi+request-11396-70d11e23@righttoknow.org.au)

Dear T Wilson-Brown

## **Freedom of Information Access Application**

I refer to your access application made under the *Freedom of Information Act 2016* (FOI Act), received by Elections ACT on 9 May 2024.

Your application requested access to:

"...documents held by the Commission relating to the requirements, design, implementation, and security of electronic voting for the 2024 legislative assembly election.

I ask that the documents be supplied to me in electronic form by reply email to this address.

If identical documents were already supplied in 2020 or 2021, there is no need to supply them again."

## **Authority**

I am an information officer appointed by the ACT Electoral Commissioner to make decisions about access to government information held by Elections ACT, in accordance with section 18 of the FOI Act.

Under section 40 (1) of the FOI Act, we must respond to your application within 30 working days of receipt, not 20 working days as advised in our acknowledgement email dated 23 May 2024. I apologise for the administrative error in that email. Section 40 (2) provides for an additional 15 working days in order to allow us to consult with a third party. Therefore a decision on your access application must be made on or by 15 July 2024.

## Decision

I have identified 17 documents containing information within the scope of your access application. These are outlined in the attached *Schedule of documents*.

I have decided to:

- grant full access to two documents
- grant part access to 10 documents
- refuse access to five documents.

Under section 35(1)(c) of the FOI Act, I have refused access to some of the information that you have requested. In some cases this is because it is contrary to the public interest information. The specific reasons are outlined in the attached *Reasons for decision*.

Copies of fully and partially released documents are attached. In accordance with section 50 of the FOI Act, redactions have been applied to information that is contrary to the public interest to disclose.

## Online publishing – Disclosure Log

Under section 28 of the Act, Elections ACT maintains an online record of access applications called a disclosure log. Your original access application and my decision will be published on our disclosure log at

[www.elections.act.gov.au/about\\_us/freedom\\_of\\_information](http://www.elections.act.gov.au/about_us/freedom_of_information)

Your personal details will not be published.

## Review of decision

Decisions on access requests are reviewable decisions as identified in schedule 3 of the Act. You have the right to seek Ombudsman review of this outcome under section 73 of the Act within 20 working days from the day that a decision is provided to you, or a longer period allowed by the Ombudsman.

For more information and the application form for Ombudsman review, please visit:

[www.ombudsman.act.gov.au/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews](http://www.ombudsman.act.gov.au/accountability-and-oversight/freedom-of-information/foi-complaints-and-reviews)

Alternatively, you may write to the Ombudsman at:

The ACT Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Via email: [actfoi@ombudsman.gov.au](mailto:actfoi@ombudsman.gov.au)

Under section 84 of the Act, if a decision is made under section 82(1) on an Ombudsman review, you may apply to the ACT Civil and Administrative Tribunal (ACAT) for review of the Ombudsman decision.

Further information may be obtained from the ACAT at:

ACT Civil and Administrative Tribunal  
GPO Box 370  
CANBERRA CITY ACT 2601  
Telephone: (02) 6207 1740

[www.acat.act.gov.au/](http://www.acat.act.gov.au/)

**Further information**

If you have any queries concerning our processing of your request, or would like further information, please contact [elections@act.gov.au](mailto:elections@act.gov.au) or call (02) 6205 0033.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ro Spence', with a long horizontal stroke extending to the right.

Ro Spence

Information Officer  
Deputy Electoral Commissioner  
ACT Electoral Commission

## Reasons for decision

### What you requested

"...documents held by the Commission relating to the requirements, design, implementation, and security of electronic voting for the 2024 legislative assembly election.

I ask that the documents be supplied to me in electronic form by reply email to this address.

If identical documents were already supplied in 2020 or 2021, there is no need to supply them again."

### Summary of my decision

I have decided to:

- grant you full access to two documents
- grant you part access to 10 documents
- refuse access to five documents

### What I took into account

In reaching my decision, I took into account:

- your access application dated 9 May 2024
- the documents containing the information that falls within the scope of your access application
- consultation with a third party about information concerning them
- your arguments for disclosure in the public interest:
  - in maintaining election integrity and confidence in the results of elections
  - in maintaining confidence in the security of Australian government information systems, and
  - the specific interest of the computer security research community in security vulnerabilities in electronic voting systems.
- the FOI Act, specifically sections 7, 16, 17 and Schedules 1 and 2
- the ACT Ombudsman FOI Guidelines.

### Reasons for my decision

I am authorised to make decisions under section 18 of the FOI Act. As a decision maker, I am required to determine whether the information within scope is in the public interest to release. To make this decision, I am required to:

- assess whether the information would be contrary to public interest to disclose as per Schedule 1 of the Act
- perform the public interest test as set out in section 17 of the Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2 of the Act.

I have decided that some documents and parts of documents that contain the information you requested contain information that is taken to be contrary to the public interest to disclose under Schedule 1 of the FOI Act, or would be 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 1***

I have decided that some documents and parts of documents contain information that is contrary to the public interest to disclose under Schedule 1 of the FOI Act.

- Schedule 1, 1.13(1) – Information the disclosure of which would, or could reasonably be expected to damage the security of the Commonwealth, the Territory or a State.

The ACT Ombudsman FOI Guidelines state that this should be interpreted to include intangible damage. The Guidelines also state that release of information relating to the Territory government's information security arrangements could reasonably be expected to facilitate cyber threats (see [FOI Guidelines Volume 4 – Considering the public interest](#)).

The ACT Electoral Commission (the Commission) values the transparency of its electoral ICT systems; acknowledging and supporting the view that transparency contributes to the public's confidence in the integrity of the ACT's democratic systems and processes. This has been a long-held view evidenced through the provision of the source code for the Electronic Voting and Counting System (eVACS®) since the system's inception in 2001. However, the Commission also understands the importance of withholding critical design and infrastructure elements so as to limit access to important information that could be used by malicious actors to infiltrate the system. The Commission holds the view that a suitable balance is required to deliver both a secure and trusted system.

I acknowledge that you seek disclosure of the information in the "... general public interest in maintaining election integrity and confidence in the results of elections...[and] the general public interest in maintaining confidence in the security of Australian government information systems in light of increasing domestic and foreign cybersecurity threats..."

Documents relevant to your application contain information that defines how the Commission identifies and mitigates security risks. I am of the view that disclosure of this information could, by the very act of disclosure, weaken the election integrity and security that this application is seeking to assure. On this basis, I am satisfied disclosure of some information contained in these documents could reasonably be expected to damage the security of the Territory and has accordingly been withheld.

### ***Schedule 2***

I have decided that some documents and parts of documents that contain the information you requested contain information that would, on balance, be contrary to the public interest to disclose under the test set out in section 17 of the FOI Act. I have identified

that the following factors are relevant to determine if release of the information contained within these documents is within the public interest.

Factors favouring disclosure under Schedule 2 of the Act

- Schedule 2, 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability;
- Schedule 2, 2.1(a)(ii) – contribute to positive and informed debate on important issues or matters of public interest;
- Schedule 2, 2.1(a)(xvi) – contribute to innovation and the facilitation of research.

Factors favouring nondisclosure under Schedule 2 of the Act

- Schedule 2, 2.2(a)(xi) – prejudice trade secrets, business affairs or research of an agency or person.

The ACT Ombudsman FOI Guidelines state that the FOI Act should not be used to obtain commercial information about competitors, and that third parties should not be adversely affected by the operation of the Act (see [FOI Guidelines Volume 4 – Considering the public interest](#)).

Documents relevant to your application contain information that could reasonably be expected to impact the commercial interests of the company who developed the business system on behalf of Elections ACT. The information includes trade secrets, proprietary methodology, proprietary software, and internal business and commercial matters. It includes information which is central to the functioning of the proprietary software used in the Elections ACT business system.

In accordance with the FOI ACT and the Ombudsman Guidelines, I have considered potential negative implications for the third party if this information were disclosed. This includes reputational damage, increased competitive pressures, and diminished commercial value of the information. I am satisfied the disclosure of some information contained in these documents could reasonably be expected to prejudice trade secrets or business affairs of an agency.

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, including your arguments in favour of the general public interest and the specific interest of the computer security research community.

Based on the above, I have decided that the public interest in disclosing this information is outweighed by the factors against disclosure. I am satisfied disclosure could reasonably be expected to prejudice the trade secrets, business affairs or research of an agency or person.

Having applied the test outlined in section 17 of the Act and deciding that release of commercial and business information contained in the documents is not in the public interest to release, I have chosen to redact this specific information in accordance with section 50(2). Noting the pro-disclosure intent of the Act, I am satisfied that redacting

only the information that I believe is not in the public interest to release will ensure that the intent of the Act is met.