

24 June 2024

Our reference: EACTFOI-20240509-01

Vanessa Teague

Via email: foi+request-11397-834b1987@righttoknow.org.au

Dear Vanessa Teague

Freedom of Information Access Application – Decision to remove eVACS source code from easy public access

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:

“...all documents, including email and meeting minutes, related to the decision in April 2024 to withdraw the EVACS voting and counting code from the easily-accessible public disclosure that had previously been made.”

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. Therefore a decision on your access application must be made on or by 24 June 2024.

Decision

I have identified five 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 three documents.

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

Copies of the documents are attached, with redactions applied to information that is contrary to the public interest to disclose.

The eVACS code was temporarily removed from the Elections ACT website when an error in the counting code was identified by Elections ACT staff during ongoing operational testing. The error has been resolved and the code has been re-certified and re-published for public comment.

Online publishing – Disclosure Log

Under section 28 of the FOI 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

Your personal details will not be published.

Ombudsman review

Decisions on access requests are reviewable decisions as identified in schedule 3 of the FOI Act. You have the right to seek Ombudsman review of this outcome under section 73 of the FOI 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:

<https://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

Under section 84 of the FOI 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/

Further information

If you have any queries concerning our processing of your request, or would like further information, please contact 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

"...all documents, including email and meeting minutes, related to the decision in April 2024 to withdraw the EVACS voting and counting code from the easily-accessible public disclosure that had previously been made."

Summary of my decision

I have decided to:

- grant you full access to two documents (documents 1 and 2)
- grant you part access to three documents (documents 3, 4, 5).

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
- the *Human Rights Act 2004*
- the FOI Act
- 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 FOI Act
- perform the public interest test as set out in section 17 of the FOI Act by balancing the factors favouring disclosure and factors favouring non-disclosure in Schedule 2 of the Act.

There were no Schedule 1 factors identified and therefore this has not been a relevant factor in my decision.

I have decided that some 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 FOI Act

- Schedule 2, 2.1(a)(i) – promote open discussion of public affairs and enhance the government’s accountability;
- Schedule 2, 2.1(a)(viii) – reveal the reason for a government decision and any background or contextual information that informed the decision.

Factors favouring nondisclosure under Schedule 2 of the FOI Act

- Schedule 2, 2.2(a)(ii) – prejudice the protection of an individual’s right to privacy or any other right under the *Human Rights Act 2004*.

Documents relevant to your application contain personal information of individuals, including names, mobile phone numbers, and email addresses. I have considered how the public interest would be advanced by releasing this information in part or in whole. It is my view that the information if disclosed, could reasonably be expected to prejudice the protection of an individual’s right to privacy under the *Human Rights Act 2004*.

Considering the type of information to be withheld from release, I am satisfied that the factors in favour of release can still be met while protecting the personal information of the individuals involved. On balance, and the information available to me, I am satisfied that the disclosure of this personal information is not in the public interest.

Having applied the test outlined in section 17 of the FOI Act and deciding that release of personal 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 FOI 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.