

13 January 2025

Our reference: EACTFOI-20241104-01

Ty Wilson-Brown

Via email: foi+request-12282-9c4ddaf8@righttoknow.org.au

Dear Ty Wilson-Brown

**Freedom of Information Access Application:
Paper vote scanning accuracy and scanning audits in the 2024 ACT
Election**

I refer to your access application made under the *Freedom of Information Act 2016* (FOI Act), received by Elections ACT on 4 November 2024.

Your application requested access to:

“...documents held by the Commission, including correspondence, relating to paper vote scanning accuracy and scanning audits in the 2024 election.

This includes documents about:

- Manual checking of scanned paper ballots
- Audits of paper ballot scanning
- The changes to the audit process between 2020 and 2024
- The overall accuracy of the process
- Any errors discovered in paper ballot scans or counts”

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. Section 40(2) provides for an additional 15 working days to allow us to consult with third parties. On 9 December 2024 we advised you that we were

consulting with third parties, and therefore a decision on your access application must be made on or by 14 January 2024.

Decision

I have identified 12 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 six documents
- grant part access to four documents
- refuse access to two 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 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.

Under section 43(1)(d) of the FOI Act, I have refused access to two documents as this information is already publicly available on the Elections ACT website.

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

<https://www.elections.act.gov.au/about-the-commission/freedom-of-information>

Your personal details will not be published.

Review options

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 ACT Ombudsman at:

GPO Box 442. CANBERRA ACT 2601

Or 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

"...documents held by the Commission, including correspondence, relating to paper vote scanning accuracy and scanning audits in the 2024 election.

This includes documents about:

- Manual checking of scanned paper ballots
- Audits of paper ballot scanning
- The changes to the audit process between 2020 and 2024
- The overall accuracy of the process
- Any errors discovered in paper ballot scans or counts"

Summary of my decision

I have decided to:

- grant full access to six documents
- grant part access to four documents
- refuse access to two documents.

What I took into account

In reaching my decision, I took into account:

- your access application dated 4 November 2024
- the documents containing the information that falls within the scope of your access application
- consultation with third party or parties about information concerning them
- documents available on the Elections ACT website
- 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 FOI Act.

Schedule 1

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

Schedule 2

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)(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 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.

Section 45

Two documents in scope of your application are publicly available on the Elections ACT website. Under section 45 and section 43(1)(d) of the FOI Act, I have refused access to these two documents.