

Reasons for decision

What you requested

"access to documents held by the Commission, including correspondence, relating to:

- the definition of a "surplus" in the Electoral Act 1992 for the 2020 election,
- the decision of the ACT Electoral Commission to treat the definition of a "surplus" in the Electoral Act 1992 as a legislative drafting error for the 2020 election (as described in the eVACS counting module audit report), and
- the decision of the ACT Electoral Commission to make the 2020 version of eVACS count votes by transferring any surplus calculated, including fractional surpluses (as described in the eVACS counting module audit report)."

What I took into account

In reaching my decision, I took into account:

- Your original access application dated 8 December 2020
- The documents containing the information that fall within the scope of your access application
- Consultations with ACT government officers about the nature of the documents
- The FOI Act
- The ACT Ombudsman's FOI guidelines documentation

Reasons for my decision

I am authorised to make decisions under section 18 of the FOI Act.

I have decided that some parts of some documents that contain the information you requested contain information that includes personal contact information such as mobile phone numbers or email address that are unnecessary for your application. Accordingly, where applicable, I have redacted this information in accordance with s 50 of the FOI Act and have notated as such via pinned comments within the relevant pdf copy of the document.

I have decided that some 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.

Schedule 2, section 2.2(a)(ii)

I have decided that the prejudice to individuals' privacy is the determinative factor in favour of non-disclosure of parts of documents 1 and 2.

Schedule 2, section 2.2(a)(ii) is a factor favouring nondisclosure if:

disclosure of the information could reasonably be expected to prejudice the protection of an individual's right to privacy or any other right under the Human Rights Act 2004.

I am satisfied the disclosure of some information contained in this document could reasonably be expected to prejudice the protection of an individual's right to privacy.

The information I have decided not to disclose includes an individual's personal contact phone number and/or email address.

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. In particular, I have considered the extent to which disclosure would promote the objects of the FOI Act and promote open discussion of public affairs and enhance the government's accountability.

Based on the above, I have decided that in this instance, the public interest in disclosing this private contact information in these documents is outweighed by the public interest against disclosure because the disclosure of information of this nature would significantly prejudice the relevant individual's privacy.

On this basis, I am satisfied disclosure of some information contained in this document could reasonably be expected to prejudice the protection of an individual's right to privacy.

Schedule 1, section 1.2 – Information subject to legal professional privilege

I have decided that documents 3 through 6 contain 'contrary to public interest information' by virtue of section 1.2 of Schedule 1 of the FOI Act and therefore disclosure of documents 3, 4, 5 and 6 is refused in accordance with s35(1)(c) of the FOI Act.

Section 1.2 of Schedule 1 of the FOI Act provides that "information that would be privileged from production or admission into evidence in a legal proceeding on the ground of legal professional privilege", is taken to be contrary to the public interest to disclose unless the information identifies corruption or the commission of an offence by a public official or that the scope of a law enforcement investigation has exceeded the limits imposed by law.

In reaching my decision to withhold disclosure of these documents I formed the view that the documents are subject to legal professional privilege.

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