# LS4856 Released Document No. 12.pdf

From:	Paul Pirani
To:	<u>Peter Burge;</u> <u>Ed Killesteyn</u>
Subject:	RE: Palmer United Party - Election of Senators for Western Australia [DLM=For-Official-Use-Only]
Date:	Thursday, 3 October 2013 10:10:04 AM
Attachments:	image006.png
	image007.png
	image008.png

For-Official-Use-Only

Mr Peter Burge Special Counsel Hopgood Ganim

Original by email: p.burge@hopgoodganim.com.au

## Dear Mr Burge

I refer to your letter dated 1 October 2013 (that was sent by you after COB on 2 October 2013 and received by me on 3 October 2013) in which you advise that you act for the voluntary association known as the Palmer United Party. In your letter your refer to your client being concerned with the authenticity of ballot papers cast in the election of Senators in Western Australia (WA) and are seeking a list of the names of Issuing Officers who were issuing ballot papers on polling day for each of the polling places in WA together with their initials and a similar list with Issuing Officers at pre-poll voting offices in WA together with their initials.

The AEC will not be agreeing to your client's request. The reasons for this are as follows.

First, the actual conduct of the scrutiny under sections 273 and 273A of the *Commonwealth Electoral Act 1918* (Electoral Act) was completed yesterday morning when the Australian Electoral Officer completed the scrutiny of ballot papers in accordance with subsection 273A(4) of the Electoral Act and then pressed the button to run the computer programme in accordance with subsection 273A(5) of the Electoral Act.

Second, the rights of the scrutineers to access information during the Senate scrutiny are set out in subsection 273A(6) of the Electoral Act and do not include the information that your client is now seeking to access.

Third, no such request was made for this information during the conduct of the Senate scrutiny and a request for this information after the completion of the scrutiny is inconsistent with the requirements of the Electoral Act.

Fourth, the information that your client is requesting is a subset of all of those persons who could have issued ballot papers for the election of Senators in WA with initials under section 215 of the Electoral Act. The utility of attempting to verify the validity of the nearly 1,350,000 ballot papers cast for the election of Senators in WA by reference to the names and initials of each Issuing Officer is not apparent.

Fifth, section 268(1)(a) of the Electoral Act provides that a ballot paper is authentic where it has either the initials of the issuing officer or by the presence of the official

mark. Accordingly, the AEC does not accept that the information that you are seeking is relevant to nearly all of the ballot papers cast in the election of Senators in WA and would only be of some marginal relevance to those ballot papers that were not printed in accordance with section 209A of the Electoral Act.

Sixth, the AEC notes that the schema of the Electoral Act is based on the authenticity of the ballot paper and the formality of the vote cast on each ballot paper. The Electoral Act provides that where a ballot paper is not authenticated by the initials of the issuing officer, under subsection 268(2) of the Electoral Act the DRO can still be satisfied that it is an authentic ballot paper which can proceed through further scrutiny by endorsing the ballot paper with the words "I am satisfied that the ballot paper is an authentic ballot paper on which a voter has marked a vote". This provision is based on the principle that the actions of a polling official, who for whatever reason has not initialled a ballot paper, should not be able to disenfranchise the vote of an elector. This principle is further shown by section 365 of the Electoral Act whereby the Court of Disputed Returns is limited in any action to void an election where any error is immaterial or did not affect an election result.

Seventh, the Issuing Officers maintain records of the ballot papers that are issued in an election. These records are reconciled by the AEC during the scrutiny process so that there is a check between the numbers of ballot papers issued and those which are included in the scrutiny process. The AEC is not aware of any discrepancy between the number of ballot papers issued and the number of ballot papers received and included in the scrutiny process. Your client has not identified any discrepancy in the number of ballot papers issued and those counted in the scrutiny process. Nor have you established any legal basis or entitlement to the information requested in your letter. In addition, the AEC has concerns that the provision of the name and initials of each AEC staff member who may have issued ballot papers would be in breach of its legal obligations, particularly those arising under the *Privacy Act 1988*.

## Yours sincerely

#### Paul Pirani | Chief Legal Officer

Legal & Compliance Branch Executive | Legal & Compliance Branch Australian Electoral Commission T: (02) 6271 4474 | M: 0401 144 531 | F: (02) 6271 4457

## For-Official-Use-Only

From: Peter Burge [mailto:p.burge@hopgoodganim.com.au]
Sent: Wednesday, 2 October 2013 8:07 PM
To: Paul Pirani; Ed Killesteyn
Cc: 1238086.Production@wcs.hopgoodganim.com.au; Julia O'Connor
Subject: RE: Palmer United Party - Election of Senators for Western Australia

Dear Mr Pirani

We are instructed to send you the attached letter. I will endeavour to ensure that you are sent a signed original by post tomorrow.

Regards

**Peter Burge** 

Special Counsel | <u>Corporate Advisory and Governance</u> p.burge@hopgoodganim.com.au

T: +61 7 3024 0468 | M: 0498000246 F: +61 7 3024 0568



Level 8, Waterfront Place, 1 Eagle Street, Brisbane Qld 4000 PO Box 7822, Waterfront Place Qld 4001

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