

LS5289 Released Document No. 5

Mr Dan Feldman
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Original by facsimile: (03) 9804 8041

Dear Mr Feldman

I refer to your letter dated 8 April 2014 addressed to the Acting Electoral Commissioner, Mr Tom Rogers. I have been asked to reply to your letter on behalf of the Australian Electoral Commission (AEC).

I note that your letter states that you act on behalf of the Liberal Party of Australia (Victorian Division). As the Liberal Party of Australia (Victorian Division) is not a "person", the AEC is unable to accept a request for information from your law firm as somehow being that of the person who actually represents the Liberal Party of Australia (Victorian Division) under the Electoral Act. The AEC notes that the current person who represents the Liberal Party of Australia (Victorian Division) on the Register of Political Parties is Mr Damien Mantach.

The AEC does not accept that the three unsubstantiated allegations contained in your letter have a basis in fact. If you have any evidence of AEC staff who engaged in conduct that you claim was in breach of the requirements of the *Commonwealth Electoral Act 1918* (Electoral Act) or was in conflict with the political neutrality conditions of their employment with the AEC, I would ask that this evidence be provided to the AEC so that appropriate action can be taken.

The AEC notes that if the allegations contained in your letter were supported by evidence, then they would have amounted to an "illegal practice" under subsection 352 of the Electoral Act. However, the time period for disputing the 7 September 2013 House of Representatives election in the Division of Indi has long since expired and is unable to be extended under section 355 of the Electoral Act.

Your request for the provision of information about AEC staff engaged in polling booths in the Division of Indi is refused as involving an unreasonable disclosure of personal information. Further, the requirements of the *Privacy Act 1988* apply to "personal information" in the possession of the AEC. I am unable to identify any basis under the Australian Privacy Principles that would enable the AEC to lawfully disclose the "personal information" of AEC staff to your law firm for the purposes outlined in your letter.

In relation to your request for information from the Commonwealth electoral Roll that relates to electors enrolled for the Division of Indi, that request must also be refused. Let me explain the reasons for this decision.

First, I am unable to accept on the material contained in your letter that the request for information from the Commonwealth electoral Roll has been lawfully made by the person or organisation identified in column 1 of the table in subsection 90B(1) of the Electoral Act.

I note that in 2004 the Parliament enacted the *Electoral and Referendum Amendment (Access to Electoral Roll and Other Measures) Act 2004* (Act No. 78 of 2004) and inserted the then new sections 90A, 90B, 91A and 91B into the Electoral Act which specifically protect and restrict access to information from the Commonwealth electoral Roll. The Second Reading Speech to the Bill that became this Amending Act (see House of Representatives Hansard 1 April 2004 page 27929 particularly at page 27930) made it clear the new Bill was to cover the field in relation to access to the electoral Roll. The then Minister went on to state that:

“The bill will amend the roll access provisions to improve clarity, remove contradictions and improve privacy protections. Access to roll information will be set out in a tabular form. The tables will include all information that is currently provided for in the Electoral Act. They list who is entitled to roll information, what information they are entitled to and how often they will receive it....”

There are several further provisions contained in the Electoral Act that support the sensitivity of information that forms part of the Commonwealth electoral Roll. Section 390 of the Electoral Act creates absolute privilege in relation to claims for enrolment and transfers for enrolment being produced to a Court. Paragraph 390(1)(b) extends this absolute privilege to *“any matter or thing in relation to”* such claims. Section 390A of the Electoral Act exempts these records from search warrants issued under the *Crimes Act 1914*.

Where Commonwealth electoral Roll information is lawfully disclosed by the AEC under section 90B of the Electoral Act, subsection 91A(1) of the Electoral Act continues to apply to the use and further disclosure of that information by the recipient and precludes any further use or disclosure of that protected information for other than a permitted purpose. This is enforceable by a criminal sanction of 100 penalty units (i.e. \$17,000.00). In addition, section 91B of the Electoral Act also continues to apply to prohibit any further disclosure or use for a commercial purpose. This is enforceable by a criminal sanction of 1,000 penalty units (i.e. \$170,000.00).

I also note that section 47A of the *Freedom of Information Act 1982* prevents any third person obtaining enrolment details of another person pursuant to an FOI request. Accordingly, any FOI request from a person (other than the elector themselves) seeking enrolment information (including copies of claims for enrolment) would be refused by the AEC as those records are exempt documents.

The existence of the above provisions further reinforces the clear Parliamentary intention that any access to the Commonwealth electoral Roll (including any information derived from the Roll such as historical information) is controlled by the provisions of the Electoral Act itself and that other persons or organisations are only able to lawfully gain access to information from the Roll under the powers contained in the Electoral Act itself.

Second I am instructed that the reference in your letter to items 4 and 5 in the table in subsection 90B(1) of the Electoral Act has already been met by the AEC forwarding a disc containing ELIAS information for the State of Victoria to the Liberal Party of Australia (Victorian Division). The ELIAS disc contains a range of information mentioned in subsection 90B(10) as “additional information” including the habitation index for the State of Victoria (including the Division of Indi) and a copy of the Roll for the State of Victoria. The ELIAS disc was provided to the Liberal Party of Australia (Victorian Division) on the following dates:

- Cycle 197 for the 2013 Federal Election was extracted on 14 August 2013 for the close of rolls on 12 August 2013 and despatched on 16 August 2103;
- Cycle 198 was extracted on 5 December 2013 and despatched on 13 December 2013;
- Cycle 199 was extracted on 14 January 2014 and despatched on 21 January 2014;
- Cycle 200 was extracted on 6 February 2014 and despatched on 14 February 2014.

In addition, a copy of the certified list of voters for the Division of Indi was provided to Ms Mirabella immediately before the 7 September 2013 election pursuant to item 1 in the table in subsection 90B(1) of the Electoral Act.

Given that the Liberal Party of Australia (Victorian Division) already has in its possession the above information, it is not clear as to what further information you state you now have instructions to seek from the AEC that falls within items 4 and 5 in the table in subsection 90B(1) of the Electoral Act.

In relation to “voting information” specified in item 4A in the table in subsection 90B(1) and subsection 90B(10) of the Electoral Act, the AEC is not legally able to process such a request from your law firm. Any request made under item 4A of the table in subsection 90B(1) must be made by the registered political party, which appears to be in this case of the Liberal Party of Australia (Victorian Division). The Register of Political Parties lists the current registered officer as Mr Damien Mantach. I am instructed that should the AEC receive a request in writing from Mr Mantach, then such a request is able to be processed in a matter of days.

The AEC is not lawfully able to provide any other information from the Commonwealth electoral Roll other than that specified in the table in subsection 90B(1) and only to the person or organisation listed in that table.

I trust that the above information is clear. If you have any queries, I can be contacted on (02) 6271 4474.

Yours sincerely

Paul Pirani
Chief Legal Officer

15 April 2014

Released under Freedom of Information Act 1982