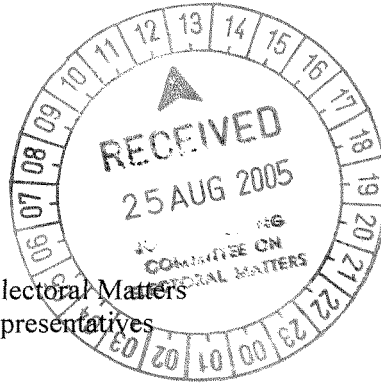


SUBMISSION. 212

85 Baringa Road
Northbridge 2063

23 August 2005

Committee Secretary
Joint Standing Committee on Electoral Matters
Department of the House of Representatives
Parliament House
Canberra ACT 2600



Joint Standing Committee on Electoral Matters	
Submission No.	212
Date Received	25/8/05
Secretary	

Dear Sir,

I was an employee of the Australian Electoral Commission for 32 years. I resigned from my position as a Returning Officer attached to the Non-Parliamentary Elections Branch located in Sydney in December 1999.

During that year, I was appointed to conduct an election for offices in the Community and Public Sector Union. The ballot opened on 29 October 1999 and closed on 22 November 1999.

I am concerned that the relevant procedures and guidelines were not adhered to in the conduct of this election and I have been endeavouring to obtain relevant information from the AEC without success.

Towards the close of the ballot, I was notified by the Union's National Secretary, Ms Wendy Caird, that a significant number of members attached to the Professional Division of the union had been *inadvertently left off the membership roll*.

I referred the matter to my immediate superior, Mr Neil Kean, who subsequently advised me (verbally) to proceed with the election. I consider that this direction was incorrect and constitutes a possible irregularity. I believe that the closing date for receipt of ballot papers should have been extended to allow these members to participate in the election.


Attempts to elicit information under Section 346 of the Workplace Relations Act (Request for Information) and the Freedom of Information Act have been unsuccessful.

It is my understanding that this Section of the WRA was to provide a member of an organization with specific information to determine whether an irregularity has occurred in the conduct of an election. It has always been past practice to meet all reasonable requests for specific information about an election provided such requests are made by or on behalf of a member of an organization.

It appears that this section of the Act in its present format only deals with requests to a returning officer. It does not authorise any other person or agency to provide information regarding an election and fails to meet the purpose for which it was intended.

Enclosed are copies of relevant correspondence between myself and the AEC.

Yours sincerely,


Terence Healy
(Telephone – 02 99587727)



Reference: 05/58/FOI/pams8527
Contact: Margaret Stretton
Telephone: (02) 6271-4687
Facsimile: (02) 6271-4457
Email: margaret.stretton@aec.gov.au

West Block Offices
Parkes ACT 2600

PO Box 6172
Kingston ACT 2604

Telephone (02) 6271 4411
Facsimile (02) 6271 4556
www.aec.gov.au
ABN 21 133 285 851

Mr T Healy
85 Baringa Road
NORTHBRIDGE NSW 2063

Dear Mr Healy

FREEDOM OF INFORMATION APPLICATION – 1999 CPSU ELECTIONS

I refer to your letter of 30 March 2005 requesting advice about the authority under which I seek information regarding your financial means.

The authority is contained in s.29(5) of the *Freedom of Information Act 1982* (the FOI Act) and Attorney-General's FOI Fees and Charges Memorandum No.29 (Memo 29). Paragraphs 83 to 100 of Memo 29 refer to observations by the Senate Committee on Constitutional and Legal Affairs and the AAT regarding remission or reduction or non-imposition of charges for financial hardship reasons. Attorney-General's FOI Memoranda can be found on the Internet at www.ag.gov.au.

As I advised in my letter of 15 March 2005, when making the decision whether to reduce or not impose charges on the basis of financial hardship, s.29(5) of the FOI Act requires me, as an authorised AEC decision-maker under s.23 of that Act, to take into account:

- whether payment of the charges, or part of them, would cause financial hardship; and
- whether giving of access to the documents is in the public interest.

In accordance with s.29(5) of the FOI Act and Memo 29, I am entitled to seek such information as I wish regarding your means.

Your statement that 'due to financial constraints', you are 'unable to afford the fee' does not provide sufficient evidence for me to make the decision whether to reduce or not impose charges on the basis of financial hardship.

I note that you did not provide any information in support of the second part of s.29(5) of the FOI Act, that is, that the giving of access to the documents would be in the public interest.

If I do not hear from you by 29 April 2005 regarding this matter, I will assume that you have withdrawn your application.

Yours sincerely

Helen Monten
Director
Parliamentary and Ministerial

// April 2005

85 Baringa Road
Northbridge 2063

Electoral Commissioner
West Block Offices
Parkes ACT 2600

Attention : Helen Monten/Margaret Stretton

Dear Madam,

Request for Information – Freedom of Information Act
1999 CPSU elections

I refer to your letter dated 15 March 2005.

Would you please specify what is the authority that makes you require me to provide you with details of my “current income, estimated weekly commitments and available cash in bank or building society or like accounts”.

I consider the collection of this information is unnecessary and unfair.

Yours sincerely,

T. Healy

30 March 2005



Reference: 05/58/FOI/pams8464
Contact: Margaret Stretton
Telephone: (02) 6271-4687
Facsimile: (02) 6271-4457
Email: margaret.stretton@aec.gov.au

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www.aec.gov.au
ABN 21 133 285 851

Mr T Healy
85 Baringa Road
NORTHBRIDGE NSW 2063

Dear Mr Healy

ESTIMATE OF CHARGES FOR APPLICATION UNDER *FREEDOM OF INFORMATION ACT 1982* – 1999 CPSU ELECTIONS

I refer to your letter dated 2 March 2005 that was received at this office on 9 March 2005 concerning the above matter.

You advise that due to financial constraints, you are unable to afford the estimated processing charges for your application amounting to \$310.00, and request that the charges be substantially reduced or not imposed.

In accordance with s.29 (5) of the *Freedom of Information Act 1982* (the FOI Act), I must take into account the following factors when making the decision whether to reduce or not impose charges on the basis of financial hardship:

- whether payment of the charges, or part of them, would cause financial hardship; and
- whether giving of access to the documents is in the public interest.

To assist me in assessing the degree of hardship involved in payment of the charges, I am entitled to seek such information as I require regarding your means. Therefore, would you please provide me with details of your current income, estimated weekly commitments and available cash in bank or building society or like accounts.

In relation to the public interest issue, would you please provide comments as to how giving access to the requested documents would be of benefit to general public or a substantial section of the public, or be in the public interest.

I would appreciate responses to this letter by 4 April 2005. If I do not hear from you by that date, I will assume that you have withdrawn your application.

Yours sincerely

Helen Monten
Director
Parliamentary and Ministerial
Authorised Decision Maker for the purposes of
Section 23 of the FOI Act

15 March 2005

85 Baringa Road
Northbridge 2063

Electoral Commissioner
West Block Offices
Parkes ACT 2600

Attention : Helen Monten

Dear Ms Monten,

Request for Information – Freedom of Information Act
1999 CPSU elections (your reference 05/58/FOI/pams8300)

I refer to recent correspondence.

Due to financial constraints, I am unable to afford the fee that you have estimated. Accordingly, I respectfully request that consideration be given to either waiving the fee in total or substantially reducing it.

Yours sincerely,

T. Healy
2 March 2005



Reference: 05/58/FOI/pams8404
Contact: Margaret Stretton
Telephone: (02) 6271-4687
Facsimile: (02) 6271-4457
Email: margaret.stretton@aec.gov.au

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Mr T Healy
85 Baringa Road
NORTHBRIDGE NSW 2063

Dear Mr Healy

APPLICATION UNDER *FREEDOM OF INFORMATION ACT 1982*

I refer to your application under the *Freedom of Information Act 1982* (FOI Act) of 10 January 2005 for access to:

'Copies of facsimiles, emails, file notes and any other correspondence contained on the election files that were maintained by the Assistant Returning Officer in all States relating to the failure to extend the ballot with respect to the Professional Division at the 1999 CPSU elections.'

In response to my letter of 25 January 2005 advising you of the results of preliminary inquiries with Australian Electoral Officers in all States and Territories, you asked me to confirm that no relevant documents exist in 1999 CPSU election files maintained by Assistant Returning Officers in Queensland and Victoria.

Files maintained by the Assistant Returning Officer in Victoria

On 12 January 2005, the Australian Electoral Officer (AEO) for Victoria advised his office holds no information relating to your application.

Therefore, I confirm that no relevant documents exist in 1999 CPSU election files maintained by Assistant Returning Officer in Victoria.

Files maintained by the Assistant Returning Officer in Queensland

In early January 2005, the AEO for Queensland forwarded to this office five files (all numbered 9933) relating to 1999 CPSU – PSU Group elections. The files each contain approximately 28 folios.

Estimate of processing charges

In accordance with s.29 of the FOI Act, I have decided that you are liable to pay a charge in respect of the processing of your request.

I estimate that retrieving and searching for files and identifying documents that come within the terms of your application has taken about two and a half hours. It will take approximately thirteen and half hours to examine the files, make a decision on each folio, list them and prepare the decisions on them.

I estimate that the files contain three documents that are relevant to your application, one of which was provided to you with the Internal Review Decision of 23 July 2003.

My preliminary assessment of the charges is as follows:

Search and retrieval time	2.5 hours @\$15.00 pr hour	\$ 37.50
Decision making time	13.5 hours @ \$20.00 per hour	\$270.00
Copy of documents @ 10 cents per page		\$000.50
Postage		\$002.00
Total		\$310.00

You may contend that the charge has been wrongly assessed, or should be reduced or not imposed. In deciding whether to reduce or not impose a charge, the decision-maker must consider any relevant reasons, including either of the following reasons:

- whether payment of the charge, or part of it, would cause you financial hardship; and
- whether the giving of access to the documents is in the general public interest.

As the charge exceeds \$25, a deposit of \$77.50 will be sought if the charge is imposed.

You are required within 30 days of receipt of this notice to either:

- (a) agree to pay the charge; or
- (b) contend that the charge:
 - (i) has been wrongly assessed
 - (ii) should be reduced, or
 - (iii) not be imposed, or both; or
- (c) withdraw your request.

In relation to paragraph (b)(i) to (iii), you should give reasons for so contending.

If you fail to notify the AEC in a manner mentioned above within 30 days of receipt of this notice, it will be taken that you have withdrawn your request.

Processing

In accordance with s.31 of the FOI Act, the 30 day limit for processing your request is suspended from the day that you receive this notice and resumes on either the day you pay the charge (in full or the required deposit) or the day on which the AEC makes a decision not to impose a charge.

Yours sincerely



Helen Monten
Director
Parliamentary and Ministerial
Authorised Decision Maker for the purposes of
Section 23 of the FOI Act

23 February 2005

85 Baringa Road
Northbridge 2063

Electoral Commissioner
West Block Offices
Parkes ACT 2600

Attention : Helen Monten

Dear Ms Monten,

Request for Information – Freedom of Information Act
1999 CPSU elections (your reference 05/58/FOI/pams8300)

I refer to your letter dated 25 January 2005.

Would you please confirm that no documentation exists in the election files maintained by the Assistant returning Officers in Queensland and Victoria pertinent to my FOI application.

Yours sincerely,



T. Healy
6 February 2005



Reference: 05/58/FOI/pams8300
Contact: Margaret Stretton
Telephone: (02) 6271-4687
Facsimile: (02) 6271-4457
Email: margaret.stretton@aec.gov.au

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PO Box 6172
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www.aec.gov.au
ABN 21 133 285 851

Mr T Healy
85 Baringa Road
NORTHBRIDGE NSW 2063

Dear Mr Healy

APPLICATION UNDER *FREEDOM OF INFORMATION ACT (FOI) 1982*

I refer to my letter (pams8244) of 11 January 2005 concerning your application under the *Freedom of Information Act 1982* for:

'Copies of facsimiles, emails, file notes and any other correspondence contained on the election files that were maintained by the Assistant Returning Officer in all States relating to the failure to extend the ballot with respect to the Professional Division at the 1999 CPSU elections.'

Processing Charges

In accordance with s.29 of the FOI Act, I have decided that you are liable to pay additional charges in respect of the processing of your request, in relation to time spent in searching for relevant documents (\$15 per hour), decision-making time (\$20 per hour), photocopying (10 cents per page) and postage. Processing charges apply, even if requested documents cannot be found in an agency's possession, or do not exist.

Preliminary Inquiries

The results of preliminary inquiries with Australian Electoral Officers (AEOs) in all States and the Northern Territory regarding the documents you seek are shown in the table at **Attachment A**.

Please note that the AEO for New South Wales advises that any relevant documents held by that office would have been included in files relating to your original FOI application concerning this matter. The details of all documents contained in those files were provided to you with the Internal Review decision of 23 July 2003.

In relation to the file records provided by the AEO Queensland, initial searches for the documents you seek have been unsuccessful.

In light of the comments contained in **Attachment A**, would you please advise the AEC as soon as possible whether you wish to proceed with your FOI application.

If you proceed with your request, you will be notified of the preliminary charges and be given a full opportunity to contend that the charges should not be imposed or should be reduced.

Please contact Margaret Stretton as above if you have any questions about this matter.

Yours sincerely



Helen Monten
Director
Parliamentary and Ministerial

25 January 2005

85 Baringa Road
Northbridge 2063

Electoral Commissioner
West Block Offices
Parkes ACT 2600

Attention : Helen Monten

Dear Madam,

Request for Information – Freedom of Information Act
1999 CPSU elections

I refer to your letter dated 23 December 2004.

The following information is requested under the provisions of the Freedom of Information Act :

Copies of facsimiles, Emails, file notes and any other correspondence contained on the Election files that were maintained by the Assistant Returning Officers in all States relating to the failure to extend the ballot with respect to the Professional Division at the 1999 CPSU elections.

My cheque for \$30.00 is enclosed.

Yours sincerely,



T. Healy

5 January 2005

*cheque 049
611*



Pams8203

Mr T Healy
85 Baringa Road
NORTHBRIDGE NSW 2063

West Block Offices
Parkes ACT 2600

PO Box 6172
Kingston ACT 2604

Telephone (02) 6271 4411
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www.aec.gov.au
ABN 21 133 285 851

Dear Mr Healy

Thank you for your letter of 5 December 2004 to the Australian Electoral Officer for Queensland requesting information relating to a decision made in the course of the 1999 CPSU elections. As the Parliamentary and Ministerial Section of the Australian Electoral Commission (AEC) is responsible for responding to requests to the AEC for access to information, your letter has been referred to me for reply.

I note that you were the Returning Officer for the 1999 CPSU election, and that you make your request pursuant to the provisions of section 346 of the *Workplace Relations Act 1996* (WR Act). Section 346 of Schedule 1B to the WR Act states:

A financial member of an organisation may, by notice in writing, request the returning officer:

- (a) in relation to an election for an office or other position in the organisation or a branch of the organisation; or
- (b) in relation to a ballot taken for the purpose of submitting a matter to a vote of the members of an organisation or a branch of the organisation;

to provide to the member specified information for the purpose of determining whether there has been an irregularity in relation to the election or ballot, and the returning officer must not unreasonably withhold the information."

Your request of 5 December 2004 does not fall within s 346 of the WR Act.

However, you may wish to make a request for information under the *Freedom of Information Act 1982* (FOI Act). Should you decide to do so, I can advise that section 15(2) of the FOI Act requires that a request should be made in writing (to the AEC at the above address), should provide such information about the documents sought as would reasonably enable the documents to be identified, and should be accompanied by the requisite application fee (\$30).

Yours sincerely

Helen Monten
Director
Parliamentary and Ministerial Section

23 December 2004

85 Baringa Road
Northbridge 2063

Australian Electoral Officer
for Queensland

Dear Madam,

Request for Information – Workplace Relations Act
1999 CPSU elections

I was the Returning Officer appointed under the Workplace Relations Act to conduct an election for offices in the above organization in November 1999. The ballot opened on 29 October 1999 and closed on 22 November 1999 and assistance was provided by your office in the conduct of this election.

The enclosed copy of a facsimile refers to discussions that were held between the Australian Government Solicitor's Office, the then Australian Electoral Officer for Queensland (Mr Longland), the Assistant Returning Officer for the Queensland Branch and Mr Kean (Director, NPE, New South Wales) not to extend the ballot.

I am endeavouring to ascertain the reasons for this decision. Accordingly, I would appreciate your assistance in providing me with copies of facsimiles, Emails, file notes and any other correspondence that should be included on the Election file that was maintained by the Assistant Returning Officer concerning this matter.

I seek this information in accordance with the provisions of Section 346 of the Workplace Relations Act.

Yours faithfully,



T. Healy

5 December 2004

Heard, Jim

From: O'Malley, Maureen
Sent: Thursday, 18 November 1999 3:51 PM
To: Heard, Jim

Gordon Hodges from AEC called, he has spoken to Bob Longland and Joe Edwards and they agree with Neil Kean's proposal of delivering the envelopes but NOT extending the polls, any problems call on 07 3834 3404

“346 - Requests by members for information concerning elections and certain ballots

A financial member of an organisation may, by notice in writing, request the returning officer:

(a) in relation to an election for an office or other position in the organisation or a branch of the organisation; or

(b) in relation to a ballot taken for the purpose of submitting a matter to a vote of the members of an organisation or a branch of the organisation;

to provide to the member specified information for the purpose of determining whether there has been an irregularity in relation to the election or ballot, and the returning officer must not unreasonably withhold the information.”