

6 October 2023

By email to: [REDACTED]

Dear [REDACTED]

OFFICIAL INFORMATION ACT REQUEST 2023/57

On 26 September 2023 you made a request under the Official Information Act 1982 (the OIA) for the following information:

Documents as they are produced during the Parliamentary Elections 2023

It is the Electoral commission's role to 'maintain people's confidence in the administration of the electoral system.

Please supply (using the above e mail) validated copies the following documents as they are produced during the 2023 Parliamentary Elections:

Please note: This request is for all documents produced across all electorates in New Zealand. This request is for original documents as they are produced. Not data dumps from the EMS.

On Voting Day 14th October (unless it is changed):

- 1) All of the Voting Place Managers "certificate of Count" forms, signed by the Voting Place Manager and Justice of the Peace, for the preliminary counts and Election Day Count (for all Voting Places in the above mentioned electorate). Note that this will include copies of reconciliation forms E, G and H. Also Candidates Votes EMS11-C and Party Votes EMS11-P.*
- 2) All of the Returning Office Headquarters phoned in counts, from the all Voting Places in the above mentioned electorate), "EMS11-HQ" validated as correct by the Returning Officer. Also the confirmation document showing that the data entered into the EMS was the same as listed on the EMS11-HQ form.*

During the Official Count:

- 3) A copy of all Voting Place Managers "certificate of Count" forms (signed by the Voting Place Manager and Justice of the Peace, for the preliminary counts and Election Day Count for the above mentioned electorate) validated as correct by the Returning Officer and other signatories.
(Electoral Act 1993 Counting the votes (178(b)(1v) and 178(c))*
- 4) A copy of all of the original hand written EMS81-WKSHEETS and all the process leaders validated EMS81-WKSHEETS from the EMS printed after the data has been entered during the Official Count. Include also a copy of the EMS82-CERT.*

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Please acknowledge that this OIA request will be actioned and appropriate procedures put in place prior to the election to ensure that the data is also made available to all scrutineers.

We do not wish to be an unnecessary burden on Ministry staff. We are confident that the Returning Officer and Voting Place Manager will have a mobile phone (and sufficient staff) capable of photography therefore can, without impediment, photograph and email validated copies of the original documents required to the e mail supplied at the close of poll.

The returning Office also has a photocopier so can copy twenty hard copies (or email copies) of the validated documents when they produce their file copy (“and that certificate shall be preserved by the Returning Officer for production when required”)

Your request is declined under sections 18(c)(i) and 18(f) of the Official Information Act on the grounds that making the requested information in the manner requested would be contrary to the provisions of a specified enactment and cannot be made available without substantial collation and research.

Further information about the count and results process is outlined below.

The Electoral Commission is responsible for administering the electoral system impartially, efficiently and effectively, and in a way that maintains confidence in the administration of the electoral system.

The Electoral Commission’s statutory functions include carrying the provisions of the Electoral Act 1993 into effect. The integrity of electoral processes and the scrutiny of the results is assured through statutory provisions for scrutineers, judicial oversight, and processes detailed in the legislation for counting, recording and releasing results in a way that parties, candidates, media and members of the public all have access to the same information.

You have asked for copies of Voting Place Managers “certificate of Count” forms, signed by the Voting Place Manager and Justice of the Peace, for the preliminary counts and Election Day Count (for all Voting Places in the above mentioned electorate). Note that this will include copies of reconciliation forms E, G and H. Also Candidates Votes EMS11-C and Party Votes EMS11-P.

The process for the preliminary count of election day votes is provided for under section 174 and 174A of the Electoral Act. The legislation provides for candidate appointed scrutineers to observe both the election day votes counts (section 160) and the advance early count (174F). A Justice of the Peace is required to be appointed for the official count but not for voting places or the advance early count. Therefore there is no certificate of results for the preliminary counts for all voting places and the advance early count signed by a Justice of the Peace on election day.

Under section 174, after completing the count in each voting place, the manager of the voting place must ensure that one or more certificates are prepared that certify the matters set out in section 174(1)(c) and to sign and invite each scrutineer present to sign every certificate prepared.

Scrutineers are appointed to observe and they can take notes. Where scrutineers are entitled to receive information, this is specified in the legislation. The only provision for such information to be

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provided is for scrutineers during the hours of polling to be provided with information supplied by the manager of a polling place regarding the names and roll numbers of persons who have voted. The Electoral Act 1993 and Electoral Regulations 1996 do not provide for scrutineers or any other person to either photograph or be provided with copies of any other voting place documents, papers or certificates of results.

The legislation provides for scrutineers to be present for the preliminary counts and as soon as possible after ascertaining a result of the voting, the manager must ensure that the result is reported to the Returning Officer. Voting Place Managers phone in the results to the Returning Officer and the information is entered into the Electoral Commission's Election Management System for immediate public release ensuring that parties, candidates, media and members of the public all have access to the same information at the same time.

As outlined above the polling place manager certificates prepared under section 174A are not signed by a Justice of the Peace because a Justice of the Peace is not in attendance at voting places and the advance early count.

During the official count, the Returning Officer is required to compare the results of the official count with the certificate of the polling place manager and where necessary amend the certificate. The certificate is initialled by the Returning Officer and Justice attending.

Scrutineers appointed by the candidates can be present to observe (sections 175 and 178). The Electoral Act 1993 and Electoral Regulations 1996 do not provide for scrutineers or any other person to either photograph or be provided with copies of any documents, papers or certificates of results produced during the official count.

During the count at the end of each day, a partial certificate is produced. Then once all of the ballot papers have been dealt with the Justice signs a certificate for the whole electorate which shall be preserved for production when required (section 178). The production of the certificate is required to be made to the Judge appointed in the event of a judicial recount under section 184 of the Act.

When the official count is completed the Returning Officer must give the Electoral Commission the total number of party votes, candidates votes, and informal party and candidate votes. As soon as practicable after receiving the results, the Electoral Commission declares the results on its website and by publishing a notice in the Gazette (section 179). Section 187 of the Act then prescribes a process for materials to be submitted to the Clerk of the House. There are processes in the statutory framework for legal challenge through judicial recounts and election petitions.

Notwithstanding the above, providing copies of all of the documents you have requested would require substantial collation. The estimated number of documents involved is at least 77,500. The preliminary and early counts on election day are made up of over 9,500 individual counts, as all of the advance voting and election day voting places complete a count for every electorate they issue ordinary votes for. This is a minimum of two electorates for each voting place (e.g. a count for at least one General and one Māori electorate), plus counts for any other electorates they issue ordinary votes for. Each of the 9,500 counts are then recounted during the official count. Your

request specifies eight documents relating to each of these counts, which totals a minimum of 76,000. Further documents would then need to be provided for the counts completed for the special votes received and the final and partial results certificates generated for each electorate. It is difficult to sample and extrapolate the time that would be involved as the documents are yet to be produced and the activity will need to be undertaken in voting places and in electorate headquarters during a compressed timeframe. However, given the scale of what has been requested, meeting this request would have significant impact on the effective operation of the Electoral Commission during a time when the Electoral Commission staff must be focused on completing the official count, and supporting any judicial recounts, returning the writ and then closedown after the election including preparing materials to be submitted to the Office of the Clerk in accordance with section 187 of the Act.

Operational manuals and training procedures for the 2023 general election staff in the voting places and electorate headquarters do not provide for this. Significant additional rework would be required to undertake this at a time when the election is already in full swing. Headquarters teams are relatively small and sized to deliver the voting services, the processing of special votes, the counting of votes and the post-election activities prescribed in the Act including the preparation of materials to be lodged with the Clerk.

In the interests of transparency, we release responses to OIA requests. We will publish this response with your personal details redacted.

You have the right under section 28(3) of the Act to make a complaint to the Ombudsman if you are not satisfied with the response to your request. Information about how to do this is available at www.ombudsman.parliament.nz or by phoning 0800 802 602.

Yours sincerely



Karl Le Quesne
Chief Electoral Officer