

18 August 2023

By email to: [REDACTED]

Dear [REDACTED]

### **OFFICIAL INFORMATION ACT REQUEST 2023/36**

On Saturday 12 August 2023 you made a request under the Official Information Act 1982 (the OIA) for the following information:

*OIR #1*

*In a previous OIR I asked:*

*How the certificates prepared under the Electoral Act 1993 both s 178(5)(c) and s 178(8) can be accessed?*

*Response:*

*Section 189 of the Act notes that the Certificate of Results and all other voting materials can only be opened by court order.*

*My Questions:*

*Does the Electoral commission / Clerk of the house recognize court orders from the following courts:*

*District court?*

*High Court?*

*Superior High Court?*

*OIR #2*

*In a previous OIR It was been stated:*

*The Clerk of the House is not bound by the Official Information Request:*

*My Questions:*

*Is the commission bound to answer the Official information requests?*

*Are persons employed by the Electoral Commission (or other Crown Entities) bound to answer the Official information requests?*

*Are the JP's, Returning Officers, 'Voting Place Managers' bound to answer the Official information requests?*

*Are volunteers bound to answer the Official information requests?*

*OIR #3*

*My Questions regarding the Electoral Commission and following the Act:*

*Is the Electoral commission allowed to break the law?*

*If it is shown to be breaking the law must it immediately amend its practices?*

*Are all procedures written by the Electoral Commission obliged to follow the Act without deviation? As it is written in law?*

*OIR #4*

*My Questions regarding the “the Electoral Commission is a crown entity”:  
Is the EMS (Electoral Management System Computer) an integral part of the Electoral Commission i.e. owned and controlled by the Crown Entity, the Electoral Commission, or is it a third party, contracted by and independent from the Electoral Commission?*

*OIR #5*

*The Electoral Act 1993 section 4C Objective*

*The objective of the Electoral Commission is to administer the electoral system impartially, efficiently, effectively....*

*After scrutinising the electoral act I can find nothing that allows the Electoral commission to have an integral role in vote counting or subsequent tabulation of the results. In fact the Electoral Act 1993 section 4C Objective - would suggest impartiality would not allow this to occur.*

*Being in any way involved in the vote counting and subsequent tabulation of results does not lend itself to being impartial.*

*My Question:*

*Please show me where in the Act it allows the Electoral commission to participate in any way apart from a supporting role?*

Responses to each of your questions are set out below.

1. *Does the Electoral Commission/Clerk of the house recognise court orders from the following courts:*

*District Court?*

*High Court?*

*Superior High Court?*

The rule of law is a key part of New Zealand’s constitutional arrangements, and this means the Government, independent crown entities and all individuals are bound by and accountable under the law. The Electoral Commission recognises court orders from New Zealand’s courts.

The four main levels of New Zealand’s court system include the District Court, High Court, Court of Appeal and the highest being the Supreme Court.

You can learn more about New Zealand’s court system here: [Learn About Our Courts — Courts of New Zealand \(courtsofnz.govt.nz\)](https://www.courtsofnz.govt.nz)

2. *Is the commission bound to answer the Official information requests?*

You can find a full list of agencies that are subject to the OIA in [Schedule 1 of the Ombudsman Act 1975](#) and in [Schedule 1 of the Official Information Act](#). This includes the Electoral Commission.

The OIA helps New Zealand citizens, permanent residents and anyone in New Zealand to access information held by Government agencies and independent crown entities. Its guiding principle is that information should be made available unless good reason exists under the Act for withholding it.

*3. Are persons employed by the Electoral Commission (or other Crown Entities) bound to answer the Official information requests?*

As we have previously advised in our response to your OIA Request (2023/32), information held by an officer, employee or member of an agency in their official capacity is considered to be held by the agency itself.

*4. Are the JP's, Returning Officers, 'Voting Place Managers' bound to answer the Official information requests?*

We note you have made a similar enquiry in your OIA Request (2023/32). As we have advised in our response to this request, information held by an officer, employee or member of an agency in their official capacity is considered to be held by the agency itself. This includes Returning Officers and Voting Place Managers.

Justices of the Peace are not subject to the OIA because they are not a central government department or a public body under the OIA.

*5. Are volunteers bound to answer the Official information requests?*

We have interpreted your question within the context of the Electoral Commission. That is, whether volunteers hired by the Commission are bound to answer requests under the OIA. The Commission does not hire volunteers in the undertaking of its work.

However, as noted in our response to your OIA Request (2023/32), information held by an officer, employee or member of the Electoral Commission in their official capacity is considered to be held by the Commission itself.

*6. Is the Electoral commission allowed to break the law?*

The Electoral Commission is not allowed to break the law. The Electoral Commission is accountable to the Minister of Justice and the House of Representatives for the exercise of its functions, and takes all legal requirements very seriously.

*7. If it is shown to be breaking the law must it immediately amend its practices?*

The Electoral Commission must always work within the law. If a court finds the Electoral Commission's practices or interpretation of the law are not lawful, the Commission will comply with the court's direction.

8. *Are all procedures written by the Electoral Commission obliged to follow the Act without deviation? As it is written in law?*

The Electoral Commission must always work within the law which means that all procedures written by the Electoral Commission must follow the Electoral Act.

9. *Is the EMS (Electoral Management System Computer) an integral part of the Electoral Commission i.e. owned and controlled by the Crown Entity, the Electoral Commission, or is it a third party, contracted by and independent from the Electoral Commission?*

The Electoral Management System (EMS) is owned by the Electoral Commission. EMS was developed by Catalyst, a New Zealand company, after a public procurement process in 2014. The Electoral Commission designed, tested and managed the development of EMS.

10. *Please show me where in the Act it allows the Electoral commission to participate in any way apart from a supporting role?*

We have interpreted your question as relating to the administration of elections. The Electoral Commission is established by section 4B of the Electoral Act 1993 (the Act) and is an Independent Crown Entity under the Crown Entities Act 2004. The objectives and functions of the Electoral Commission are set out in sections 4C and 5 of the Act. Under these sections, the Electoral Commission has the role of carrying out the provisions of the Act and administering the electoral system in a way that is impartial, efficient and effective. This entails more than a supporting role in the delivery and administration of elections.

In the interests of transparency, we release responses to OIA requests every 3 months. 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](http://www.ombudsman.parliament.nz) or by phoning 0800 802 602.

Yours sincerely



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