

**To: Mr Steve Tully  
Electoral Commissioner  
Victorian Electoral Commission**

**From: Ian Quick  
President  
Save Our Suburbs (Vic)**

Copy to:

Minister for Local Government, Candy Broad  
Shadow Spokesperson for Local Government, John Vogels  
Minister for Planning, Rob Hulls  
Shadow Minister for Planning, Ted Baillieu  
Anthony van der Craats  
VLGA  
Limited Media release

Pages: 24

**Subject: VEC Council election data, and other issues regarding the conduct and practices of the VEC.**

Dear Mr Tully

I have a number of issues to raise with the VEC -

In summary

1. Will you release the detailed ballot paper data for the 2005 Council Elections to me, so that I can verify the result and perform analyses? The availability of this category of information has already been the subject of a successful appeal (VCAT General List No. 1999/057919 - see [Appendix D](#)) and this data should clearly be publicly available. Why has the VEC made it so difficult to get (including lying to me)? Is there a problem with that election that is being covered up? [See Page 3](#) for more detail.
2. On what basis does the VEC believe "Candidate Statements" **can not be made public** after voting has ceased? The Local Government (Electoral) Regulations 2005 seems to imply the exact opposite, ie that they are permanently publicly available. This would make sense since voters may want to be able to check later as to whether candidates are fulfilling their election promises, among other things. Will you provide me with a complete copy? [See Page 4](#) for more detail.

3. Why did the VEC limit public access to Candidate contact details in the 2005 Council elections. Specifically, why would it not provide the email address and/or mailing address of all candidates? What steps did the VEC take to confirm candidates' phone contact details (the only contact data on the VEC web site) **could be successfully used to contact** the candidates? [See Page 5](#) for more detail.
4. Why did the VEC remove the 2002 State Election results from its web site for the months preceding the 2005 Council Elections? And why was it so reluctant to provide these election results to members of the public who rang and requested them? [See Page 6](#) for more detail.

There seem to be major problems within the VEC, since in a number of instances it appears to be acting in direct contradiction to its mission statement, and too many of its functions and values ([see Appendix E](#)).

I find it absurd that I have to read various Acts or Regulations to try and find ways of getting the VEC to support open and transparent democratic processes, when it seems to be using the same legislation - even incorrectly - to find ways to prevent such processes occurring!

In particular, could you get back to me promptly about the ballot paper data, as I have a number of people very interested in the analysis that I intend to perform.

Ian Quick  
 President  
 Save Our Suburbs

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## Ballot Paper details from the 2005 Council elections

I recently asked the VEC for a copy of the ballot paper data for the Council Elections in 2005, similar to what I had done for Yarra Council in 2004 - See Appendix B in this paper.

I am extremely concerned that this simple request has led to outright lies - I was told that the VEC is was not allowed to give me this information - and the VEC finally demanded a 'formal' application that had to justify the usage of this information!

Specifically:

" In response to your request below, under Section 111 of the Local Government (Electoral) Regulations 2005 I am only able to provide the information you requested for those elections where you were either a candidate or a scrutineer. I am unable to provide you with information across all elections counted by computer where this requirement is not met."

**This statement was clearly incorrect, and a completely inappropriate response.**

Not only could the VEC have simply sent me the data when I first requested it, there has been a VCAT case in the past **requiring** the VEC to make this data available! ([see Appendix D](#)). Given that I could put in a FOI request, then file at VCAT, why all the obstacles?

What is the VEC trying to hide? Why isn't it supporting democratic transparency? Why is ignoring its own mission statement, functions, and values as articulated on the VEC web site ([See Appendix A](#))?

In fact, why isn't this data **ON** the VEC web site? Are the VEC afraid that people will be able to independently verify the election results? Why aren't the VEC **encouraging** people to do that, and to do the types of analysis I did for the Yarra 2004 election ([see Appendix C](#))?

In the last email I received, I was told that even if the data was given to me, there would be a cost involved:

" I also need to inform you that if he approves the provision of information to you there will be a cost involved depending on exactly what data you want and how long it will take for the VEC to bring the information together."

Why? Not only is this a simple database query or two, with a copy to CD, the VEC should be encouraging this type of request! How much are you going to charge for something that should be free (if we wanted a transparent democracy, or if the VEC was following its own slogans)?

**So this is my 'formal' request - could I please have the electronic ballot paper data for the 2005 Victorian Council elections, for all councils. I intend to confirm the proportional representation calculations were correct, and do analysis similar to [Appendix C](#). It should be free, but if not tell me what you want to charge, and I will consider my course of action.**

## Candidate Statements

In the Victorian Council Elections of 2005, as per section 38 of the Local Government (Electoral) Regulations 2005, Candidate statements were placed on the VEC web site.

Being exceedingly busy before the council election, I did not manage to copy them all to my local PC.

However, I was stunned to find that within hours of the election being closed for voting, they had all been removed from the web site!

When I rang the VEC on the following Monday to see if I could get a copy, not only was I told no, I was told that the VEC was **not allowed** to do so!

After numerous phone calls, I gave up.

Could you please tell me on what basis you believe these **can not be made public** after voting has ceased? They were certainly removed before all candidates were declared, and before all election matters were complete (ie ongoing court cases).

Looking at the Local Government (Electoral) Regulations 2005, section 38 -

### ***38. Candidate information on the Internet***

*As soon as practicable after a candidate's candidate information is accepted by the returning officer, the returning officer must ensure that it is published on a web site maintained by or on behalf of the returning officer that is not the web site of the Council.*

There is no indication in this section, or the rest of this Regulation, of when the information is to be 'unpublished', leading to the conclusion that **it should still be on the VEC web site!**

Unless there is some other Act or Regulation, with a higher priority than the Local Government (Electoral) Regulations 2005, that requires the VEC to hide this information, why is it not still published? And why are you stating it **can not** be handed out? It certainly is not a privacy or copyright problem, as candidates understand these are **public documents**.

If the VEC were following their own mission statement, functions and values, these candidate statements would still be on the web site!

**Will the VEC send me a complete set? If not, why not?**

## **Candidate contact details**

In the 2004 Victorian Council Elections, candidates contact details, including **email address** and phone number, were placed on the VEC web site.

At the recent Victorian Council Elections (2005) only a phone number was recorded.

This presented a significant problem to community groups - how could they send questionnaires out to candidates?

A number of groups rang every phone number provided. Unfortunately, many of the numbers never answered, and some were not even connected!

**When I contacted the VEC to 1) complain, and 2) ask for a list of email addresses and/or physical addresses for all candidates, I was told that the VEC did not have to provide this information and was not going to!**

How can this be in line with the VEC mission statement, functions, and values ([See Appendix A](#))? How is not being able to contact a candidate helping to "maintain the integrity of the Victorian electoral system" ?

Could you please explain why the VEC removed email addresses, why this practice was changed from the previous Council election, and what the policy for the future is going to be?

Could you also explain the procedure (if any) that was followed to confirm that candidates could actually be contacted by the published phone number?

## Missing State election results

Prior to the Victorian Council Elections 2005, in about June 2005 I went to the VEC web site to review the previous Victorian State Election results. I did this mainly to see what directions the forthcoming Council Election might take.

To my surprise, all the detailed election results for the 2002 State Election had been **removed** from the web site (they had been there previously). There was a comment that the web site was being 'upgraded' and that these details would return later in the year!

When I rang the VEC I was told that

1. The date the results would be returned to the web site was unknown.
2. The VEC would not give me a copy of the data that had been on the web site.

I asked "surely the VEC has to make public the detailed results from the previous state election" and was told that it didn't.

I eventually got someone on the phone who agreed that the VEC **did** have to provide a report to parliament on the election, and with a few more phone calls I managed to get someone to send me a copy of that report (I found a staff member who actually wanted to help!)

The 2002 State election results did not return to the VEC web site until many months later, too late to be useful to anyone interested in the 2005 Council elections.

1. Why did the VEC remove the State election result from its web site, and who directed it to be done?
2. Why were they withheld for so long?
3. Why was the VEC not prepared to simply (e)mail out the results if anyone requested them?
4. Do you think this behaviour is in line with the VEC mission statement, functions, and values ([See Appendix A](#))?

## **Appendix A: VEC Mission, Functions, and Values**

From: <http://www.vec.vic.gov.au/vecmore.html>

### ***The VEC's mission***

The VEC's mission is to conduct fair and impartial elections, efficiently and according to law, and to maintain the integrity of the Victorian electoral system.

We are committed to quality and accountability in the management and delivery of electoral services.

Our aim is to continue to be recognised for our excellence in providing these services.

### ***The VEC's functions***

The VEC's primary responsibilities are set out in the Electoral Act 2002. They are to:

- conduct parliamentary elections and by-elections;
- conduct local council elections and by-elections;
- conduct certain statutory elections;
- ensure the enrolment of electors;
- prepare electoral rolls for parliamentary elections, voters' lists for local government elections and jury lists;
- promote public awareness of electoral matters through education and information programs;
- conduct and promote research into electoral matters;
- provide advice to the Attorney-General and to Parliament on electoral issues; and report to Parliament on the VEC's activities.

The VEC also conducts electoral representation reviews of local councils in accordance with the Local Government Act 1989.

### ***The VEC's values***

The VEC values:

- conducting elections with complete impartiality and integrity;
- the provision of innovative services that facilitate participation in the democratic process;
- an approach to our work that demonstrates a commitment to ensuring the highest standards of service and professionalism;
- each eligible voter, and each stakeholder;
- respect for each other, diversity, sharing, trust and teamwork; and
- responsive, open communication.

## Appendix B: Email log re request for ballot paper data

(Most recent email at the top)

To: ian.quick  
From: VEC  
Date: Wed, 14 Dec 2005 10:31:43 +1100

Ian

I have spoken with the Electoral Commissioner and he would like a formal request in writing outlining what you intend using the information for. I also need to inform you that if he approves the provision of information to you there will be a cost involved depending on exactly what data you want and how long it will take for the VEC to bring the information together.

Additionally the section you refer to in your email is in relation to the PR distribution report that is provided at the end of the count, not the information provided during the count.

VEC

-----Original Message-----

From: ian.quick  
To: VEC  
Sent: Monday, 12 December 2005 6:24 PM  
Subject: RE: Ballot Paper Details Report

So you mean I have to get a candidate at every council to ask for them? I can do that, it just means you will be doing them one by one for the next few months.... Seems pretty silly to me.

I just had read of section 111, and you are incorrect in saying you can not give them to me. Section 111 (5) specifically states

"(5) The returning officer may publish a record of the count or make the record available to any person "

So you HAVE to give them to candidates/scrutineers, but you MAY give them to any person (which I am!). So can you please tell me if you will give me a copy (as per 111.5), or if you are going to force me to get candidates to request them (which would be pretty silly).

Ian Quick

At 02:21 PM 12/12/2005, VEC wrote:

>Ian

>

>In response to your request below, under Section 111 of the Local  
>Government (Electoral) Regulations 2005 I am only able to provide the  
>information you requested for those elections where you were either a  
>candidate or a scrutineer. I am unable to provide you with information  
>across all elections counted by computer where this requirement is not  
>met.

>

>

>VEC

>



>-----Original Message-----

From: ian.quick

To: VEC

>Sent: Friday, 9 December 2005 10:40 PM

>

>Last year I used the electronic ballot paper data from Yarra (if you'd

>like to see what I did with it, look at

><http://www.yarra.net/forum/viewtopic.php?t=49> :-), this year I want the

>same data for the council election a few weeks ago - for all the

>councils you have it for. I assume you won't want to email that much

>data, so I can either come in and pick it up on CD, or you can mail it

>on CD.

>>It that's going to be a problem, please ring or email me.

>

>Ian Quick

>President

>Save Our Suburbs

>

>

## Appendix C: Example data usage

What I have done with ballot paper details - Yarra Council 2004

See <http://www.yarra.net/forum/viewtopic.php?t=49>

The overall results are -

### **Meba Ward**

Meadows, Kay  
Morton, Judy  
Sekhon, Gurm

### **Nicholls ward**

Fristacky, Jackie  
Maltzahn, Kathleen  
D'Agostino, Paul

### **Langridge**

Farrar, Jenny  
Jolly, Stephen  
Barbara, Annabel

For the detailed roll up, I've made a pdf of the full figures -

[http://www.yarra.net/election2004/Yarra\\_2004\\_Election\\_Results.pdf](http://www.yarra.net/election2004/Yarra_2004_Election_Results.pdf)

For preliminary votes broken down by booth (these are not final figures) -

[http://www.yarra.net/election2004/Yarra\\_2004\\_Election\\_Results\\_FirstPrefCount\\_Prelim.xls](http://www.yarra.net/election2004/Yarra_2004_Election_Results_FirstPrefCount_Prelim.xls)

**And a quick and subjective summary of a few key points -**

### **Melba Ward**

Kay Meadows went over quota on her primary vote (by 2%), with it then between Ian Quick (10%), Gurm Sekhon (16%), George Wright (18%), Judy Morton (22%), with other candidates having less than 4%.

With the minor candidate rolled up, my (Ian Quick) votes (12% at that stage), were rolled up resulting in Judy Morton and Gurm Sekhon achieving quota\*. George Wright was very close to going over quota ahead of Judy Morton - if the local ALP had supported him more, or Judy Morton less (they supported her extremely well), there is not much doubt that he would have replaced her on council.

Of interest was that Judy Morton's vote was about half (in percentage terms) what it was in the last election (Docker Ward), and the green vote (with a different candidate) was also about two thirds of what it was (compared to Docker Ward).

Of course, as the ward boundaries have changed, these numbers may not be directly comparable.

### **Nicholls Ward**

Kathleen Maltzahn got over quota on her primary vote (by 3%), with Jackie Fristacky also over quota by a narrow .4%. Paul D'Agostino then easily survived the rollup to take the third position.

### **Langridge Ward**

Jenny Farrar was easily over quota on her primary vote (by over 5%), with Annabel Barbara also over quota (by over 3%). The remaining contest was between Sivy Orr, Geoff Barbour, and Stephen Jolly -

with Stephen having a slightly higher primary vote to begin with.

When Geoff Barbour was rolled up (with the lowest vote of the three, with the Stephen the highest), his preferences catapulted Stephen Jolly over quota\*\*.

\*

*Yes, my preferences pushed a Green candidate into council, resulting in three Green councillors. I arranged my how to vote card in this order as I knew the greens could not have a majority on council (they were running only 4 candidates), where as the ALP could have quite possibly had at least 5 of the 9 seats. I do not believe any political party should have a majority on council, it tends to make them even more insular to resident concerns.*

\*\*

*ALP Geoff Barbour's preferences were what pushed Stephen Jolly (Socialist Party Left Wing Team) over quota. I'm sure it's going to be an interesting time with Stephen on council!*

And yes, I'm very happy with my result and would like to thank everyone who helped me. I received the 11th highest primary vote (1087) out of all 27 candidates across all of Yarra, which was higher than many party supported candidates. Indeed, Jackie Fristacky was the only person not supported by a

party to get a higher vote than me - and she had the advantage of being a sitting councillor. And in my ward I received roughly two thirds of what the greens vote was, and my preferences decided two out of the three councillors.

Ian

**And the primary (prelim) vote for everyone, for all wards, highest to lowest was -**

MEADOWS	Kay	2944
FARRAR	Jenny	2921
BARBARA	Annabel	2696
MALTZAHN	Kathleen	2676
FRISTACKY	Jackie M.	2450
MORTON	Judy	2391
D'AGOSTINO	Paul	2128
SEKHON	Gurm	1786
WRIGHT	George	1774
JOLLY	Stephen	1174
QUICK	Ian	1087
ORR	Sivy	971
MEES	Paul	947
BARBOUR	Geoff	719
FERGUSON	Jill	602
KENNEDY	Glen	497
VIEGAS-DIAS	Juliana	376
KUCERA	Dominik	350
BETZIEN	Jody	306
McPHERSON	John	298
SMEDLEY	Dale	261
DRUMMOND	Matthew	153

DRISCOLL	Beth	139
BERNARD	Jim	117
SALES	Erinn	113
TUDEHOPE	Alice	97
WRIGHT	Zachary	89
Total		30062
Informal	Votes	2234

**It is also interesting to see what effect the 'Donkey', 'Reverse Donkey', or 'Fill Donkey' vote had (my naming convention).**

COUNT	Total	Donkey (1)	Fill Donkey (2)	Reverse Donkey (3)
Melba	10786	285	833	30
Nicholls	9526	316	611	32
Langridge	9417	268	680	28
PERCENTAGE				
Melba		2.6%	7.7%	0.28%
Nicholls		3.3%	6.4%	0.34%
Langridge		2.8%	7.2%	0.30%

(1) Donkey - 1,2,3 at the top of the ballot paper.

(2) Fill Donkey - 7,8,9 at the bottom of the ballot paper (of a 9 candidate ward) etc. The voter has probably put their top candidate(s) in and then number the remaining ones top to bottom.

(3) Reverse Donkey - 1,2,3 start from the bottom of the ballot paper up.

**So being at the top of the ballot paper will get you about 3% extra of the vote, and being at the bottom will get you .3%.**

Now that we have proportional representation this could make a big difference, and may represent a large percentage of the top persons vote.

Looking at each ward

#### **Melba**

Of George Wright's 1735 votes, 285 were 'Donkey' votes - ie 16.4% of his primary vote. If I (Ian Quick) had been number 1 on the ballot paper and had received these votes instead of George, I would have come very close (though not quite doing) to knocking Cnr Gurm out and replacing him on council.

#### **Langridge**

Of Jenny Farrar's 2883 primary votes, 268 (9%) were 'Donkey' votes. While this would have made no difference to Jenny if they had gone to someone else instead, it looks at first glance to have been significant in the Steve Jolly, Sivy Orr, and Geoff Barbour roll up (I'll do some detailed work on this later).

#### **Nicholls**

Of Jackie Fristacky's 2423 primary votes, 316 (13%) were 'Donkey' votes. It wouldn't have remotely made a difference if someone else had got them instead.

One other interesting number was Beth Driscoll's (Melba) vote of 137 primary votes. 30 of those (22%!) were reverse donkey!

**Of interest is to also look at how many times someone was first, or second, etc etc on the voters preference -**

Melba	George WRIGHT	Juliana VIEGAS-DIAS	Kay MEADOWS	Judy MORTON	Matthew DRUMMOND	Ian QUICK	Gurm SEKHON	Dale SMEDLEY	Beth DRISCOLL
1	1735	367	2911	2369	151	1078	1778	260	137
2	2553	1333	3039	995	270	1665	526	204	201
3	796	708	973	3238	353	497	522	1483	2216
4	1948	1865	525	875	1177	528	379	3052	437
5	480	1916	378	451	2379	1288	1057	539	2298
6	2188	1367	231	338	2727	1105	385	545	1900
7	322	2244	277	349	2004	700	1167	2395	1328
8	303	569	405	1974	1294	3520	494	1629	598
9	460	411	2041	192	386	398	4471	664	1669
Not marked	1	6	6	5	45	7	7	15	2
Total	10786	10786	10786	10786	10786	10786	10786	10786	10786

Nicholls	Jackie Fristacky	Kathleen Maltzahn	Paul D'Agostino	Jill Ferguson	Paul Mees	Glen Kennedy	Jody Betzien
1	2423	2645	2119	600	942	495	302
2	824	1600	972	492	2408	2922	308
3	2086	777	1937	642	847	869	2368
4	2377	588	848	3578	599	587	949
5	911	1451	532	1017	1259	2488	1868
6	297	512	764	2430	3069	1551	903
7	607	1950	2353	759	397	611	2823
Not marked	1	3	1	8	5	3	5
Total	9526	9526	9526	9526	9526	9526	9526

langridge	Jenny Farrar	Erinn Sales	Stephen Jolly	Zachary Wright	Jim Bernard	Dominik Kucera	Annabel Barbara	Sivy Orr	Geoff Barbour	John Mepherston	Alice Tudehope
1	2883	109	1162	88	117	346	2650	958	711	296	97
2	1384	1188	545	146	135	190	755	2368	2389	177	140
3	476	500	2977	1056	220	2410	617	385	385	225	166
4	924	3006	617	610	558	259	338	348	419	248	2090
5	268	703	2285	2902	579	297	304	820	389	283	587
6	225	2282	316	659	445	734	303	350	257	3549	297
7	413	315	252	2701	1072	2888	620	262	305	328	261
8	120	214	529	480	559	544	3266	902	301	2206	296
9	91	589	256	400	2355	462	239	358	3143	379	1145
10	2315	329	227	202	378	433	154	250	934	1413	2782
11	316	180	251	168	2983	844	169	2384	181	305	1546
Not marked	2	2	0	5	16	10	2	32	3	8	10
Total	9417	9417	9417	9417	9417	9417	9417	9417	9417	9417	9417

**The one/two votes on each ballot paper were also interesting - it shows how many people follow the how to vote cards. The answer? Typically around 60 to 70%**

Melba		Primary (1) vote								
		George WRIGHT	Juliana VIEGAS-DIAS	Kay MEADOWS	Judy MORTON	Matthew DRUMMOND	Ian QUICK	Gurm SEKHON	Dale SMEDLEY	Beth DRISCOLL
Second	George WRIGHT	0	75	2070	174	14	82	104	25	9

Vote										
	Juliana VIEGAS-DIAS	342	0	144	78	11	669	70	11	8
	Kay MEADOWS	1047	42	0	1697	22	46	137	40	8
	Judy MORTON	121	39	445	0	34	103	139	93	21
	Matthew DRUMMOND	39	14	59	68	0	52	18	7	13
	Ian QUICK	68	127	43	118	37	0	1240	23	9
	Gurm SEKHON	82	40	104	155	9	76	0	29	31
	Dale SMEDLEY	20	11	23	48	8	28	28	0	38
	Beth DRISCOLL	16	19	23	31	16	22	42	32	0
	Total Primary Vote	1735	367	2911	2369	151	1078	1778	260	137
%	George		20.4%	71.1%	7.3%	9.3%	7.6%	5.8%	9.6%	6.6%
	Juliana	19.7%		4.9%	3.3%	7.3%	62.1%	3.9%	4.2%	5.8%
	Kay	60.3%	11.4%		71.6%	14.6%	4.3%	7.7%	15.4%	5.8%
	Judy	7.0%	10.6%	15.3%		22.5%	9.6%	7.8%	35.8%	15.3%
	Mathew	2.2%	3.8%	2.0%	2.9%		4.8%	1.0%	2.7%	9.5%
	Ian	3.9%	34.6%	1.5%	5.0%	24.5%		69.7%	8.8%	6.6%
	gurm	4.7%	10.9%	3.6%	6.5%	6.0%	7.1%		11.2%	22.6%
	dale	1.2%	3.0%	0.8%	2.0%	5.3%	2.6%	1.6%		27.7%
	beth	0.9%	5.2%	0.8%	1.3%	10.6%	2.0%	2.4%	12.3%	

<b>Nicholls</b>		Primary (1) vote							
		Jackie Fristacky	Kathleen Maltzahn	Paul D'Agostino	Jill Ferguson	Paul Mees	Glen Kennedy	Jody Betzien	
Second Vote	Jackie Fristacky	0	257	239	95	149	63	21	
	Kathleen Maltzahn	545	0	239	102	522	38	154	
	Paul D'Agostino	293	230	0	78	91	254	26	
	Jill Ferguson	122	103	131	0	62	44	30	
	Paul Mees	216	1908	120	74	0	62	28	
	Glen Kennedy	1189	55	1350	219	66	0	43	
	Jody Betzien	58	92	40	32	52	34	0	
	Total Primary Vote	2423	2645	2119	600	942	495	302	
%	Jackie Fristacky		9.7%	11.3%	15.8%	15.8%	12.7%	7.0%	
	Kathleen Maltzahn	22.5%		11.3%	17.0%	55.4%	7.7%	51.0%	
	Paul D'Agostino	12.1%	8.7%		13.0%	9.7%	51.3%	8.6%	
	Jill Ferguson	5.0%	3.9%	6.2%		6.6%	8.9%	9.9%	
	Paul Mees	8.9%	72.1%	5.7%	12.3%		12.5%	9.3%	
	Glen Kennedy	49.1%	2.1%	63.7%	36.5%	7.0%		14.2%	
	Jody Betzien	2.4%	3.5%	1.9%	5.3%	5.5%	6.9%		

<b>Langridge</b>		Primary (1) vote										
		Jenny Farrar	Erinn Sales	Stephen Jolly	Zachary Wright	Jim Bernard	Dominik Kucera	Annabel Barbara	Sivy Orr	Geoff Barbour	John Mcpherson	Alice Tudehope
Second Vote	Jenny Farrar	0	21	136	12	10	38	208	834	68	43	14
	Erinn Sales	299	0	812	11	4	3	34	8	5	10	2
	Stephen Jolly	168	40	0	23	11	18	78	33	38	133	3
	Zachary Wright	22	19	44	0	20	5	18	3	7	6	2
	Jim Bernard	21	5	17	16	0	24	25	4	8	9	6
	Dominik Kucera	29	6	10	7	25	0	57	12	24	9	11
	Annabel Barbara	128	4	44	7	11	32	0	32	459	25	13
	Sivy Orr	2115	6	39	6	3	21	104	0	47	20	7
	Geoff Barbour	48	3	28	2	8	176	2071	22	0	22	9
	John Mcpherson	27	2	21	3	14	11	23	7	39	0	30

	Alice Tudehope	26	3	11	1	11	18	32	3	16	19	0
	Total Primary Vote	2883	109	1162	88	117	346	2650	958	711	296	97
%	Jenny Farrar		19.3%	11.7%	13.6%	8.5%	11.0%	7.8%	87.1%	9.6%	14.5%	14.4%
	Erinn Sales	10.4%		69.9%	12.5%	3.4%	0.9%	1.3%	0.8%	0.7%	3.4%	2.1%
	Stephen Jolly	5.8%	36.7%		26.1%	9.4%	5.2%	2.9%	3.4%	5.3%	44.9%	3.1%
	Zachary Wright	0.8%	17.4%	3.8%		17.1%	1.4%	0.7%	0.3%	1.0%	2.0%	2.1%
	Jim Bernard	0.7%	4.6%	1.5%	18.2%		6.9%	0.9%	0.4%	1.1%	3.0%	6.2%
	Dominik Kucera	1.0%	5.5%	0.9%	8.0%	21.4%		2.2%	1.3%	3.4%	3.0%	11.3%
	Annabel Barbara	4.4%	3.7%	3.8%	8.0%	9.4%	9.2%		3.3%	64.6%	8.4%	13.4%
	Sivy Orr	73.4%	5.5%	3.4%	6.8%	2.6%	6.1%	3.9%		6.6%	6.8%	7.2%
	Geoff Barbour	1.7%	2.8%	2.4%	2.3%	6.8%	50.9%	78.2%	2.3%		7.4%	9.3%
	John Mcpherson	0.9%	1.8%	1.8%	3.4%	12.0%	3.2%	0.9%	0.7%	5.5%		30.9%
	Alice Tudehope	0.9%	2.8%	0.9%	1.1%	9.4%	5.2%	1.2%	0.3%	2.3%	6.4%	

## Appendix D: VCAT 1999/057919 Anthony van der Craats vs City of Melbourne

From: <http://www.austlii.edu.au/au/cases/vic/VCAT/2000/447.html>

van der craats v Melbourne CC [2000] VCAT 447 (29 January 2000)

Last Updated: 1 August 2000

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

General List No. 1999/057919

### CATCHWORDS

General List, Freedom of Information, Records of Council Election, Freedom of Information Act 1982 Sections 31(1)(a) and Section 38

Applicant Anthony van der Craats  
Respondent City of Melbourne  
Where Heard At Melbourne  
Before M.F. Macnamara, Deputy President

Date of Hearing 25 November, 1999

Date of Order 25 November, 1999

### ORDER

Twenty-eight days from this day access be granted to the document claimed to be exempt in the proceeding

M.F. MACNAMARA  
DEPUTY PRESIDENT  
APPEARANCES

For the Applicant: Appeared in person

For the Respondent: Mr Bastkos of FOI Solutions

### REASONS FOR DECISION

1. Mr van der Craats was an unsuccessful candidate for election to the Melbourne City Council in its election in March 1999. He sought election as one of five councillors representing the entire municipal district, rather than representing any particular ward. No less than 23 candidates offered themselves for election.

2. On the 14th of May he requested the respondent, Melbourne City Council to furnish a copy of the data file on disk with all ballots recorded for the MCC elections March 1999.

3. By way of background I should note that as the Local Government Act 1989 now provides for, (and the election for the entire municipal district in 1999 and it seems that election in 1996 was conducted by) the use of a computer based counting system rather than the traditional manual system. This entailed a series of operators, in this case, about 20, inputting data from the ballot



papers which were obtained in the course of a postal vote, into computer terminals. It is that data which forms the basis for the disk material which Mr van der Craats seeks.

4. He says, and this is conceded, that similar information was furnished to him subsequent to the 1996 election at which he was also unsuccessful in his bid for election. On this occasion also, though there is some debate about it, Mr van der Craats says he was given to understand that he would receive this information. This is not entirely admitted by the Council. At any rate, ultimately, upon reflection and consideration the Council officer responsible for this matter, Mr Gifford, determined that it would be improper to furnish the disk to Mr van der Craats. Accordingly, Mr van der Craats has brought this proceeding in the Tribunal seeking a review pursuant to Section 50 of the Freedom of Information Act 1982 of Council's determination not to furnish him with the disk.

5. At the forefront of Council's submission were the provisions to be found in Schedule 3 of the Local Government Act 1989 governing elections. It is common ground that these provisions applied to this election despite the fact that it was conducted as a computer counted postal vote. The most important provision relied upon is to be found in Clause 15 of the relevant Schedule. It is headed "Disposal of Ballot Papers". Sub-clause (1) states:

"(1) As soon as practicable after the completion of the count of votes or in the case of the voters' roll the scrutiny of the voters' roll, the returning officer must--

(a) enclose in one or more separate packets--

(i) the parcels of used ballot-papers; and

(ii) the parcels of spoilt ballot-papers; and

(iii) the parcels of ballot-papers set aside; and

(iv) all parcels, copies of voters' rolls, books or other papers used in connection with the election; and

(b) secure the packets; and

(c) write on the packet--

(i) a description of the contents; and (i) a description of the contents; and

(ii) the name of the ward; and

(iii) the date of polling; and

(d) sign the writing on the packet.

(2) The returning officer must deliver the parcels to the Chief Executive Officer.

(3) The Chief Executive Officer must keep the parcels safely and secretly for 3 years.

(4) After 3 years the Chief Executive Officer must cause the parcels to be destroyed in his or her presence or in the presence of an authorised person.

(5) The Chief Executive Officer may permit a sealed packet or sealed parcel to be opened only as specifically provided by or under this Act."

6. I will turn shortly to the respects in which Mr Bastkos on behalf of the respondent Council submitted that this provision interacted with the Freedom of Information Act.

7. For present purposes I consider how he submits of its own force, it requires a secrecy regime to be observed with respect to the computer disk which Mr van der Craats is seeking. His primary submission was that the computer disk included the self same information as was to be found on the used ballot papers. Mr Bastkos submitted and I did not understand Mr van der Craats to disagree, that a used ballot paper was one which contained the same information which was to be found on the computer disk. Since there was an identity of information between the ballot paper and the disk, therefore one should regard the disk and the ballot paper as having an identity. Secondly, he submitted that if that were incorrect, that sub-paragraph (4) referring to all parcels, copies of voters' rolls, books or other papers used in connection with the election, comprehended the computer disk. He did not as I understand him, submit that the disk was to be regarded as "other papers". He did submit however, that it could be regarded as a book or books. Accordingly in Mr Bastkos' submission there was an obligation cast upon the Chief Executive Officer of his client, to retain amongst other things, this disk, safely and secretly for three years and then to destroy it, not to make it available to Mr van der Craats or anybody else but only make it available in certain specified circumstances which are to be found in the Local Government Act and the regulations governing elections.

8. One particular circumstance in which in a general sense ballot papers preserved in the manner described in Regulation 15 might be required to be resorted to would be in a count back. This is a procedure which has recently been introduced for Local Government elections whereby when a casual vacancy arises the preferences of the retiring candidate can be redistributed so that the person next eligible according to the people's vote can take the retiring candidate's place and the cost and inconvenience of a by-election may be avoided.

9. The arrangements for such a count back are to be found in Schedule 3A of the Local Government Act 1989. Clause 2 of that schedule provides for the candidates who stood at the principal election to be invited and to be given 14 days to decide whether they wished to participate in the re-count. Clauses 9 and 10 of that Schedule deal with the process of re-count. Clause 9 is headed:

"Count back may be conducted using existing electronic database."

10. Clause 10 is headed:

"Retrieval and opening of ballot papers."

11. These two clauses establish a regime of, in the case of Clause 9 a re-count by reference to electronic data, such as we are concerned with here and in the case of Clause 10 the physical ballot papers.

12. Clause 10(1) says:

"This Clause applies if neither Clause 9.1 nor 2 applies."

13. So it appears that recourse is first to be had to the electronic information and only if it is unavailable or non-existent because a manual count has been conducted are the parcels of ballot papers to be retrieved.

14. Sub-clause (2) of Clause 9 says:

"The Returning Officer may conduct a countback of votes by using the electronic form of the ballot-papers if she or he certifies in writing that she or he is satisfied, after conducting any tests that she or he considers to be appropriate, that the electronic form of the ballot papers is an accurate copy of all the valid ballot-papers that were cast at the relevant election."

15. Clause 10 provides specifically for the opening of the parcels and packets which have been established in accordance with Clause 15 of Schedule 3. I should for completeness mention, slightly out of order, that with respect to the regime established by Clause 15 of Schedule 3 for the preservation of the ballot papers, regard should also be had to Regulation 88 of the Local Government Elections Regulations 1995 which makes some more specific provisions as to the subject matter of Clause 15. I did not however understand Mr Bastkos to suggest that that affected the operation and purport of Clause 15.

16. I return therefore in light of Clauses 9 and 10 of Schedule 3A to the correctness of the submissions made by Mr Bastkos that this disk can be seen as the identical subject matter as the used ballot papers or if not that, should be regarded as amongst the associated books and papers which are also required to be maintained in the packets. What is striking in a comparison between Clauses 9 and 10 of Schedule 3A is that Clause 10 makes specific provision for the opening of packets and parcels by the Chief Executive Officer. Clause 9 makes no such provision. The assumption appears to be that the disk is relatively freely available and has not been sequestered for secret preservation in accordance with the Clause 15 regime. Merely to say that a particular document contains the same information as another document or group of documents is not to say that the two are the same thing. It says no more than that they contain the same information. Clauses 9 and 10 of Schedule 3A make specific and separate provision for the disk and the primary material including the ballot papers. To my mind they show that the two are different and that the disk is not intended to be sequestered as required by Clause 15. To the extent that Mr Bastkos' submissions proceed upon that footing, I reject them.

17. Mr Bastkos first took me to Section 31(1)(a) of the Freedom of Information Act which is one of the two exemptions relied upon by Council. Section 31(1)(a) provides:

"(1) Subject to this section, a document is an exempt document if its disclosure under this Act would, or would be reasonably likely to--  
(a) prejudice the investigation of a breach or possible breach of the law or prejudice the enforcement or proper administration of the law in a particular instance;"

18. He referred me to a decision of the Full Court of the Supreme Court of Victoria as to the operation of that exemption in the matter of *Sobh v Police Force of Victoria* [1994] 1 VR 41. At page 55 Nathan J said:

"As to what the law may be there is no doubt. It includes both the civil and criminal law of the State of Victoria. That law is expressed by statute,

regulation and the case in common law. Accident Compensation in Croom 1991 2 VR 322 already referred to acknowledges the width of the term "in this section". Young CJ at page 324 said:

"But the administration of the law indicates something concerned with the process of the enforcement of legal rights and duties."

Earlier on the same page His Honour said:

"Prejudice is not a term of legal art. It means to impede or derogate from. Its content is governed by the matters which may be impeded or derogated from which in this case is the administration of the law."

19. I will not trouble at this stage to go to the relatively large case law from the Administrative Appeals Tribunal and this Tribunal as to what is comprehended by the administration of the law. The flavour of the dictum of Young CJ which was approved by Nathan J in Sobh's case and relied upon by Mr Bastkos seems to me to indicate that what is contemplated is proceedings judicial or quasi-judicial. However, I will assume for the purposes of the argument that the administration of the law is a wider concept still.

20. Mr Bastkos submitted that if this disk were released, the administration of the law would be impeded to the extent that the Chief Executive Officer of his client would be impeded and prevented from his duty in upholding the terms of Clause 15 of Schedule 3 of the Local Government Act. In fact, he will be called upon, according to Mr Bastkos's submission to breach the terms of that clause. For reasons that I have already given, I do not believe that the clause operates with respect to this computer disk and accordingly I reject that submission.

21. A more general submission was made, this time relying upon the formulation to be found in Nathan's J judgment in Sobh's case as to the meaning of "prejudice" in so far as it refers to derogation. Mr Bastkos submitted and in cross-examination Mr van der Craats ultimately did not disagree that the information to be found upon this disk if properly analysed and manipulated, would permit a skilled individual (and Mr van der Craats said one would not have to be especially skilled because these sorts of matters are not in his words "rocket science") to ascertain upon a countback who would be victorious from amongst the unsuccessful candidates and to make calculations such as that candidate X would succeed if he could prevail upon Candidate Y to remain in the race when invited in accordance with Clause 2 of Regulation 3A but have Candidate Z withdraw. In these circumstances, Mr Bastkos submits the democratic election would be rendered a farce to the outrage of voters and the administration of the law would be derogated from. Mr van der Craats' answer is that the votes have been cast and they cannot be changed. Any improper inducements to a particular candidate to withdraw, such as a bribe would be a criminal offence under Section 59 of the Local Government Act and therefore one should not assume that such a thing would occur because the penalty is very harsh, namely two years imprisonment.

22. I reject the submission that the suggested use of the disk which was referred to in various respects as "orchestrating" the result would amount to a prejudice to the administration of the law. It may or may not be that ratepayers

would be disapproving of such a process. The mere fact that information or particular measures or strategies can be used to produce a result which many in the community would deplore, does not to my mind show that there is any prejudice to the administration of the law. If release of particular documents under the Freedom of Information Act permitted a tax payer to minimise his tax, many people might be outraged but I do not believe that that would amount to a prejudice to the administration of the law. I must say speaking for myself as a citizen, the process which is described here as orchestration, does not strike me as especially outrageous. Every electoral system produces means of manipulation and calls for particular tactics which may achieve particular results. In a single electorate first past the post election, the standing of more than one candidate in the same interest or allegedly in the same interest may prejudice the likelihood that that particular interest will be victorious. That tactic is sometimes described as the use of one or more spoilers. In more elaborate electoral systems one may consider other tactics. It may be in a compulsory preferential system that the standing of multiple candidates in the same general interest might maximise the likelihood that one of them would achieve victory by resort to the preferences of the other. These are tactics, they may be savoury, they may be unsavoury but to my mind neither they nor what is suggested could be done here, amounts to a prejudice of the administration of the law. Accordingly I reject the exemption which is said to be based upon Section 31(1)(a).

23. This then brings me to Section 38 of the Freedom of Information Act which is the other and perhaps principal exemption relied upon by Mr Bastkos. That states:

"A document is an exempt document if there is in force an enactment applying specifically to information of a kind contained in the document and prohibiting persons referred to in the enactment from disclosing information of that kind, whether the prohibition is absolute or is subject to exceptions or qualifications."

24. There is quite a bit of law as to what for the purposes of that exemption is regarded as sufficient specificity. Mr Bastkos referred me to *Harrigan v Department of Health* (1986) 72 ALR 293, 294-5. It is unnecessary in the view that I take to say anything as to those principles. I will accept for the purposes of these reasons that other things being equal, the operation of the provisions relied upon by Mr Bastkos is to be regarded as sufficiently "specific" to attract the operation of Section 38.

25. Mr Bastkos however made a particular and sophisticated submission based upon the decision in *Department of Premier and Cabinet and Birrell (No. 2)* [1990] VR 51, 52 where Murphy J of the Supreme Court of Victoria said:

"The information contained in that document must be "of a kind" to which the enactment in question "specifically" applies before the document containing it is "exempt" under Section 38 of the Act. It is the information that is in the document which must give it the quality must make it of the class that is "specifically" made the subject of the enactment in question which proscribes persons from disclosing that kind of information. It is not the document itself to which the enactment should refer."

26. Mr Bastkos says that the content of the ballot papers is by force of Clause 15 rendered the subject of a secrecy provision and therefore likewise there is an enactment in force, namely Clause 15 of Schedule 3 which operates for the purposes of Section 38 of the Freedom of Information Act to create the relevant exemption. Mr Bastkos referred me to a decision of the Administrative Appeals Tribunal of Victoria in the matter of Corrs Chambers Westgarth v The Legal Aid Commission (1996) 10 VAR 388 where the Tribunal had to consider the operation of the Legal Aid Act 1978 Sections 43(1) and (2). Those two sections created specific restrictions on the Legal Aid Commission as to the disclosure of certain documents and information. The Tribunal upheld an exemption under Section 38.

27. Mr Bastkos however conceded that the Tribunal made no particular distinction in its reasons between the references in the two sub-sections to documents and information and the reasons were quite consistent with the Tribunal having focussed upon the reference to a restriction on release of information and having given no heed whatsoever to the reference to the release of the documents.

28. With that excursus I return to Clause 15 and consider whether Clause 15 in its terms applies to information or applies to documents. There is nothing in Clause 15 which specifically refers to information as distinct from documents. The Chief Executive Officer is obliged to keep the parcels which he is required to prepare safely and secretly but it is a quite possible interpretation of Clause 15 and to my mind in this circumstance, the preferable one, that the objective is to maintain the ballot papers for three years should they need to be referred to, not to keep the information contained in them a secret. After all, in all elections including council elections and I have been taken to the detailed provisions, candidates are permitted to have scrutineers present. Where the election is conducted manually, the scrutineer is permitted to observe the ballot papers as they are being counted. A scrutineer is perfectly entitled to view the trend of preferences. Indeed we are all familiar with the television panel coverage of the progress of State and Federal elections in which party heavyweights who are included on the panels as experts from time to time retire to receive special information as to the drift of preferences in vital polling booths. That is not something which is prohibited by any electoral law at all. In so far as Mr Bastkos made a submission early in his case that such a thing might be contrary to Section 60 of the Local Government Act headed "Infringement of Secrecy" I would reject it and I did not understand Mr Bastkos to press that submission. What is intended to remain secret about an election is who any individual voter voted for. Given that that is the key point of the secret ballot system, and that scrutineers are permitted to view individual ballot papers either as they are being keyed in or as they are being made the subject of a manual count, I cannot think that there is any regime intended to be imposed by Clause 15 to render the content of the ballot papers as distinct from the vote which an individual ascertainable voter cast, a secret. Accordingly, I likewise reject the submission based upon Section 38 of the Freedom of Information Act.

29. To my mind there is nothing in the Local Government Act or regulations viewed individually which would prohibit the release of this disk and for reasons given, no alchemy operating on Section 38 of the Freedom of Information Act can somehow conjure a prohibition out of the air. Particularly since the section relied upon refers to documents and not to information in contra distinction to the formulation relied upon by Mr Bastkos from Birrell's case.

30. Having rejected both of the exemptions which are relied upon by the respondent it is unnecessary for me to say anything as to the public interest arguments pressed by either of the parties. Accordingly I will order that 28 days from this day access be granted to the document claimed to be exempt in the proceeding.

MFM:RB

## Appendix E: VEC failure to confirm to Mission, Functions, And Values

*The VEC's mission is to conduct fair and impartial elections, efficiently and according to law, and to maintain the integrity of the Victorian electoral system.*

A key part of the integrity is that other people can verify the results, contact candidates, and review what candidates have stated!

*Our aim is to continue to be recognised for our excellence in providing these services.*

Unfortunately, this is not the case.

*\*promote public awareness of electoral matters through education and information programs;*

*\*conduct and promote research into electoral matters;*

The VEC is actively **discouraging** research, and trying to **restrict** information!

*\*the provision of innovative services that facilitate participation in the democratic process;*

The VEC is actually trying to be innovative in stopping participation in the democratic process!

*\*an approach to our work that demonstrates a commitment to ensuring the highest standards of service and professionalism;*

Given that I have been lied to, and had almost every staff member do what they could (even if they had to invent reasons) to make sure I **couldn't** get what I need, this value is clearly not being implemented.

*\*responsive, open communication.*

While it is true that I've received refusals fairly quickly, this hardly qualifies as responsive and open communication!