

29 August 2023

By email to: [REDACTED]

Dear [REDACTED]

OFFICIAL INFORMATION ACT REQUEST 2023/37

On 14 August 2023 you made a request under the Official Information Act 1982 (the OIA) for the following information:

*The following questions relate to the Electoral Act 1993 or any other parliamentary act:
Where in the Acts does it state that the elections are to be managed by (be the sole domain of) a SOE (State owned enterprise) i.e. the electoral commission?
Where in the Acts does it state that elections may not be managed by the people in the electorate – specifically within the electorate that the elections are being held?
Where in the Acts does it state who/which entity employs/instates the Returning Officer?
Are Returning Officers, Justices of the Peace, Voting Place Managers and Scrutineers, bound to follow the Electoral Act 1993 Version as at 1 July 2023 exactly?
Is the Electoral commission bound to follow the Electoral Act 1993 Version as at 1 July 2023 exactly?*

Do any Acts override any discrepancies between the Electoral Act 1993 and procedures written by the Electoral Commission?

Where in the Acts does it state that the Certificates of count must be tabulated by the EMS computer?

Where in the Acts does it state that the Returning Officer may not tabulate the EMS11-HQ and or Certificates of count by hand?

Where in the Acts does it state that the Returning Officer may not tabulate the EMS81-WKSHEET count by hand?

Where in the Acts does it state that the Returning Officer may not distribute copies of the EMS81-WKSHEET count as it is produced?

Where in the Acts does it state that the Justice of the Peace, Returning Officer or Voting Place Manager may not retain a copy of the paperwork they have signed?

Where in the Acts does it state that the Justice of the Peace, Returning Officer or Voting Place Manager may not distribute copies of the paperwork they have signed to the Scrutineers or any other persons or people at or after the close of poll?

*Can an employment contract, signed with the electoral commission, compel a person or a man to complete a task that is not legal/lawful? Especially if, when the contract is signed, the participants may not be aware that the task is breaking the law, i.e. the **Electoral Act 1993** or any other parliamentary act.*

What authority does the electoral commission (a corporation) have over persons?

What authority does the electoral commission (a corporation) have over people?

Responses to each of your questions are set out below.

1. *Where in the Acts does it state that the elections are to be managed by (be the sole domain of) a SOE (State owned enterprise) i.e. the electoral commission?*

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.

2. *Where in the Acts does it state that elections may not be managed by the people in the electorate – specifically within the electorate that the elections are being held?*

The Electoral Act vests power in the Electoral Commission to carry out the provisions of the Act and requires the Commission to administer the electoral system. The Commission employs over 20,000 temporary staff from electorates all over New Zealand, to help run voting and counting at a general election.

3. *Where in the Acts does it state who/which entity employs/instates the Returning Officer?*

Section 20B of the Act states that the Electoral Commission must designate an electoral official as the Returning Officer for each district.

4. *Are Returning Officers, Justices of the Peace, Voting Place Managers and Scrutineers, bound to follow the **Electoral Act 1993 Version as at 1 July 2023** exactly?*

Returning Officers, Justices of the Peace, Voting Place Managers and Scrutineers are bound to follow the Act. This includes any amendments as those amendments are made.

5. *Is the Electoral commission bound to follow the Electoral Act 1993 Version as at 1 July 2023 exactly?*

The Electoral Commission is bound to operate within the Act.

6. *Do any Acts override any discrepancies between the Electoral Act 1993 and procedures written by the Electoral Commission?*

The Electoral Commission must always work within the law, which means that all procedures written by the Electoral Commission must not be beyond the powers set out in the Act.

7. *Where in the Acts does it state that the Certificates of count must be tabulated by the EMS computer?*

Sections 174A(1)(c) and (d), 178(5)(b) and (c), (8) and (9) of the Act and 179 provide processes for the preparation and use of certificates of results and the requirement that the Electoral Commission declare the results. Nothing in the Act precludes the Commission from recording results in EMS following a manual count. The count process meets the requirements of the Act.

8. *Where in the Acts does it state that the Returning Officer may not tabulate the EMS11-HQ and or Certificates of count by hand?*

The Act sets out the process to be followed when counting the votes in section 178. Section 179 of the Act states that once the official count under section 178 of the Act is completed, the totals are recorded on a certificate of results which is signed by the Returning Officer and a Justice of the Peace. The Returning Officer must then give the Electoral Commission the results of the votes and information about informal votes. It is then the Electoral Commission's role to declare the results.

9. *Where in the Acts does it state that the Returning Officer may not tabulate the EMS81-WKSHEET count by hand?*

As set out in our answer to questions 8 and 9 above, the Act sets out the process to be followed when counting the votes in section 178. This process is also outlined on our [website](#). The count process meets the requirements of the Act.

10. *Where in the Acts does it state that the Returning Officer may not distribute copies of the EMS81-WKSHEET count as it is produced?*

As set out in our answer to question 8 above, the Act sets out the process to be followed when counting the votes in section 178 and how results are to be declared. This process is also outlined on our [website](#). The count process meets the requirements of the Act.

11. *Where in the Acts does it state that the Justice of the Peace, Returning Officer or Voting Place Manager may not retain a copy of the paperwork they have signed?*

Per section 174A of the Act, after the preliminary count of the votes, the voting place manager must prepare and send a certificate that certifies the results of the preliminary count to the Returning Officer.

For the official count, under section 178 of the Act, a certificate is completed and countersigned by the Justice of the Peace present. Section 179 states that this certificate must be preserved by the Returning Officer for production when required. Scrutineers are able to take notes during this count, but we don't provide copies of the certificates.

The results for the preliminary count and official count are entered into EMS to generate a certificate of each count. The manually completed versions are sent to the Clerk of the House of Representatives with the other documents provided for in section 187 of the Act.

12. *Where in the Acts does it state that the Justice of the Peace, Returning Officer or Voting Place Manager may not distribute copies of the paperwork they have signed to the Scrutineers or any other persons or people at or after the close of poll?*

See the response to question 11 above.

13. *Can an employment contract, signed with the electoral commission, compel a person or a man to complete a task that is not legal/lawful? Especially if, when the contract is signed, the participants may not be aware that the task is breaking the law, i.e. the **Electoral Act 1993** or **any other parliamentary act**.*

All employment contracts with the Electoral Commission comply with the law and do not compel employees to complete any tasks that are not lawful.

14. *What authority does the electoral commission (a corporation) have over persons?*

The Electoral Commission is not a corporation. The Electoral Commission is a crown entity and has the powers given to it by the [Electoral Act 1993](#), [Electoral Regulations 1996](#) and the [Crown Entities Act 2004](#).

15. *What authority does the electoral commission (a corporation) have over people?*

See the answer to question 14.

In the interests of transparency, we release responses to Official Information Act 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 or by phoning 0800 802 602.

Yours sincerely



Kristina Temel
Electoral Commission