

04 September 2023

By email to: [REDACTED]

Dear [REDACTED]

### **OFFICIAL INFORMATION ACT REQUEST 2023/43**

On Thursday 31 August 2023 you made a request under the Official Information Act 1982 (the OIA) for the following information:

*Please answer all questions as they relate to the Electoral Act 1993 or any other parliamentary act.*

*Where in the Act:*

*1) Does it specifically state that the “certificates of count” signed by the Voting Place Manager and JP and/or the EMS81-WKSHEET signed by the Returning Officer and JP must be tabulated by a computer, the EMS computer?*

*2) Does it specifically state that all the “certificates of count” signed by the Voting Place Manager and JP and/or the EMS81-WKSHEET must not be tabulated together by hand?*

*3) Does it specifically state in the Act that the “certificates of count” signed by the Voting Place Manager and JP and/or the EMS81-WKSHEET must be placed in the bundle of documents and sent to the Clerk of the House”? Note - The statement “all documents/paperwork related to” is not specific as there is no definition stating what category these documents fall in.*

*4) Does it specifically state in the Act that the “certificates of count” signed by the Voting Place Manager and JP and/or the EMS81-WKSHEET may not be replicated by hand or photocopied/photographed by the returning Officer and distributed to the signatories and others “at the close of poll”?*

*5) The commission employs the Returning Officers, the Voting Place Managers, the staff in the counting areas, writes the procedures (which may or may not follow the Act), owns the EMS which cannot be audited outside of the commission.*

*Where in the Acts does it state that the Electoral Commission has a role in the direct control of the staff participating in the electoral process?*

*The following statement would indicate that the electoral Commission (according to the Act) has no legal role in the voting process and receives the documents for safe keeping.*

***"The Electoral Act: 179 Declaration of result of poll***

***(1)When the official count under [section 178](#) is completed, the Returning Officer must give the Electoral Commission the following information:"***

*The Electoral Commission Owns the EMS, and employs the Returning officer. How does the commission justify that its employee receive the voting data before the official count is completed?*

*How does the commission justify that its EMS receives the voting data before the official count is completed?*

Responses to each of your questions are set out below.

1. *Does it specifically state that the "certificates of count" signed by the Voting Place Manager and JP and/or the EMS81-WKSHEET signed by the Returning Officer and JP must be tabulated by a computer, 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.

2. *Does it specifically state that all the "certificates of count" signed by the Voting Place Manager and JP and/or the EMS81-WKSHEET must not be tabulated together 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.

3. *Does it specifically state in the Act that the "certificates of count" signed by the Voting Place Manager and JP and/or the EMS81-WKSHEET must be placed in the bundle of documents and sent to the Clerk of the House"? Note - The statement "all documents/paperwork related to" is not specific as there is no definition stating what category these documents fall in.*

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 178(8) 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.

4. *Does it specifically state in the Act that the "certificates of count" signed by the Voting Place Manager and JP and/or the EMS81-WKSHEET may not be replicated by hand or photocopied/photographed by the returning Officer and distributed to the signatories and others "at the close of poll"?*

See the response to question 3 above.

5. *The commission employs the Returning Officers, the Voting Place Managers, the staff in the counting areas, writes the procedures (which may or may not follow the Act), owns the EMS which cannot be audited outside of the commission.*

*Where in the Acts does it state that the Electoral Commission has a role in the direct control of the staff participating in the electoral process?*

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.

Section 20A of the Act provides that every electoral official must exercise or perform his or her powers, duties, and functions in accordance with any oral or written directions given by the Electoral Commission.

6. *The following statement would indicate that the electoral Commission (according to the Act) has no legal role in the voting process and receives the documents for safe keeping.*

***"The Electoral Act: 179 Declaration of result of poll***

***(1)When the official count under [section 178](#) is completed, the Returning Officer must give the Electoral Commission the following information:"***

*The Electoral Commission Owns the EMS, and employs the Returning officer. How does the commission justify that its employee receive the voting data before the official count is completed?*

See the response to question 2 above.

7. *How does the commission justify that its EMS receives the voting data before the official count is completed?*

See the response to question 1 above.

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](http://www.ombudsman.parliament.nz) or by phoning 0800 802 602.

Yours sincerely



Kristina Temel  
Electoral Commission