

From the enquiries and searches made prior to my responding to you on 25 July 2011, the only record of telephone calls between you and anyone in the former Chief Justice's chambers during the period you nominated, i.e. 1 January 2006 to 1 April 2006, that was able to be found were those recorded in the log of calls from litigants which I referred to in my response. I provided you with an extract from that log of the only two calls recorded in that period.

Following receipt of your email of 26 July 2011 I initiated some additional enquiries. These included discussions with some staff who continue to be employed by the Court and who had worked in the former Chief Justice's chambers at various times over the several years prior to the former Chief Justice's retirement about the systems in place in those chambers to record incoming and outgoing phone calls. Unfortunately it has taken a little time to obtain and assess the results of all of these additional enquiries.

The discussions with staff confirmed that the only record of calls maintained within the former Chief Justice's chambers was the log of calls from litigants referred to above, that no outbound call log was maintained and that file notes were created where necessary to record details of outgoing calls as well as some lengthy or more detailed incoming calls.

Despite the further enquiries made, no journal or similar record of the former Chief Justice's associates has been able to be found which records phone calls made or received from you during the period you nominated and no file notes or other record have been

able to be found of any phone calls between you and any of the former Chief Justice's associates during that period. The only record found of any telephone calls in or out of the Chief Justice's chambers from or to you during that period were the two calls shown in the inbound log covered by my response of 25 July 2011.

In these circumstances I cannot assist you further.

Regards,

John Mathieson

John Mathieson
Deputy Registrar,
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone (02) 9230-8336
www.fedcourt.gov.au

From:

Sent: Monday, 8 August 2011 12:13 AM

To: John Mathieson

Subject: Re: Reguest for Personal Information

Dear Registrar Mathieson

I request my personal information retained the outbound call log of the Black CJ's chambers and the journal of the associates to Black CJ between 1 January 2006 to 1 April 2006.

Yours sincerely

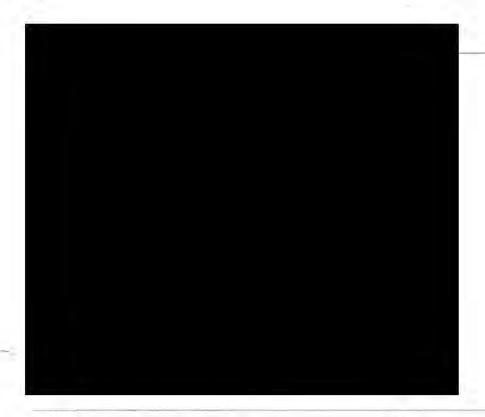
On 26 July 2011 01:19,

wrote:

Dear Registrar Mathieson

Thank you very much for your email. However, what I am really after is the outbound call log. Isn't there a log of calls to litigants from the former CJ's chambers rather than the other way round? If there is no outbound call log, isn't there a journal of the former associates to the former CJ?

Kind regards



From:

Sent: Tuesday, 26 June 2012 4:27 PM

To: External FOI

Subject: FOI Application



Dear Sir/Madam,

Application is made under the Freedom of Information Act for copies of all documents relating to the following contract:

Federal Court of Australia
CN410373
Deloitte Touche
49 110 847 399
Advice on Judges' Pension Act
Accounting services
18-Jul-1111-Jul-1031-Aug-10
13,860.00

I would like a copy of the advice and any subsequent actions, results or commentary about it and the original reasons for it being requested. le. a problem arose.

In relation to publishing documents I may win access to on internet

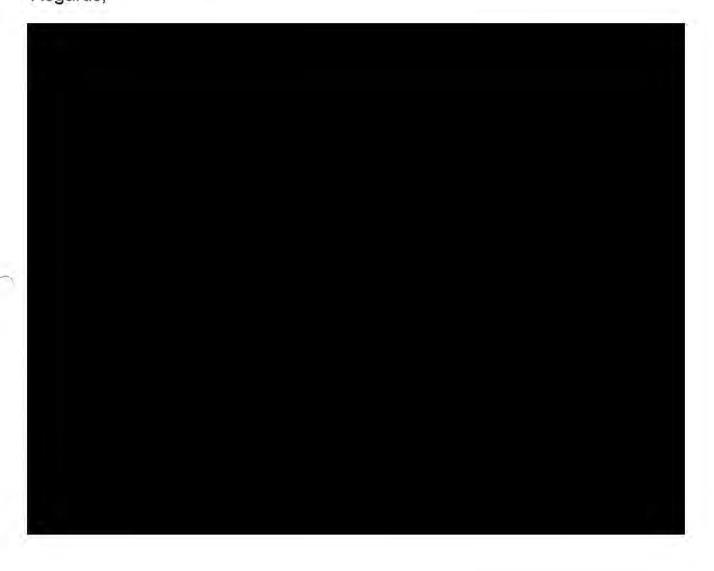
29/06/2012 4

disclosure logs, I request that you inform me of a final decision first and not release documents to me via mail.

I will contact you to arrange an appropriate time to pick up as I may be on leave or away and do not wish to have documents I have worked for/paid for released on the internet before I am ready to read them.

I am on leave overseas from June 27 to August 12 this year and will not be able to take phone calls but will be checking my email regularly if you have simple requests.

I prefer to communicate via my emai easier.	i,	if that is
Please contact me on	if you have any queries.	
Regards.		



5

29/06/2012



29/06/2012 6

Page 1 of 3

John Mathieson

From:

John Mathieson

Sent:

Friday, 7 September 2012 1:08 PM

To:

Subject:

FOI Request - Federal Court Contract CN410373 with Deloitte Touche for accounting

services advice on Judges' Pension Act

Attachments: Schedule of Documents for Access Decision.pdf

Dear I

As advised in my earlier emails to you, I am authorised under section 23(1) of the *Freedom of Information*Act 1982 (FOI Act) to make decisions in relation to requests under the FOI Act on behalf of the Federal

Court of Australia (the Court).

You requested access to documents under the FOI Act relating to accounting services advice from Deloitte Touche on the Judges' Pension Act. On 20 July 2012, in conjunction with advising of my decisions to impose charges, I indicated that 37 documents had been identified as being within the scope of your request. These documents were identified by the Justice Edmonds and his staff, as well as by the Court's Contracts Manager, by searching the records held by Justice Edmonds in his chambers and in the Court's records for contracting out of services in regard to the relevant engagement in 2011 of Deloitte Touche Tohamatsu and by relying on their own knowledge of that engagement.

Summary of my Decision

The attached Schedule of documents provides details of each document that falls within the scope of your request and the access decision for each of those documents. As you will see I have decided to grant you assess in full to documents numbered 1 to 8, 10, 12 to 14 and 16 to 30 and access to edited copies of documents numbered 9, 11 and 15. More information, including the reasons for my decision, is set out below.

Decision and Reasons for Decision

As noted in the summary above, I have decided to grant you access in full to the documents numbered 1 to 8, 10, 12 to 14 and 16 to 30 in the Schedule.

Under subsection 47F(1) of the FOI Act, a document is conditionally exempt if its disclosure under that Act would involve the unreasonable disclosure of personal information about any person. Under subsection 11(5) of the FOI Act a document that is conditionally exempt must nevertheless be disclosed unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.

The Australian Information Commissioner (the Commissioner) has issued guidelines under section 93A of the FOI Act, to which regard must be had in exercising any power under that Act. Of relevance, those guidelines explain that personal information is information about a natural person which identifies them and that it can include a date of birth if the person's identity is apparent or reasonably ascertainable. Further those guidelines indicate that in considering whether disclosure would involve an unreasonable disclosure of personal information consideration must also be given to whether that information is available from publicly accessible sources.

Documents numbered 9, 11 and 15 in the Schedule each contain details of the names, dates of birth and dates of appointment as a federal judge of each of the former Justices Stone and Downes and Justices Jacobson and Bennett. I am satisfied that that information in each case is personal information. Details of the names and dates of appointment of those former judges and judges and the dates of birth of former Justice Downes and Justices Jacobson and Bennett are publically accessible from a range of different sources. In those circumstances I am satisfied that disclosure of that personal information would not be unreasonable. The date of birth of the former Justice Stone, however, is not publically accessible. I am satisfied that its release, particularly if combined with other information about the former Justice Stone in these documents or which a reasonable member of the public would be able to access, would potentially expose her to an increased risk of identity theft and be an unreasonable intrusion on her privacy.

As a result documents 9, 11 and 15 in the Schedule are conditionally exempt under subsection 47F(1) of the FOI Act.

Subsection 11B(3) of the FOI Act lists factors that favour access being given to a document under that

7/09/2012

Act and, as relevant to this request, these include promoting the objects of the Act, informing the debate on a matter of public importance and promoting effective oversight of public expenditure. Subsection 11B(5) requires that in considering whether access to a document would, on balance, be contrary to the public interest consideration must be given to any guidelines issued by the Commissioner under section 93A of the FOI Act. The Commissioner has issued relevant guidelines which include a non-exhaustive list of factors against disclosure which, as relevant to documents 9, 11 and 15 in the Schedule and the discussion above, includes prejudice to the protection of an individual's right to privacy and harm to the interests of an individual. In this regard I remain satisfied that the disclosure of the former Justice Stone's date of birth would be an unreasonable intrusion on her privacy and potentially expose her to an increased risk of identify theft and, as a result, its disclosure would, on balance, be contrary to the public interest.

As I have decided that documents 9, 11 and 15 in the Schedule are conditionally exempt and that the disclosure of them would be contrary to the public interest, access to them is refused. I have, as I am required to do, given consideration to whether edited copies of those document could be given to you under section 22 of the FOI Act.

I have decided that it is reasonably practical to prepare an edited copy of documents with deletions of the former Justice Stone's date of birth.

I have therefore decided that such edited copies of documents 9, 11 and 15 should be provided to you.

Outstanding Charges

You remitted a deposit of \$56.60 on 7 August 2012. Because of an error this was initially credited to an incorrect account but this was corrected by 3 September 2012. As I confirmed in my email to you on 8 August 2012, the Court nevertheless has treated the deposit as being received on 6 August 2012. Now that your request has been decided, the actual amount for processing has been calculated to be \$208.40 as follows:

Search and Recovery (@ \$15 per hour)

Search and recovery	1hr	\$15.00
Preparation of schedule of documents	1hr	\$15.00
Subtotal		\$30.00
Decision Making (@ \$20 per hour)		
Examination of documents	3hrs	\$60.00
Consultation with third parties	4.75hrs	\$95.00
Preparation of decision	2.5hrs	\$50.00
Preparation of documents for release	1.5	\$30.00
Subtotal		\$235.00
TOTAL		\$265.00
Less deposit paid		\$ 56.60
AMOUNT NOW PAYABLE		\$208.40

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of it. The Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this advice.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.]

Information Commissioner Review

7/09/2012

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this advice, and be lodged in one of the following ways:

online:

https://forms.australia.gov.au/forms/oaic/foi-review/

email:

enquiries@oaic.gov.au

post:

GPO Box 2999, Canberra ACT 2601

in person:

Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review_complaints.html#foi_merit_reviews.

Notice to Third Parties and Possible Review

In my email to you of 8 August 2012 I also advised you that the Court was required under section 27A of the FOI Act to consult with some third parties before making a decision on the release of the documents covered by your request.

I am now writing to those individuals to also advise them of the decision I have made to provide you access to documents numbered 1 to 8, 10, 12 to 14 and 16 to 30 in the Schedule and edited copies of document numbered 9, 11 and 15 in the Schedule.

If any of those individuals is dissatisfied with my decision, he or she may apply for internal review or Information Commissioner review of the decision and may subsequently appeal. Under subsection 27A(6) of the FOI Act, the Court is prohibited from giving you access to the documents until after the opportunities for review or appeal have run out. I will contact you further as soon as this has occurred.

Providing Documents to You

Subject to the opportunity for third party review or appeal having run out then, following payment of the outstanding charge of \$208.40, I will provide copies of documents numbered 1 to 8, 10, 12 to 14 and 16 to 30 in the Schedule and edited copies of document numbered 9, 11 and 15 in the Schedule to you electronically in PDF format.

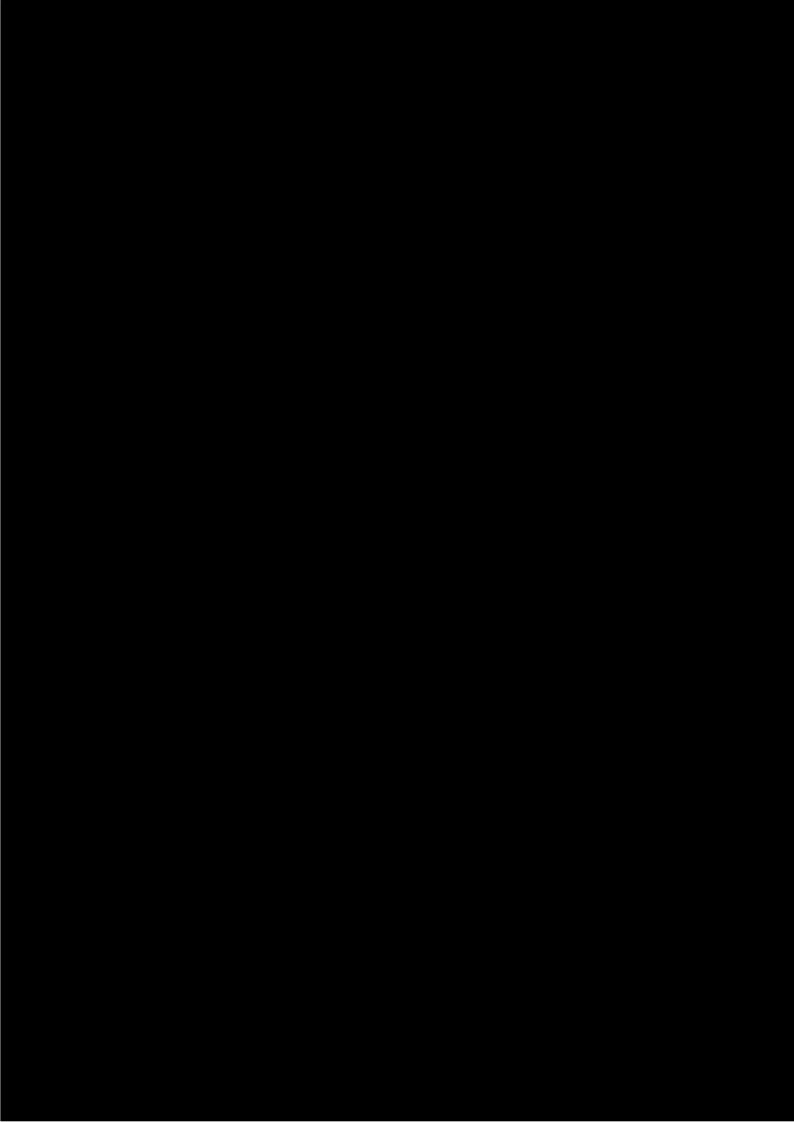
Questions About These Decisions

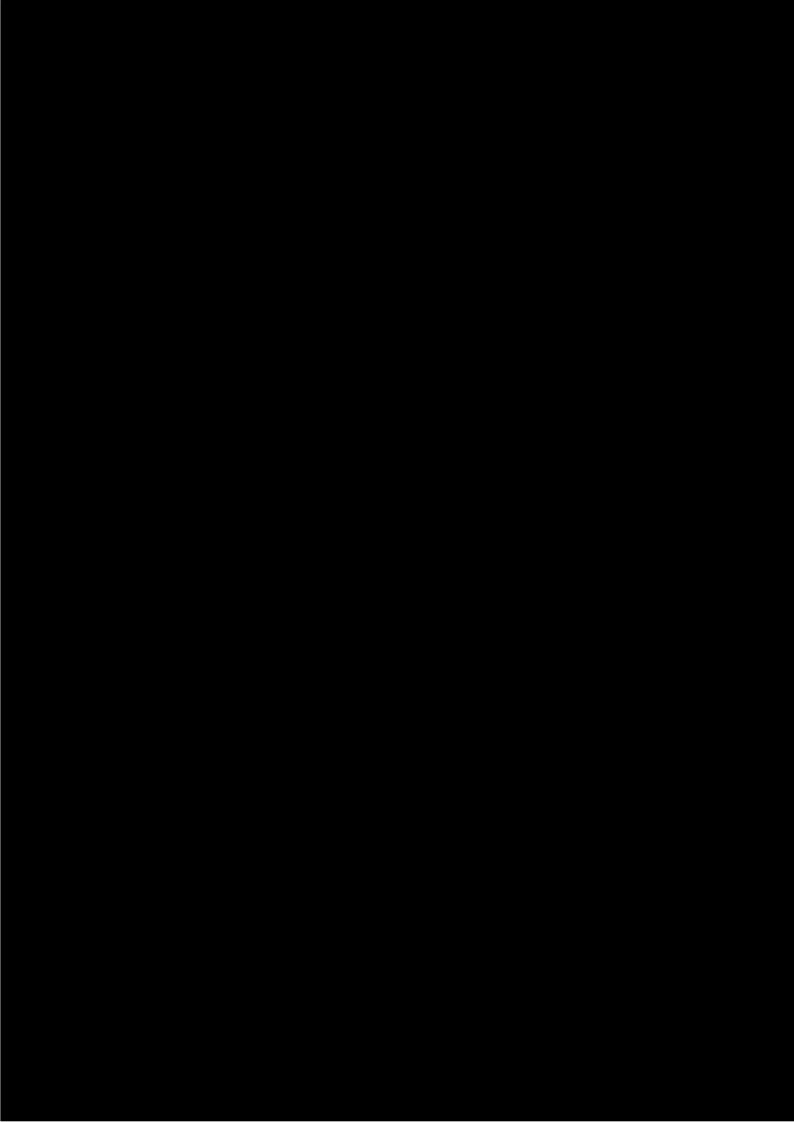
If you have any questions or wish to discuss my decision, please contact me by phone or email.

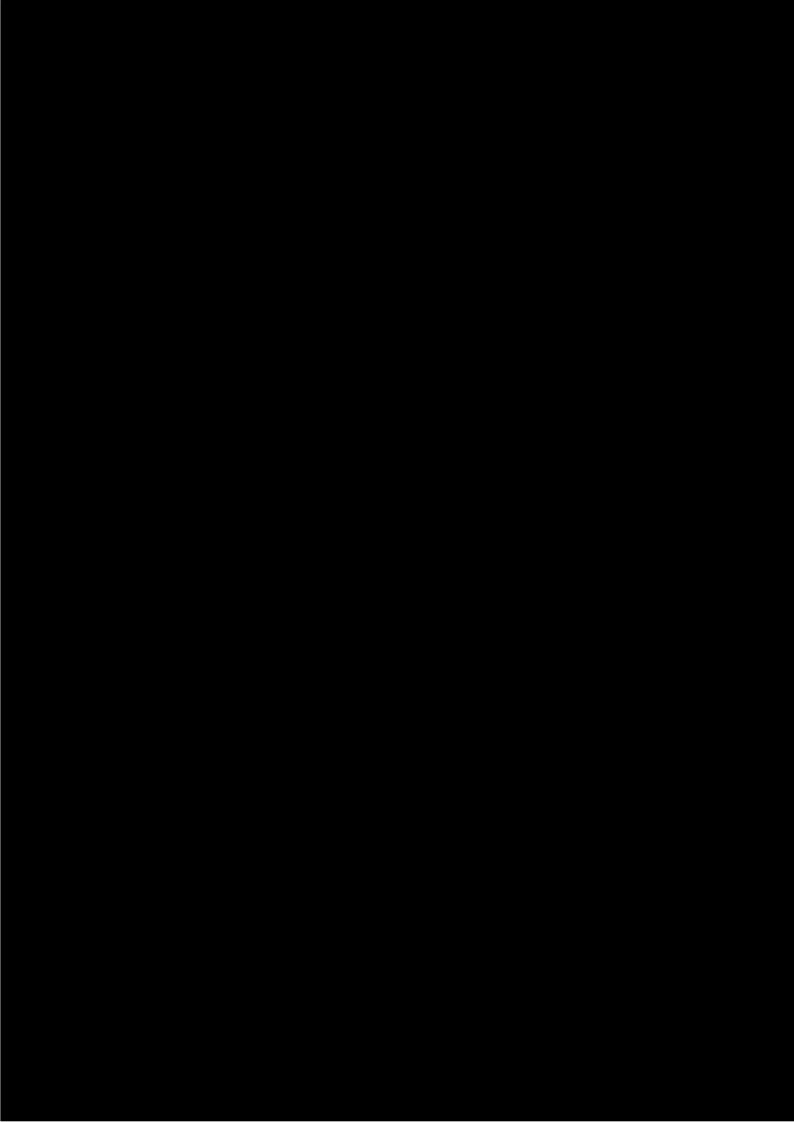
Regards,

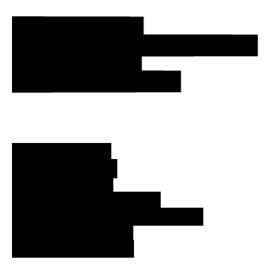
John Mathieson

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone 02 9230 8336
www.fedcourt.gov.au









From:

Sent: Wednesday, 25 July 2012 5:53 PM

To: External FOI Subject: Application

To whom it may concern,

I seek, under the Freedom Of Information Act 1982, access to the following information:

- 1. All internal audit reports compiled by officers of or consultants to the Federal Court of Australia in the past five years.
- 2. To clarify, these are documents prepared usually by or for the internal audit committee of the Court and its officers (or other Commonwealth public servants) or otherwise prepared by consultants hired by the Court, which examine the financial controls of the Court and its officers in the relevant period and which also usually examine conduct of the Court and its officers, including but not limited to complaints, allegations of misconduct and other concerns of impropriety.
- 3. I also seek a comprehensive schedule of documents captured by this application.

I seek that any costs associated with the processing of this request by discounted on public interest grounds.

If I can assist in clarifying the scope of this application, please do not hesitate to contact me at the telephone number below.

Best regards



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From: John Mathieson

Sent: Wednesday, 5 September 2012 8:35 AM

To:

Subject: FOI Request - Internal Audit Reports

Attachments: Schedule of Documents for Access Decision.doc

Dear

As advised in my earlier emails to you, I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions in relation to requests under the FOI Act on behalf of the Federal Court of Australia (the Court).

You requested access to documents under the FOI Act relating to internal audit reports compiled by officers of or consultants to the Court. On 13 August 2012, in conjunction with advising of my decisions to impose charges and to reduce by 50% the charges imposed, I provided you with a table of the documents which had been identified as being within the scope of your request. These 19 documents were identified by the Court's Chief Finance Officer and his staff by searching the Court's records for internal audit and audit committee meetings from June 2007 to July 2012, electronic folders in which internal audit and audit committee records for that period are stored and retained and by relying on their own knowledge.

Summary of my Decisions

The attached Schedule of documents provides, as necessary, more detailed and accurate descriptions of each document that falls within the scope of your request and the access decision for each of those documents. As you will see I have decided to grant you assess in full to documents numbered 1 to 17 and the document numbered 19 and access to an edited copy of the document numbered 18. More information, including the reasons for my decision, is set out below.

Decisions and Reasons for Decisions

As noted in the summary above, I have decided to grant you access in full to the documents numbered 1 to 17 and 19 in the Schedule.

The document numbered 18 in the Schedule is a report on ICT Controls (ICT Controls report) compiled in June 2012 by the Court's current Internal Auditor. At the time of its compilation it was indicated by its author that it contained some confidential information and that, for this reason, that author had marked it as a 'Confidential Report'.

Under subsection 37(1) of the FOI Act a document is exempt if its disclosure under that Act would, or could reasonably be expected, to prejudice the proper administration of the law in a particular instance or endanger the life or physical safety of any person.

In addition, under paragraph 47E(d) of the FOI Act, a document is conditionally exempt if its disclosure under that Act would, or could reasonably be expected, to have a substantial adverse effect on the proper and efficient conduct of the operations of an agency. Under subsection 11(5) of the FOI Act a document that is conditionally exempt must nevertheless be disclosed unless, in the circumstances, access to the document at that time would, on balance, be contrary to the public interest.

The Australian Information Commissioner (the Commissioner) has issued guidelines under section 93A of the FOI Act, to which regard must be had in exercising any power under that Act. Of relevance, those guidelines explain that an agency's operations may not be substantially adversely affected if the disclosure of a document would, or could reasonably be expected, to lead to a change in the agency's processes that would enable those processes to be more efficient. Further those guidelines explain that where disclosure of the documents reveals inefficiencies, the "proper and efficient" element of the provision in paragraph 47E(d) will not be met and the public interest factors of accountability and transparency are weighted towards disclosure.

The Court is a court of law with a wide civil jurisdiction under federal laws, as well as a limited federal criminal jurisdiction, which deals with many legal disputes of significance to the Australian economy and to the parties to those disputes and which have significance interest to the community generally. The Judges of the Court are prominent persons in the Australian community. Because of their judicial work and that prominence, those Judges are at significantly greater risk than other members of the community of malicious action by disaffected persons. The efficient operation of the Court's computer systems is critical to the exercise by the Court of its judicial function. Any interference with equipment located in the data centres in buildings from which the Court operates would impact on the efficiency of those computer systems and that impact could be catastrophic.

The ICT Controls report examines the work practices adopted and infrastructure in place in the Court to safeguard the security, during preparation and before delivery, of draft judgments in proceedings which have been heard by the Court. In addition the report examines access controls in relation to some Judges' chambers and the data centre in the Law Courts Building in Queens Square, Sydney. In reporting on that examination and in its recommendations, the report:

- discusses in some detail the Court ICT infrastructure;
- suggests scenarios which may present risks to the security of draft judgments; and
- identifies the location in the Law Courts Building in Sydney of the data centre which supports the Court's computer systems in that building and nationally, some security equipment and security access to Judges' chambers.

The disclosure of the ICT Controls report could reasonably be expected to:

- prejudice the proper administration of the law in a particular instance and endanger the life or physical safety of a person by:
 - o identifying the location within the Law Courts Building in Sydney of the data centre and security equipment;
 - discussing security access to Judges' chambers;
 - providing scenarios which put at risk the security of draft judgments which are in preparation; or
 - identifying detail of security safeguards and protections, as well as the vulnerabilities that exist with these, in the Court's ICT infrastructure

and allowing:

- a disaffected person to interfere with equipment in that data centre which will impact adversely (potentially catastrophically) on the operation of the Court's computer systems;
- o a disaffected person to act maliciously towards Judges or staff of the Court resulting in death or injury; or
- a person with an direct or indirect interest in a dispute which has been heard by the Court or a person on their behalf to obtain inappropriately information about a decision that the Court is considering; and
- have a substantial adverse effect on the proper and efficient conduct of the operation of the Court through:
 - o identifying the location within the Law Courts Building in Sydney of the data centre and security equipment;
 - discussing security access to Judges' chambers;
 - o providing scenarios which put at risk the security of draft judgments which are in preparation; or
 - identifying detail of security safeguards and protections, as well as the vulnerabilities that exist with these, in the Court's ICT infrastructure

and allowing:

- a disaffected person to interfere with equipment in that data centre which will impact adversely (potentially catastrophically) on the operation of the Court's computer systems;
- a disaffected person to act maliciously towards Judges or staff of the Court resulting in death or injury; or
- a person with an direct or indirect interest in a dispute which has been heard by the Court or a person on their behalf to obtain inappropriately information about a decision that the Court is considering.

The above expectations are not mere assertions or speculative possibilities but are made reasonably based on the knowledge that I hold of past and present actions and activities relating to the operations of the Court.

The provision to the Court of the ICT Controls report has led and will lead to change in the Court's systems, processes and operations for increased effectiveness. Its public disclosure will not improve this or create further efficiencies but rather will prejudice the Court's operations, its security and the safety of its Judges and staff.

The ICT Controls report is thus both exempt under subsection 37(1) and conditionally exempt under paragraph 47E(d) of the FOI Act.

Subsection 11B(3) of the FOI Act lists factors that favour access being given to a document under that Act and, as relevant to this request, these include promoting the objects of the Act, informing the debate on a matter of public importance and promoting effective oversight of public expenditure. Subsection 11B(5) requires that in considering whether access to a document would, on balance, be contrary to the public interest consideration must be given to any guidelines issued by the Commissioner under section 93A of the FOI Act. .The Commissioner has issued relevant guidelines which include a non-exhaustive list of factors against disclosure which, as relevant to the ICT Controls report and the discussion above, includes prejudice to security or safety and impediment to the administration of justice generally.

I have decided that, in so far as the ICT Controls report is conditionally exempt, its disclosure would, on balance, be contrary to the public interest.

As I have decided that the document is, firstly, exempt and, secondly, conditionally exempt and that its disclosure would be contrary to the public interest, access to it is refused. I have, as I am required to do, given consideration to whether an edited copy of the document could be given to you under section 22 of the FOI Act.

I have decided that it is reasonably practical to prepare an edited copy of the ICT Controls report with deletions of:

security safeguards and protections, as well as the vulnerabilities that exists with these, in the Court's ICT infrastructure;

- · suggested scenarios which would present risks to the security of draft judgments; and
- identification of the locations in the Law Courts Building in Sydney of the data centre which supports the Court's computer systems in that building and nationally, some security equipment and access vulnerabilities to Judges' chambers.

I have therefore decided that that edited copy of the ICT Controls report should be provided to you.

Outstanding Charges

You paid a deposit of \$46.40 on 23 August 2012. On 13 August 2012 (as noted in the summary above) I decided to reduce by 50% the charges payable. Now that your request has been decided, the actual amount for processing has been calculated to be \$164.22 as follows:

Search and Recovery (@ \$15 per hour)

Search and recovery	0.75hrs	\$11.25
Preparation of schedule of documents	1hr	\$15.00
Subtotal		\$26.25
Decision Making (@ \$20 per hour)		
Examination of documents	14.75hrs	\$295.00
Preparation of decision	3.5hrs	\$70.00
Preparation of documents for release	1.5	\$30.00
Subtotal		<u>\$395.00</u>
Combined total		\$421.25
Less 50%		<u>\$210.63</u>
Total		\$210.62
Less deposit paid		<u>\$ 46.40</u>

Your Review Rights

AMOUNT NOW PAYABLE

If you are dissatisfied with my decisions, you may apply for internal review or Information Commissioner review of those decision. The Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

\$164.22

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decisions. The internal review application must be made within 30 days of the date of this advice.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.]

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decisions. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this advice, and be lodged in one of the following ways:

online: https://forms.australia.gov.au/forms/oaic/foi-review/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review complaints.html#foi merit reviews.

Providing Documents to You

Following payment of the outstanding charge of \$164.22 I will provide copies of documents numbered 1 – 17 and 19 in the Schedule and an edited copy of document numbered 18 the Schedule to you electronically in PDF format.

Questions About These Decisions

If you have any questions or wish to discuss my decisions, please contact me by phone or email.

Regards,

John Mathieson

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone 02 9230 8336
www.fedcourt.gov.au



From:

Sent: Tuesday, 4 September 2012 11:33 AM

To: External FOI

Subject: Freedom of Information Request

Dear Sir or Madam

Under the Freedom of Information Act, I seek all documents (including drafts, diary notes and text messages) created by, sent to and sent from officers and employees of the Federal Court (and consultants or advisers to the Federal Court) related to the following:

- The external and internal management of public and media interest in Justice Bernard Murphy, following disclosures in The
 Australian newspaper and elsewhere last month involving the law firm Slater & Gordon, the Prime Minister Julia Gillard, and the
 law firm Maurice Blackburn. This would include all documents related to the development of a media release issued on behalf
 of Justice Murphy.
- 2. The external and internal management of public and media interest in Justice Bernard Murphy, following his appointment to the Federal Court (and prior to disclosures in The Australian and elsewhere).
- 3. The circumstances surrounding the appointment of Justice Bernard Murphy, from long-listing to short-listing to appointment.
- 4. The curriculum vitae and other material such as references and supporting documents provided by Mr Murphy or by others in support or otherwise of Mr Murphy, prior to his appointment and subsequent to his appointment.





From: John Mathieson
Sent: Wednesday, 26 September 2012 1:07 PM
Total

Subject: Freedom of Information Request

Attachments: Schedule of Documents for Access Decision 260912.pdf
Dear

As advised in earlier emails to you, I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions under the FOI Act on behalf of the Federal Court of Australia (the Court).

Background

You requested access under the FOI Act to:

"all documents (including drafts, diary notes and text messages) created by, sent to and sent from officers and employees of the Federal Court (and consultants or advisers to the Federal Court) related to the following:

- 1. The external and internal management of public and media interest in Justice Bernard Murphy, following disclosures in The Australian newspaper and elsewhere last month involving the law firm Slater & Gordon, the Prime Minister Julia Gillard, and the law firm Maurice Blackburn. This would include all documents related to the development of a media release issued on behalf of Justice Murphy.
- 2. The external and internal management of public and media interest in Justice Bernard Murphy, following his appointment to the Federal Court (and prior to disclosures in The Australian and elsewhere).
- 3. The circumstances surrounding the appointment of Justice Bernard Murphy, from long-listing to short-listing to appointment.
- 4. The curriculum vitae and other material such as references and supporting documents provided by Mr Murphy or by others in support or otherwise of Mr Murphy, prior to his appointment and subsequent to his appointment."

On 14 September 2012 I advised you of the transfer of part of that request to the Attorney-General's Department. As a result, the only part of your request that remains with the Court is:

- · the part set out in item 1 of the request; and
- the part set out in items 2, 3 and 4 of the request that does not relate to the appointment of Justice Murphy as a judge of the Federal Court.

Documents Identified and Destroyed

I have identified a total of 77 documents as being within the scope of your request. The majority of these are emails or attachments to emails and many of the emails are replies to or messages forwarding earlier emails in the chain. The count of "documents' is therefore arbitrary as many contain multiple communication items with many of these appearing numerous times. The "documents" are gathered together in two sets, reflecting the two principal participants in the exchange of emails, but include all (with some exceptions detailed below) emails, attachments and messages sent or received from others. Those principal participants and the documents are described in the attached Schedule. For each set, the schedule identifies, for emails and messages, each 'new' communication item but does not repeat in detail earlier emails being replied to or forwarded (but it does identify particular items where necessary to give context and confirms that a trail of earlier emails is included where this is the case). Other documents in each set are described in the schedule generically but as accurately as possible.

These documents were identified by another of the Court's Deputy Registrars, ; the Family Court/Federal Magistrate's Court's Media & Public Affairs Manager, (who was providing assistance to the Court on 20 and 21 August 2012 during the absence on leave of Bruce Phillips); the Court's Director Public Information, Justice Murphy; Chief Justice Keane; and Chief Justice Keane's staff by searching electronic folders and other records for the relevant periods and by relying on their own knowledge.

No documents could be found in regard to the external and internal management of public and media interest in Justice Murphy's appointment announced on 7 April 2011. A swearing in ceremony was held on 14 June 2011 (a transcript of that ceremony is available on the Court's website at http://www.fedcourt.gov.au/aboutct/judges_papers/speeches_murphyj1.html). Invitations to attend the ceremony were extended to the family and friends of Justice Murphy, the Court's Victoria based judges and former judges; and as a number of judicial officers of other courts and officials. Notice of the ceremony was included in court lists published on the internet and in newspapers. Arrangements for this event did not include any media or other public promotion, either in advance or subsequently.

No documents could be found within scope of items 3 and 4 of your request which do not relate to the appointment of Justice Murphy as a judge of the Federal Court.

received three SMS messages and sent two SMS replies and all, if not destroyed, would have been within scope of your request. The first of those message received by him was from and sent by her at 3.16 pm on 20 August 2012 and he replied at 3.32 pm on that same day (extracts of the message sent and reply received by Denise Healy are available – see item 54 in the schedule). The second such message received by was from and sent by her at 11.41 am on 21 is available - see item 26 in the schedule). The third and last of August 2012 (an extract of the message sent by and sent by her at 12.27 pm on 21 August 2012 and he replied also at those message received by him was again from are available - also see item 54 in the 12.27 pm on that same day (extracts of the message sent and reply received by schedule). All messages received and the replies sent were all deleted by on or shortly after 20 or 21 August 2012 respectively. An email was sent by to at 1.20 pm on 21 August 2012 (see item 66 in the schedule) however, despite could not be

An email was sent by to to at 1.20 pm on 21 August 2012 (see item 66 in the schedule) however, despite comprehensive searching of relevant electronic folders following receiving your request, its receipt by could not be confirmed nor could the message be found. It may have been deleted and removed from the relevant 'deleted items' folder at some time before your request was received or it may have never been received. Its contents, as sent by mentioned above.

Decision

I have decided, as indicated in the schedule, to grant access in full to all of the documents identified.

Outstanding Charges

'The Australian' newspaper paid the deposit of \$39.90 on 16 September 2012. Now that your request has been decided, the actual amount for processing has been calculated to be \$159.85 with an outstanding amount of \$119.95 as follows:

Search and Recovery (@\$15 per hour)
Search and recovery

Search and recovery 1.5 hrs \$22.50

Preparation of schedule of documents 2.0 hr \$30.00

Subtotal \$52.50

Decision Making (@ \$20 per hour)

Examination of documents 6.5 hrs \$130.00 Consultation with third parties 1.0 hr \$20.00 Preparation of documents for release 1.5 hrs \$30.00 Preparation of notice of access decision 1 hr \$20.00 Subtotal \$200.00 Less deduction of first 5 hours \$100.00

Adjusted subtotal \$100.00

Access and Deliver Charges

Electronic production (@ \$0.03 per page) 245 pages \$7.35

Total \$159.85

Less deposit paid \$39.90

AMOUNT NOW PAYABLE \$119.95

Payment should be made by:

- cheque drawn in favour of "Federal Court of Australia", crossed "Not Negotiable" and forwarded to me at the address below; or
- by electronic funds transfer to the Court's bank account below:



If paying by electronic funds transfer please email payment details to me and accounts@fedcourt.gov.au.

Your Review Rights

If you are dissatisfied with my calculation of the charge or the searches the Court did to locate documents related to your request, you may apply for internal review or Information Commissioner review of the decision. The Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.australia.gov.au/forms/oaic/foi-review/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/foi-portal/review complaints.html#foi merit reviews.

Providing Documents to You

Following payment of the outstanding charge of \$119.95 I will forward to you copies of all of the documents described in the schedule in PDF format.

Questions About This Decision

If you have any questions or wish to discuss this decision, please contact me by email or phone.

Yours sincerely,

John Mathieson

John Mathieson Deputy Registrar

Principal Registry
Federal Court of Australia
Locked Bag A6000
Sydney South NSW 1235
john.mathieson@fedcourt.gov.au
Phone 02 9230 8336
www.fedcourt.gov.au

Freedom of Information Request Form

Send this form direct to the agency holding the document, together with the application fee. Waived please!

FREEDOM OF INFORMATION REQUEST

Dute: 20th September 2012.

Surname:

First Name(s):

I would like access to the following document(s):

FEDERAL LAWS OF AUSTRALIAN CONSTITUTION,

OF Federation State of Victoria and of

Commonwealth of the civil and criminal

process and the court Authority and so fourth,

that involve unlawful act of court process!

Federal Laws & State Laws, that involves Australian Citizen Sex gender legal status, Within Commonwealth of Australia Constitution!

Indicate whether you would like to inspect the documents and/or obtain a copy of the documents:

I want a copy of the document(s):.....

I want to inspect the document(s):.....



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

24 September 2012



Freedom of Information Request

I acknowledge receipt of your request under the *Freedom of Information Act 1982* (Cwlth) (FOI Act) seeking access to "FEDERAL LAWS OF AUSTRALIAN CONSTITUTION, of Federation State of Victoria and of Commonwealth of the civil and criminal process and the Court Authority and so fourth, that involve unlawful act of court process! Federal Laws & State Laws, that involves Australian Citizen sex gender legal status, within Commonwealth of Australia Constitution!" which you sent to the Victoria District Registry of this Court. I am authorised to make decisions on behalf of the Federal Court in relation to requests under the FOI Act.

The Commonwealth FOI Act applies only to official documents of the Commonwealth Government and its agencies. However it does not apply to documents which are publically available. Commonwealth Acts (including the Australian Constitution) and Legislative Instruments are publically available in all major libraries throughout Australia and online from ComLaw at www.comlaw.gov.au and accordingly cannot be accessed under the FOI Act.

As a result the Federal Court holds no documents within the scope of your request to which the FOI Act applies.

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. If you decide to seek any review, the Court encourages that you consider an internal review as a first step as it may provide a more rapid resolution of your concerns.

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.australia.gov.au/forms/oaic/foi-review/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/foi-portal/review complaints.html#foi merit reviews

The State of Victoria also has in place separate Freedom of Information legislation which applies to official documents of that State and its agencies. Access to documents under this legislation requires a request to be directed to the Victorian Government agency which created or has possession or control of the relevant document. Similarly to the Commonwealth legislation, the Victorian legislation also does not apply to documents which are publically available. You can obtain information about accessing documents under the Victorian legislation online at http://www.foi.vic.gov.au/home/ or by contacting the Victorian Department of Justice at GPO Box 4356, Melbourne Vic 3001; telephone 03 8684 0063 or email enquiry@foi.vic.gov.au.

John Mathieson Deputy Registrar From: John Mathieson

Sent: Monday, 6 May 2013 4:47 PM

To:

Subject: Freedom of Information Request

Attachments: document2013-05-03-154200.pdf

Dear ,

Authority

I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to FOI requests.

Request

On 6 April 2013 you requested access to various documents relating to or connected with proceedings at first instance and on appeal in the Federal Court between and and as well relating to changes to information on the Court's website about Form 55 made on 10 February 2010. Specifically you sought access to:

- all the documents, notes, files, diary notes, electronic info as defined by "Information" in the FOI definition, that was generated or used or received concerning the Motion filed by and the rejection of it by Justice Marshall
- all the information exchanged between the Court and placement of copies of 2 judgments (involving you and correspondence folder relating to the proceedings
- all records, notes and internal reviewing that led to the amendments to the Guide to Form 55 on the Court's website on 10 February 2010 other than the email chain copies of which were provided to you under cover of letter from me dated 11 January 2011
- all internal and external communication concerning the filing of the appeal and fee waiver by Mijac on 12 August 2009 and the decision of Registrar Allaway refusing the fee waiver
- all correspondence and internal notes within the Registry about your correspondence seeking answers on prodedural issues and the filing of your appeal

Applicability of FOI Act

The Federal Court (including its registries and staff) is a prescribed authority for the purposes of the FOI Act but its judicial officers are not (see subsection 5(1) FOI Act). Importantly the FOI Act does not apply to any request for access to a document of the Court <u>unless the document relates to matters of an administrative nature</u> (see also subsection 5(1)) and, since 12 April 2013, the handling of judicial complaints (see subsection 5(1A) FOI Act).

Any documents in existence covered by those parts of your request that are mentioned in the first, second, fourth (with the exception of any relating to the fee waiver) and fifth of the dot points above are not documents of an administrative

nature. All such documents were filed in or lodged for filing in the Court in relation to a proceeding or relate to the filing, rejecting, processing or handling of those documents or a proceeding. As such the FOI Act does not apply to them and no request under that Act can validly be made in relation to them (see paragraph 2.6, Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; Loughnan v Altman [1992] FCA 985; Bienstein v Family Court of Australia [2008] FCA 1138 and Klein v Official Secretary to the Governor-General [2012] FCAFC 184).

Access to Court Documents etc Otherwise

Even though the FOI Act does not apply to court documents, as you are aware, they may nevertheless be accessed.

Access to court documents in proceedings in the Federal Court is governed by the *Federal Court Act 1976* (particularly sections 17 and [since 12 December 2012] 37AA to 37AL) and the Federal Court Rules 2011 (particularly Rule 2.32). Under the latter a party to a proceeding may inspect any court document in a proceeding except a document for which a claim of privilege has been made but not decided by the Court, such a document that the Court has decided is privileged or a document that a court has ordered is confidential. Other documents in relation to a proceeding (such as correspondence) can be inspected by leave. Except for transcript (which is available for purchase from the Court's transcript provider) a person may obtain a copy of any document that that person is entitled to inspect on payment of the required file production and copy charges imposed by the Federal Court and Federal Circuit Court Regulation 2012.

In this regard I note that you have spent extended periods inspecting the court documents in the relevant proceedings as well as, with leave, the other documents held by the Court in relation to those proceedings and that you have obtained copies of all documents from the court files which you inspected and requested be copied.

You (or others appropriatly authorised by to do so on its behalf) are at liberty to avail yourself of the right to inspect such documents at any time during ordinary business hours at the Victoria District Registry of the Court (which currently is the 'propery place' for these proceedings under the Rules of Court) or, by arrangement, another District Registry.

It will, however, not be possible for you or any other person appointed by to inspect and obtain a copy as above of the Notice of Motion received by the Court in proceeding from on about 25 August 2009. The reason for this is that that Notice of Motion is not in the possession of the Court and it does not have a copy of it.

The Notice of Motion was sent to the Court via the Court's eFiling application through which, then, documents could be filed electronically under Order 1 rule 5AC. That application was decommissioned in July 2010 and replaced for that purpose with the Court's current eLodgment application.

eFiling was designed to mirror the functions which occurred on presentation of a document for filing to the Registry counter where any document presented is:

- examined
- if it can be accepted for filing, it is processed by collecting any fee payable on it; stamping the document with details of the date of filing; (if required) sealing the document; (again if required) endorsing the document with any hearing date, time etc and signing (or issuing) it; and returning copies
- but, if it cannot be accepted for filing, it is returned.

On a document being received electronically by the eFiling application it was allocated a unique identifier and stored temporarily. Court staff checked eFiling for any new document received regularly. Any such document was then examined electronically and it was decided whether that document could be accepted for filing. If it could be accepted, any required fee was processed; the electronic copy of the document in eFiling was processed electronically to stamp and (if necessary) seal and endorse it with hearing date etc; the modified copy of the document was saved permanently into a folder, printed, the printed copy placed on the Court's paper file and an electronic copy of the modified document returned to the sender for printing and service as required. If however the document was not accepted the sender was notified of this and no further action was taken. Unaccepted documents were purged from eFiling at regular intervals through routine maintenance.

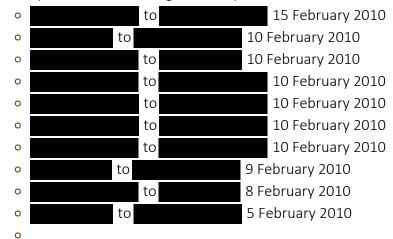
As the Notice of Motion was not accepted it was never processed in eFiling, a hard copy was never placed on the proceedings court file and the document was never saved permanently by the Court. The temporary copy retained for the purpose of the examination of the document would have been purged in normal system maintenance or, if for any reason this did not occur, on the decommissioning of the eFiling application. Electronic searches across all relevant folders have confirmed that the Court no longer retains that temporary file.

I note that this was explained to through its lawyer, through its lawyer, letter from the Australian Government Solicitor (AGS) dated 21 February 2013.

Website Changes

Following receiving a request from you for access to the files of the Court's Principal Registry concerning the amendment to the "Guide to Form 55" made in 15 February 2010 and after exhaustive searches and enquiries, under cover of letter dated 11 January 2011 I provided you with copies of a number of webpage snapshots and emails as follows:

- snapshots from the Court's webpage archives of the published "Guide to Form 55" taken on:
 - 7 December 2009
 - 8 December 2009
 - 15 February 2010
 - o 21 June 2010
 - 1 September 2010
- emails (in reverse chronological order):



to 5 February 2010

I also advised in that letter that there was no 'file' in relation to that modification.

No other document regarding the changes made to the Court's website on 10 February 2010 in relation to the Guide to Form 55 has been able to be found (either when preparing my letter of 11 January 2011 or since receiving your FOI request on 6 April 2013). Enquiries have included searching electronic folders and other records for the relevant period (including mail folders of relevant staff, past and present) and by relying on the knowledge of present staff.

Fee Waiver

In August 2009 fees for the filing in the Court of various documents, including a notice of appeal, were imposed by the Federal Court of Australia Regulations 2004. As an administrative function, the Court collected fees prescribed under the Regulations and Court Registrars decided requests for fee waiver. Registrars could also defer fees in some circumstances under the Regulations.

A search of the court file in proceeding has located an application by for a fee waiver received by the Court on 12 August 2009. Endorsed on a page of that document are decisions of Deputy District Registrar Allaway made respectively on 13 August 2009 and 20 August 2009 refusing waiver of payment of the prescribed fee and deferring payment of that fee until 3 September 2009. A letter from Ms Elaine Coverdale, Full Court Officer, dated 20 August 2009 addressed to you advising of these decisions has also been located. No other document has been able to be located concerning that fee waiver.

Each of the two documents mentioned in the preceding paragraph are documents of the Court of an administrative nature. I have decided to give you access to each of these documents. I have also decided that no charge is to be payable in relation to this access (whether for search, retrival, decision making or otherwise). I attach an electronic copy of these in PDF format.

Notice to Admit and Notice to Produce Received by Deputy Registrar Josan

On 16 February 2013	directed to Deputy Registrar Josan	a Notice to Produce and a Notice to	Admit in relation
to an application in proceed	ding . That application	sought orders, amongst other thing	gs, to set aside a
number of decisions of the	Court and had been listed for hearing	before Justice Tracey on 18 March 2	2013. AGS was
engaged on behalf of Depu	ty Registrar Josan and on 21 February	2013 wrote to indicating the	nat in AGS's view
those notices were miscond	ceived and was invited to withdr	aw them or to otherwise not seek to	call upon them.
On 23 February 2013	sent an email to AGS noting AGS's	comments, indicating that	considered that
an application under the au	uthority of Rules 20.33, 22.01 or 24.24	may be better founded and as such	accepted
not to receive a reply to the	e previous requests at least until such t	could confirm them	٦.
On 13 March 2013, not hav	ring heard anything further from	, AGS wrote to the Associate of J	ustice Tracey, with
copies to and the	lawyers for the respondents, to advise	of the communications which had o	occurred between
AGS and about th	ese notices and that it was AGS's unde	rstanding from email of 2	23 February 2013
that these notices would no	ot be called upon at the hearing on 18	March 2013. AGS indicated that, in	these
circumstances, it did not in	tend to appear on 18 March 2013 to se	eek orders that compliance with the	Notices be
dispensed with unless the (Court considered that this was necessa	ry. Subsequently that day AGS rece	ived from Justice
Tracev's Associate an email	(which was also sent to Madinah and	the respondent's lawver) advising th	nat

application for leave to issue that subpoena as the first matter for consideration at the hearing on 18 March 2013. The Associate also advised that Justice Tracey had directed that copies of your affidavit filed in the proceeding on 6 March 2013 and the proposed subpoena be provided to the lawyers for Deputy Registrar Josan and the respondents and these were attached.

The documents and things sought to be produced by Deputy Registrar Josan under the proposed subpoena overlapped significantly with many of the documents sought under the earlier Notice to Produce or referred to in the earlier Notice to Admit.

On 15 March 2013 AGS wrote to advising that AGS had been instructed to appear before Justice Tracey on 18 March 2013, to make submissions opposing the granting of leave for the issue of the subpoena and, if successful, to seek an order for costs against.

Deputy Registrar Josan appeared before Justice Tracey by counsel on 18 March 2013 when the application for leave to issue the subpoena was heard and opposed the grant of leave. Justice Tracey refused leave and ordered that pay Deputy Registrar Josan's costs of and incidental to its application for leave to issue the subpoena.

It is not clear from your request whether it relates only to what was done following the receipt in February 2013 of the Notice to Produce and Notice to Admit or what was done following the receipt in March 2013 of advice about the hearing of the application for leave to issue the proposed subpoena. In any event, of the history as outlined above, it is difficult to separate what was done. I have assumed in considering your request that you are seeking copies of documents relating to what was done following receipt of both the notices and the proposed subpoena.

The Federal Court has in its possession a letter from addressed to Deputy Registrar Josan dated 16 February 2013 and the copies of the documents filed in proceeding which were attached to that letter (including the Notice to Produce and Notice to Admit); an extract of the email from to AGS dated 23 February 2013; a copy of the letter from AGS to Justice Tracey's Associate dated 13 March 2013; an extract of the email from Justice Tracey's Associate to AGS, and the respondent's lawyer dated 13 March 2013 and the affidavit and proposed subpoena attached to it; a copy of letter from AGS to dated 15 March 2013; the judgment of Justice Tracey on the substantive application (which contains the order for to pay Deputy Registrar Josan's costs) delivered on 4 April 2013; and the order of Justice Tracey on that application which was subsequently entered. Your request does not seek copies of any of these documents but if you wish to obtain copies in PDF format of any or all of them please advise and I will provide them to you.

The Court also has in its possession copies of emails between court staff and AGS lawyers giving or seeking instructions; emails between court staff for use or in connection with giving those instructions; documents, including copies and drafts, on which instructions were given; notes made during a conference with counsel and AGS lawyers; and copies of the brief to counsel to advise and appear. All of these documents are, however, privileged from production in legal proceedings on the ground of legal professional privilege and that privilege has not been waived. As a result, all are exempt from disclosure under the FOI Act (see section 42, *FOI Act* and paragraphs 5.114 to 5.134 Guidelines issued by the Australian Information Commissioner under section 93A of the *FOI Act*).

Summary of My Desisions on Your Request

In summary, I have decided:

- Any documents in existence covered by those parts of your request that are mentioned in the first, second, fourth (with the exception of any relating to the fee waiver) and fifth of the dot points above are not documents of an administrative nature and, as such, the FOI Act does not apply to them and no valid request under that Act can be made in relation to them. You or others who are appropriately authorised on behalf can obtain access to these (as you have previously done) under the Federal Court Rules 2011 by inspecting them during business hours at the District Registry which is the 'proper place' for the relevant proceeding (currently the Victoria District Registry) or at another District Registry by arrangment
- In relation to that part of you request mentioned in the third dot point above, there are no other documents that have been able to be located regarding the changes made to the Court's website on 10 February 2010 in relation to the Guide to Form 55 beyond the emails and webpage snapshots under cover of letter from me dated 11 January 2011
- That you should be granted full access to the completed fee waiver in proceeding which was received by the Court on 12 August 2009 with Deputy District Registrar Allaway's decisions refusing waiver made on 13 August 2009 and deferring payment made on 20 August 2009 and the letter from you dated 20 August 2009. Copies of that application and waiver in PDF format are attached to this email. No charge is payable for this access
- In relation to that part of your request mentioned in the sixth dot point above, the Court has in its possession copies of emails between court staff and AGS lawyers giving or seeking instructions; emails between court staff for use or in connection with giving those instructions; documents, including copies and drafts, on which instructions were given; notes made during a conference with counsel and AGS lawyers; and copies of the brief to counsel to advise and appear but these are privileged from production in legal proceedings on the ground of legal professional privilege which has not been waived and, as a result, all are exempt from disclosure under the FOI Act. The Court holds copies of correspondence and court documents in relation to the Notice to Produce and Notice to Admit issued in February 2013 and the proposed subpoena for which leave was sought but refused. You do not seek copies of these but copies in PDF format can be provided on request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. As there can be significant delays in any review by the Information Commissioner, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this email.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An

application for review by the Information Commissioner must be made in writing within 60 days of the date of this email, and be lodged in one of the following ways:

online: https://forms.australia.gov.au/forms/oaic/foi-review/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines issued by the Commissioner under section 93A of the FOI Act which I have referred to in the reasons for my decisions above. Go to www.oaic.gov.au/foi-portal/review complaints.html#foi-merit reviews.

Questions about this decision

If you wish to discuss this decision, please contact me as below.

Regards,

John Mathieson

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone 02 9230 8336
www.fedcourt.gov.au

From:

Sent: Saturday, 6 April 2013 2:44 PM

To: John Mathieson

Subject: FOI / RTI Request by

Dear Mr Mathieson, I noticed the below extract from the Federal Court Website.

It is hoped that I can obtain similar sorts of detailed information that was requested & provided in the other below FOI Applications. The info I seek is relating to some issues concerning my Company , & my involvement with the FCA & under my entitlement under the same provisions of the FOI Act / RTI Act.

So the information I seek is as follows:

1. On 25 August 2009, B2B Lawyers acting for its clients, inc in the long running Appeal No. VID 635 of 2009, filed a Motion with the Melb Registry which had the 'label' V20090825805. This Motion which must have been recorded in the FCA's system, was then allocated to Justice Marshall to rule on . On that same day, Marshall J made a

ruling, which rejected that Motion. That Ruling stated that "it is the Court's view that there is no appeal before it". That Ruling went on to say that "if the notice of appeal is properly filed, then it will be allocated an Appeal No." (I am only quoting the note in B2B's own Itemized Bill of Costs.) I require all the documents, notes, files, diary notes, electronic info as defined by "Information" in the FOI definition, that was generated or used or received concerning this Motion and the rejection by the judge concerned. It is noted that "Marshall J's Associate was to call B2B to explain why Marshall J had rejected the Motion. The Associate's name and his computer/ manual files (& Court's), should also be included, along with Marshall J's "letter of rejection".

- 2. Registrar Josan refused to comply with request to provide specific information under a Notice to Produce & Admit in the last month or so. That included providing all correspondence between B2B Lawyers and herself and the Court, in particular concerning the origin of the 2 Court cases referred to in her Email dated 25 Nov 2009 & the other case involving Slater & Gordon of 1st October 2009. So I require a copy of all that information exchanged with the Court & B2B & everything that related to the origin and placement of those 2 cases onto the Court's Correspondence file.
- 3. Registrar Josan on about 8 Feb 2010 raised it to the attention of the Principle Registry, that there appeared to be an anomaly in the official Rules with the Form 55 Website Appeal Instructions, following my comments in a supporting affidavit. I know you have already provided the Email chain concerning the change, but I require all other records and notes & internal reviewing, that led to the amendments to the Website instructions. This shall include the FCA's paperwork created as a result of the error and subsequent amendments to the website. Also any release or notification to the FCA staff & public & legal profession, advising of such change.
- 4. On 12 August 2009, I filed Appeal via Fax to the FCA's Elaine Coverdale, together with Fee Waiver. Registrar Allaway a week later advised that the Fee Waiver had been refused, but extended time to pay the Appeal fee by a further 2 weeks. I require a copy of all internal (& external) communication concerning the Filing of that Appeal and Fee Waiver and relating to the decision of Registrar Allaway. It is noted on his internal Formal Refusal, that he made the decision the day after lodging the Fee Waiver on 12th August 09. Yet the Registry's letter to from Elaine Coverdale, did not take place until 20 August 09, 8 days later. So in particular, I require all the notes and exchanges concerning this matter & which relate to this unusual 8 day delay.
- 5. Between 12 August 2009 and 31 January 2010, I had emailed the Registry many times seeking answers to procedural issues, in particular, in my email to Elaine Coverdale on 14 August 2009, I asked her how long to Serve other side, and is it 7 days after filing? I require a copy of all the exchanges of correspondence and any internal notes that flowed within the Registry about my correspondence and Filing of Appeal & in particular about my question of the 7 days to serve. ie. Ms Coverdale must have deferred this question to Registrar Josan. I require the record of the dialogue concerning the response.
- 6. last month served Registrar Josan with a Notice to Admit and Notice to Produce. I require a copy of the internal paperwork or notes or files etc, that was created following the receipt of these Notices and decision that led to the refusal to comply with these Notices.

I note that the above requests concern the administration functions within the FCA's Registry & as such should be made available like the below FOI info.

I look forward to your reply.

FOI Disclosure Log

Freedom of Information Act 1982

Publicly available information released following an FOI access request

The Federal Court is required by section 11C of the *Freedom of Information Act 1982* (Cth) (FOI Act) to publish a disclosure log on its website. The disclosure log lists information which has been released in response to an FOI access request. This requirement has applied since 1 May 2011.

The disclosure log requirement does not apply to:

personal information about any person if publication of that information would be 'unreasonable' information about the business, commercial, financial or professional affairs of any person if publication of that information would be 'unreasonable'

other information covered by a determination made by the Australian Information Commissioner if publication of that information would be 'unreasonable'

any information if it is not reasonably practicable to publish the information because of the extent of modifications that would need to be made to delete the information listed in the above dot points.

The information described in this disclosure log has been released by the Federal Court under the FOI Act and is available for public access.

A link is provided if the information can be downloaded from this website or another website.

Information that is not available on a website may be obtained by writing to the Court's FOI Contact Officer.

A charge may be imposed to reimburse the Federal Court for the cost incurred in copying or reproducing the information or sending it to you. There will be no charge for the time spent by the Federal Court in processing the FOI request that led to this information being made available. You will be notified if any charge is payable and required to pay the charge before the information is provided.

There may be documents in the disclosure log that are currently not available in HTML format. If you are unable to read the format provided please contact the Court's FOI Contact Office by phone on 02 2930 8336 or by email at foi@fedcourt.gov.au. The Court will try to meet all reasonable requests for an alternative format of the document in a timely manner and at the lowest reasonable cost to you.

Information attached to, or referred to, in the Federal Court's disclosure log will generally be removed after 12 months, unless the information has enduring public value.

2012

FOI			

Reference number	Date of access	FOI request	Information published in the disclosure log [pdf]	Other information
PA3192	24 September 2012	All internal audit reports for the last five years including any documents prepared for the internal audit committee which examine the conduct of	1 08/2007 - Ernst & Young — Management of Aspects of the Court's Marshal Function O'Connor Marsden — FCA 2011-2013 Fraud Control Plan 10/2011 - Briefing for Audit Committee on Action Under 2011-13 Fraud Control Plan 4 10/2011 - Briefing Note for Audit Committee on Litigants Fund and Money Held in Trust 5 edited with deletions) 6 06/2012 - O'Connor Marsden — Review of Fee Income and Litigants Fund	Nil
PA3201	27 September 2012	Documents regarding the external and internal management of public and media interest in Justice Bernard Murphy, following disclosures in the media in August 2012 involving the law firm Slater & Gordon, the Prime Minister and the law firm Maurice Blackburn, including the development of a media release issued on behalf of Justice Murphy.	Emails, messages and attachments sent or received by Louise Anderson, Deputy Registrar, Federal Court on 20, 21 & 22 August 2012 Emails, messages and attachments sent or received and notes made by Denise Healy, Media & Public Affairs Manager, Family Court/Federal Magistrates Court (assisting in the absence of the Federal Court's Director Public Information) on 20, 21 & 22 August 2012	



• all internal paperwork or notes or files etc that was created following the receipt in March 2013 by Deputy Registrar Josan of a Notice to Admit and Notice to Produce that led to the refusal to comply with these notices



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

22 July 2013

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Transfer of freedom of information request to another agency

I refer to your request for access to documents relating to your interview with the Australian Federal Police in Canberra on 20 June 2013 which you made under the *Freedom of Information Act 1982* (FOI Act) and posted to the Court on 16 July 2013.

I am authorised to make decisions on behalf of the Federal Court of Australia under the FOI Act and am writing to tell you that I have transferred the whole of your request to the Australian Federal Police.

Under section 16(1) of the FOI Act, I am able to transfer a request received by the Federal Court if the subject-matter of any document which may be the covered by the request is more closely connected with the functions of another agency that with those of the Federal Court and that other agency agrees. The Federal Court does not have in its possession any documents in relation to your interview. If any such document exists, its subject-matter would be more closely connected with the functions of the Australian Federal Police than the Federal Court. I have therefore sought and obtained the agreement of the Australian Federal Police to transfer the whole of your request to it.

The Court received your request on 17 July 2013 and the 30 day statutory period for processing your request commenced from the day after that date. The Australian Federal Police will treat your request as though it received it the same day that that the Court did. You should therefore expect a decision from the Australian Federal Police by Monday 19 August 2013. That 30 day period may be extended if the Australian Federal Police needs to consult third parties or for other reasons. They will advise you if this happens.

The Australian Federal Police's FOI Contact Officer can be contacted by:

phone on (02) 6131 6131 email at FOI@afp.gov.au or mail addressed to:

FOI Contact Officer Australian Federal Police Government Relations Information Access GPO Box 401 Canberra City ACT 2601

Yours sincerely

John Mathieson **Deputy Registrar**

From:
To: External FOI

Cc: Subject: P3M3 evaluation - FOI request

Date: Tuesday, 10 December 2013 5:13:49 PM

To the FOI officer,

Federal Courts has assisted me in my research by providing me with P3M3 information in 2012. The information is an assessment of your organisation's maturity of practice in terms of project management, programme management and portfolio management and is prepared annually to meet a mandate from AGIMO.

I am writing to request your latest P3M3 information and continue my research. I am formally requesting this information through the FOI Act. However, many agencies prefer to provide me with this information directly outside the FOI Act and I would be more than willing to withdraw my formal request if this is your preferred option.

The documents I would like are:

- Your 2013 P3M3 external assessment detailing the P3M3 maturity levels (project, programme and portfolio management maturity).
- Your latest Capability Improvement Plan detailing in particular the P3M3 targets

I commit to maintaining your privacy and will not publish any information that will identify your agency. Please feel free to call me if you need clarification on any matter. My mobile is 0468 897 161 and my office numbers are in the footer below.

PS. I would be very pleased to present a customised version of my findings

and recommendations. I have achieved some impressive short term results in this area

and am committed to doing further research with interested Agencies. Please let me know and I will find a mutually convenient time to present and discuss my findings.





From:
To: External FOI

Subject: Documents scanned to Chambers on 3 April 2014

Date: Monday, 12 May 2014 1:26:46 PM

Attention: Freedom of Information Officer, Federal Court of Australia

I am making this request on behalf of

is the simplist and most reliable form of communication.

I cannot find any pro-forma FOI request form on the Federal Court web site.

This is an Application under the Freedom of Information Act 1982 (Commonwealth).

The documents Lodgment ID 133404 were lodged at 3/04/2014 2:30:30 PM AEST and I notice that these documents were not processed until 7/04/2014 11:03:58 AM AEST which is the Monday following the Directions Hearing of Friday 4/04/2014. The Transaction Number is 235413.

These documents included reasons for seeking an Extension of Time and Leave to Appeal the decision of which we believed would be before His Honour together with the Notice of Appeal in the Directions Hearing. We are seeking to establish whether these documents Lodgement were included in the material placed before His Honour in the Directions Hearing . We have been informed by the Federal Court Registry that "The documents were scanned to Chambers on 3 April 2014 for them to look at prior to the directions hearing on 4 April 2014" but this does not imply that they were placed before His Honor for consideration.

The documents sought relate to communications to, from and within the Federal Court Registry relating to Application to Deregister an Indigenous Land Use Agreement and Appeal . We respectfully seek all communications and particularly their time and date that relate to the proceedings including emails, letters and notes to or from Chambers.

Thank you for your assistance.

Yours sincerely,



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

> LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

16 May 2014

Dear
I acknowledge receipt on 12 May 2014 of the request made under the <i>Freedom of Information Act 1982</i> (FOI Act) on your behalf by seek access to documents relating to the electronic lodgement with the Court on 3 April 2014 of documents in proceeding
I am authorised under subsection 23(1) of the FOI Act to make decisions on behalf of the

A request for access to documents under the Freedom of Information Act can be made to the Federal Court only in relation to documents which relate to the management and administration of the Court's registry and office resources (see s 5(1), FOI Act). Access to

documents relating to proceedings in the Court are governed, not by the FOI Act, but the Federal Court of Australia Act 1976 and the Federal Court Rules.

Federal Court in relation to FOI requests.

As a result your request is outside the scope of and cannot be dealt with under the FOI Act.

If you are disagree with this decision you may apply for an internal review by another officer in the Court or for an external review by the Information Commissioner.

Under section 54 of the FOI Act any request for an internal review must be made within 30 days of this letter. It must be in writing but can be by email sent to FOI@fedcourt.gov.au.

Under section 54L of the FOI Act any request for an external review must be made within 60 days of this letter. It must be in writing and can be lodged with the Information Commissioner in any of the following ways:

online: https://forms.australia.gov.au/forms/oaic/foi-review/

email: enquiries@oiac.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney

I have, however, referred a copy of your request to the Court's Queensland District Registrar. Ms Heather Baldwin. Ms Baldwin will be in touch with you shortly with advice about how your documents were dealt with and how you can obtain, if still required, access under the Federal Court Rules to documents filed in the above proceedings.

Yours sincerely

John Mathieson

Deputy Registrar

From: To: Subject: John Mathieson

Freedom of Information Request Tuesday, 7 October 2014 12:04:00 PM image001.png

Attachments: image001.pnc image003.jpg

Dear

Authority

I am authorised under section 23(1) of the Freedom of Information Act 1982 (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

Request

On 6 October 2014 you requested access under the FOI Act to various documents relating to or connected with proceedings in the Federal Court's Victoria District Registry between and and filed during the period 10 August 2009 and 10 September 2009. Specifically you sought access to:

- all documents filed and any correspondence or notices or advices or receipts of any kind which the Federal Court created
- the application made by the Respondent on 25 August 2009 together with receipts or notifications, relating to the filing fee and the refund of that filing fee and correspondence
- all documents flowing between the Registry and Justice Marshall's office on or about 25 August 2009
- notes and emails etc. to and from all Federal Court employees that relates to the matter where were in contact with Justice Marshall's Associate
- the name of Justice Marshall's Associate at the time

Applicability of FOI Act

The Federal Court (including its registries and staff) is a prescribed authority for the purposes of the FOI Act but its judicial officers are not (see subsection 5(1) FOI Act). Importantly the FOI Act does not apply to any request for access to a document of the Court <u>unless</u> the document relates to matters of an administrative nature (see also subsection 5(1)) and, since 12 April 2013, the handling of judicial complaints (see subsection 5(1A) FOI Act).

The High Court of Australia has recently clarified that the phrase "matters of an administrative nature" refers only to documents that concern "the management and administration of registry and office resources" (see Kline v Official Secretary to the Governor General [2013] HCA 52 at 47). Any documents in existence covered by those parts of your request that are mentioned in the first four dot points above were filed in or lodged for filing in the Court in relation to a proceeding or relate to the filing, rejecting, processing or handling of those documents or to the proceeding and are not documents of an administrative nature. As such the FOI Act does not apply to them and no request under that Act can validly be made in relation to them (see paragraphs 2.6 and 2.7, Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act).

The FOI Act, subject to exemptions and exclusions, permits access to documents. The request in the fifth dot point above is a request for access to information not to a document and accordingly is outside of the scope of the FOI Act.

Access to Court Documents etc. Otherwise

Even though the FOI Act does not apply to any documents in existence covered by those parts of your request that are mentioned in the first four dot points above, as you are aware, any such documents may nevertheless be accessed.

Access to court documents in proceedings in the Federal Court is governed by the *Federal Court Act 1976* (particularly sections 17 and [since 12 December 2012] 37AA to 37AL) and the Federal Court Rules 2011 (particularly Rule 2.32). Under the latter a party to a proceeding may inspect any court document in a proceeding except a document for which a claim of privilege has been made but not decided by the Court, such a document that the Court has decided is privileged or a document that a court has ordered is confidential. Other documents in relation to a proceeding (such as correspondence) can be inspected by leave. Except for transcript (which is available for purchase from the Court's transcript provider) a person may obtain a copy of any document that that person is entitled to inspect on payment of the required file production and copy charges imposed by the Federal Court and Federal Circuit Court Regulation 2012.

I note that you have spent extended periods inspecting the court documents in the relevant proceedings as well as, with leave, the other documents held by the Court in relation to those proceedings and that you have obtained copies of all documents from the court files which you inspected and requested be copied.

at any time during ordinary business hours at the Victoria District Registry of the Court (which currently is the 'proper place' for these proceedings under the Rules of Court) or, by arrangement, another District Registry.

In regard to the name of Justice Marshall's former Associate, as you have previously been advised, the Court will provide information about its past employees only to those lawfully entitled to require it and then only through a proper process.

My Decisions on Your FOI Request

I have decided:

• Any documents in existence covered by those parts of your request that are mentioned in the first four dot points above are not documents of an administrative nature and, as such, the FOI Act does not apply to them and no valid request under that Act can be made in relation to them. As noted above

under the Federal Court Rules 2011 by inspecting them during business hours at the District Registry which is the 'proper place' for the relevant proceeding (currently the Victoria District Registry) or at another District Registry by arrangement

• That part of your request mentioned in the fifth dot point above is outside of the scope of the FOI Act. As also noted above the Court will provide information about its past employees only to those lawfully entitled to require it and then only through a proper process.

Your Review Rights

If you are dissatisfied with my decisions, you may apply for internal review or Information Commissioner review of the decisions. As there can be significant delays in any review by the Information Commissioner, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this email.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this email, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines issued by the Commissioner under section 93A of the FOI Act which I have referred to in the reasons for my decisions above. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, you can contact me as below.

Regards,

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone 02 9230 8336
www.fedcourt.gov.au

From:

Sent: Monday, 6 October 2014 1:30 PM

To: External FOI

Subject: Seeking under FOI, copy of all files lodged with the FCA in Melb in August 2009 re Case Mijac vs Graham & ors VID 635/2009

Dear Sir/ Ms, I wish to obtain a copy of all Documents Filed with the Melb Div of the Federal Court, during the period of 10th August 2009 & 10th September 2009 & any correspondence or notices or advices or receipts of any kind which the FCA created in that same period.

This shall include the Application made by the Respondent on 25th August 2009, together with receipts, or notifications, relating to the filing fee & the refund of that filing fee & correspondence.

This info sought shall also include a copy of all documents flowing between the Registry and Marshall J's office on or about 25th August 2009. This info should also include the notes & emails etc to & from all FCA employees, that relates to this matter, where contact with Marshall J's Associate.

It should also include the name of Marshall J's Associate at the time. To assist you pin point this data, please see below a copy of an extract of the Respondents' Solicitor, sworn Bill of Costs relating to this period of time. Also FCA's email of 25 Aug 09 confirming the Application made & being handled by Marshall J. Please advise of the Fee for this Application. I am happy communicating by email on this FOI matter. These are the Appeal details.

The Appellant appeals from the whole of the judgment of the Federal Court given on 22 July 2009 at Melbourne by the Honourable Justice Gordon in Federal Court in which the Appellant was the Applicant.

IN THE FULL COURT OF THE FEDERAL COURT OF AUSTRALIA VICTORIA DISTRICT REGISTRY

BETWEEN		No.
		Applican
AND		rippicuit
		First Defendan
	Third Defendant	
	Fifth Defendant	

From: <u>John Mathieson</u>

To:

Subject: Request for Information in Relation to a Case Being Heard in the High Court

Date: Monday, 13 October 2014 1:58:00 PM

Dear ,

An incomplete version of this email was sent to you earlier. I apologise for that error.

I refer to your request below for information under the Freedom of Information Act 1982 (FOI Act). I am authorised under section 23(1) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

Your request has been made to the Federal Court but the proceeding that the request relates to is in the High Court of Australia (High Court). The Federal Court and High Court are separate and independent courts, each of which maintains its own records in relation to proceedings in each court. I have considered transferring your request to the High Court under section 16 of the FOI Act but have decided that this would be pointless as your request is out of scope of the FOI Act. Such a transfer could be done only with the consent of the High Court. I have discussed this response with the High Court's FOI contact officer and the High Court agrees with it.

Firstly, the FOI Act allows a person to request access to documents. You, however, have not sought access to documents but rather that you be provided with information. This is not something which can be done under the FOI Act

Second, while federal courts (including the High Court) are deemed to be prescribed authorities under the FOI Act this is only in relation to a "document (that) relates to matters of an administrative nature" (section 5(1) FOI Act). The High Court has recently clarified that this phrase means that the FOI Act only applies to "the management and administration of registry and office resources" (see Kline v Official Secretary to the Governor General [2013] HCA 52 at 47). As a result the FOI Act does not apply to any documents relating to a proceeding in the High Court and no FOI request can be made in relation to any such document.

What you are seeking in your request is not available under the FOI Act at all and your request is therefore out of scope of that Act and the only possible outcome is that it must be refused.

This does not mean that some of the information you are seeking can't be accessed by you.

The High Court publishes on its website (http://www.hcourt.gov.au/) under the "Publications" tab a range of information about cases which it is dealing with. This includes a bulletin of cases, transcripts of hearings and judgments. It would appear that the transcript of the case discussed in the Sydney Morning Herald report you are referring to is available at

A person may inspect and take copies of any document filed in an office of the High Court during office hours on payment of prescribed fees. Information on office hours, location of the High Court's offices and fees are also available on the High Court's website.

If you are dissatisfied with my decision, you may apply for internal review or Information

Commissioner review of the decisions. As there can be significant delays in any review by the Information Commissioner, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this email.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this email, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines issued by the Commissioner under section 93A of the FOI Act which I have referred to in the reasons for my decisions above. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me at the Federal Court's FOI request email address FOI@fedcourt.gov.au.

Yours sincerely,

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
www.fedcourt.gov.au

From:

Sent: Friday, 10 October 2014 8:58 AM

To: External FOI

Subject: Request for information in relation to a case being heard in the high court

Dear Sir,

I would like to request more information in relation to a case of an Afghan asylum seeker scheduled to be heard in the Australian High Court on the coming Tuesday based upon the article published in the Sydney Morning Herald Newspaper. (link provided below).

I do not know the details of the asylum seeker since they havent been made public.

I would like to request the following information in relation to the Freedom of Information

act:

- 1. Who is representing the foreign national (Afghan Asylum seeker truck driver)
- 2. How is the asylum seeker funding his case in the high court
- 3. Are tax payer's dollars being invested by the government to defend the Afghan Asylum seeker?

As a proud citizen of this country and as a regular tax payer, I would like to know if my hard earned money is being spent for funding the legal representation of this foreign national

Yours Sincerely,

SMH Link

From: <u>John Mathieson</u>

To: Subject:

FOI request

Date:

Friday, 24 October 2014 12:49:00 PM

Dear ,

I acknowledge receipt of you request below. I am authorised under section 23(1) of the Freedom of Information Act 1982 (FOI Act) to make decisions on behalf of the Federal Court of Australia in relation to Freedom of Information (FOI) requests.

You request information on the assessment of charges for each FOI request that has been made to the Court in 2014. Although the Federal Court is a prescribed authority for the purposes of the FOI Act, that Act only applies to the Court in relation to documents relating to matters of an administrative nature. The High Court of Australia recently clarified that "matters of an administrative nature" means only documents that concern "the management and administration of registry and office resources" (see kline v Official Secretary to the Governor General [2013] HCA 52 at 47). As a result the Federal Court received very few FOI requests.

In 2014 the Court has not received any FOI request for which any charge was imposed. Accordingly it holds no document which comes within the scope of your request.

In dealing with FOI requests, decision makers in the Court make decisions about charges in accordance with section 29 of the FOI Act, the Freedom of Information (Charges) Regulation 1982 and the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (particularly Part 4 in relation to the latter). Where charges are imposed the rates applied are those set out in the Regulations.

Access to court documents in proceedings in the Federal Court is not governed by the FOI Act but the Federal Court Act 1976 (particularly sections 17 and [since 12 December 2012] 37AA to 37AL) and the Federal Court Rules 2011 (particularly Rule 2.32). Fees for production of a file for inspection and for making copies of documents in a file are fixed by the Federal Court and Federal Circuit Court Regulation 2012 (see item 123 of Schedule 1, Part 1).

If you are dissatisfied with my decision on your request, you may apply for internal review or Information Commissioner review of the decisions. As there can be significant delays in any review by the Information Commissioner, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this email. It can be directed by email to FOI@fedcourt.gov.au.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this email, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines issued by the Commissioner under section 93A of the FOI Act which I have referred to in the reasons for my decisions above. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me as below.

Your sincerely,

John Mathieson Deputy Registrar Principal Registry Federal Court of Australia john.mathieson@fedcourt.gov.au Phone 02 9230 8336 www.fedcourt.gov.au

----Original Message-----

From:

Sent: Monday, 20 October 2014 9:36 AM

To: External FOI Subject: FOI request

Freedom of information request to the Federal Court This is an application for the purposes of the FOI Act

I am attempting to get information on how much government departments, court and agencies charge for individual FOI requests and any relationship with the processing.

I request details on the assessment of charges for each of the Freedom of Information requests made for the year 2014. I would like to know the amounts for estimated number of documents, total search retrieval charges and total for decision making charges with the total charges. These would be shown for each request. Individual tasks within these totals may or may not be shown; whatever is easier to prepare.

Thank you for your assistance

From: Meg.Foreman@familycourt.gov.au To: Subject: FOI request - FARMER [SEC=UNCLASSIFIED] Date: Wednesday, 22 October 2014 11:06:48 AM Hi As per our discussion this morning, please find pasted below part of the FOI request from which pertains to a contract of the Federal Court. I advised that he should approach the Federal Court himself in regard to this, but he is not keen to "start all over again" with a new request, so I am thinking it might be helpful to him if I just transfer this part of the request to you for his convenience and the Federal Court can manage it as they would wish. copy of the Federal Court of Australia contract with Auscript Australasia Pty Ltd for the provision of court reporting services; If there is anything I can do to assist please let me know - FYI I have already sent a copy of the FCoA/FCC-Auscript contract to Auscript for their view on release of that. If it would be helpful, I'd be happy to send a template copy of the letter I sent to Auscript, to save "reinvention of the wheel", Best regards Meg Foreman Client Feedback Coordinator & Admin Law Consultant Ph:

The information contained in this e-mail (including any attachments) is for the exclusive use of the addressee. If you are not the intended recipient please notify the sender immediately and delete this e-mail. It is noted that legal privilege is not waived because you have read this e-mail

From: <u>John Mathieson</u>

To:
Subject: FOI Request

Date: Friday, 5 December 2014 1:25:26 PM

UNCLASSIFIED

Dear

Introduction

On 4 November 2014 I wrote to you to confirm that part of your Freedom of Information (FOI) request which was sent to the Treasury on 14 August 2014 had, with the consent of the Federal Court of Australia (Federal Court), been transferred to the Federal Court. The part transferred to the Federal Court relates only to the request for a copy of the contract between the Federal Court and Auscript Australasia Pty Ltd (Auscript) for the provision of court reporting services (the Federal Court contract).

Earlier today (5 December 2014) we spoke on the phone. In that conversation I outlined, very briefly, that I had decided that the Federal Court contract was exempt and you confirmed to me that, if so, you would like to obtain an edited copy of the document with the exempt material deleted if this was possible.

In my email to you on 4 November I advised that, from my examination of the Federal Court contract, it appeared to me that that document contained information concerning the business, commercial and financial affairs of an organisation that that organisation may wish to contend is exempt and that the Federal Court was therefore obliged by section 27 of the *Freedom of Information Act* 1982 (FOI Act) to consult with that organisation before making a decision about releasing a copy of the Federal Court contract to you under your FOI request. That organisation, of course, was Auscript.

In response to the required consultation about your request, on 17 November 2014 a written submission was received from lawyers for Auscript objecting on Auscript's behalf to the release of the Federal Court contract on the grounds that that document was exempt under the FOI Act or, alternatively, that that document was conditionally exempt under that Act and that its release would be contrary to the public interest. That written submission set out in some detail the reasons for these claims. I make further reference to these below.

I am writing to tell you of my decision in relation to the part of your FOI request which has been transferred to the Federal Court and to advise of review rights should you be dissatisfied with my decision.

Summary of Decision

I have decided, because the Federal Court contract contains some material in the Appendices which is exempt under each of sections 45 and 47 of the FOI Act, that the contract is an exempt document under those sections. I have also decided that that contract contains some material of the kind to which the section 47G exemption applies, the disclosure of which, on balance, would be contrary to the public interest. I am therefore also of the view that the contract is

conditionally exempt under section 47G of the FOI Act. I have considered the possible application of the section 47F personal information conditional exemption to parts of the contract, but do not consider the contract contains any information which is conditionally exempt under section 47F of the FOI Act.

It is only one defined term in the contract terms and conditions and certain material in the Appendices to the contract that, in my view, is exempt under one or more of sections 45, 47 or 47G. I have therefore considered whether it is reasonably practicable to prepare an edited copy of the Federal Court contract for release to the applicant, with the exempt content deleted. I consider that it is reasonably practicable to do so.

It is not possible, however, for that edited copy to be released, until after all opportunities that Auscript has for review or appeal of this decision have run out.

Authority

As I indicated in my email of 4 November 2014, I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to FOI requests.

Request

On 14 August 2014 a FOI request was received by The Treasury. On 22 August 2014 that request was transferred to the Family Court of Australia (Family Court) under section 16 of the FOI Act with the consent of that Court. That request, in part, sought access to the Federal Court contract and on 23 October 2014 that part of the request was transferred to the Federal Court with its consent, again under section 16 of the FOI Act.

The Federal Court is only considering the request for access to the Federal Court contract and this decision relates only to that document. The Family Court is considering separately other parts of the FOI request and has or will advise you of the decisions it has made or will make in relation to these.

Fees and Charges

Under section 29 of the FOI Act and the Freedom of Information Charges Regulations 1982 fees and charges may be payable for the processing of a FOI request. However, no such fees and charges can be imposed unless a decision is made within 30 days of the FOI request being received (subject to some extensions of that period which can apply in some circumstances).

As the part of your FOI request which was transferred to the Court was received after the 30 day decision period had already expired without any extension, it was not possible for me to make any decision within the statutory period. As a result no fees and charges can or will be sought from you in regard to the processing of your FOI request.

Federal Court Contract

The Federal Court contract was entered into between the Federal Court and Auscript on 25 March 2013 following Auscript being awarded the contract for the provision of court reporting

services after a prequalified tender.

Following the Federal Court's initial approach to market by way of an Expression of Interest on 18 July 2012, suitable and potential suppliers were chosen and invited on 17 September 2012 to submit a proposal to a Request for Tender (RFT) made available through the AusTender website. Amongst other things, the RFT set out the conditions of tender and included a draft of the proposed terms and conditions for any resulting contract.

One of the conditions of tender was:

"1.2 Confidentiality

- (a) The Commonwealth will treat as confidential any information provided by tenderers prior to the award of a contract. Once a contract has been awarded, the Commonwealth will not keep such information confidential, if it was provided by the successful tenderer unless:
 - (i) the tenderer requests that specific information should be kept confidential:
 - (ii) the specific information is by its nature confidential; and
 - (iii) the Commonwealth agrees to that request.
- (b) The Commonwealth cannot provide an absolute guarantee of confidentiality because certain confidential information may be required to be disclosed by law or to the Parliament or the Auditor-General."

The draft terms and conditions for the contract included a confidentiality provision as well as an interpretation provision containing a number of definitions of terms used in that confidentiality provision. Under that provision the contracting parties are prevented from disclosing any information which, under the contract, is confidential without the prior written consent of the other party. It is however expressly provided that the parties will not be taken to have breached that obligation if, amongst other things, the disclosure is authorised or required by law or the information is in the public domain otherwise than due to a breach of the confidentiality obligations under the contract. It was also provided that information provided to the Federal Court by the contracting supplier of court reporting services which is listed in the contract was agreed to be included as confidential information under the contract.

In submitting its tender proposal, Auscript requested that a range of commercial information included in its response be kept confidential. Details, referenced in relation to the relevant clauses, appendices or attachments to the draft contract and parts, paragraphs and annexures of the RFT, were listed in a confidentiality register included with Auscript's proposal.

The Federal Court contract contains a confidentiality provision and relevant definitions in its interpretation provision which are substantially identical to those set out in the draft terms and conditions of contract included with the RFT. An appendix substantially identical to the confidentiality register included with Auscript's tender proposal was included in the Federal Court contract as the details of the contractor's confidential information.

The Federal Court contract is comprised of a list of contents, terms and conditions, execution provisions and appendices. The appendices contain the variable contract details (including information about subcontractors and contact representatives), statements of requirements (including specifications for various services, formatting requirements, registry and courtroom locations, equipment ownership and protocols and arrangements for various functions), pricing,

real-time services requirements, a deed of confidentiality, an unconditional financial undertaking, the format of Commonwealth Court or Tribunal order for supply of services, an intellectual property register and the contractor's confidential information register.

Auscript's Objections

Exemption – Trade Secrets and Commercially Valuable Information

It was submitted on Auscript's behalf that the Federal Court contract is exempt under section 47 of the FOI Act as its disclosure would disclose trade secrets or other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if that information was disclosed. Particulars of the trade secrets and commercially valuable information involved, as well as the impact which Auscript believes that the disclosure of these would have, are set out in the submission.

As relevant, subsection 47(1) of the FOI Act provides:

- (1) A document is an exempt document if its disclosure under this Act would disclose:
 - (a) trade secrets; or
 - (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.

The Australian Information Commissioner has issued Guidelines under section 93A of the FOI Act to which regard must be had for the purposes of performing a function, or exercising a power, under that Act (the Guidelines).

In relation to the "trade secrets" exemption under section 47, the Guidelines explain that:

- the term "trade secret" is not defined in the FOI Act but the Federal Court has interpreted a trade secret as information possessed by one trader which gives that trader an advantage over its competitors while the information remains generally unknown (paragraph 5.184);
- the test that the Federal Court referred to in considering whether information amounts to a trade secret was:
 - o that the information is used in a trade or business
 - o the owner must limit the dissemination of it or at least not encourage or permit widespread publication
 - o if disclosed to a competitor, the information would be liable to cause real or significant harm to the owner of the secret (paragraph 5.185);
- factors that a decision maker might regard as useful guidance, but not an exhaustive list of matters to be considered, include:
 - o the extent to which the information is known outside the business of the owner of that information
 - o the extent to which the information is known by persons engaged in the owner's business
 - o measures taken by the owner to guard the secrecy of the information
 - o the value of the information to the owner and to his or her competitors
 - o the effort and money spent by the owner in developing the information
 - o the ease or difficulty with which others might acquire or duplicate the secret (paragraph 5.186);

• information of a non-technical character may also amount to a trade secret but, to be a trade secret, information must be capable of being put to advantageous use by someone involved in an identifiable trade (paragraph 5.187).

In relation to the "information having a commercial value" exemption under section 47, the Guidelines explain that to be exempt a document must, firstly, contain information that has a commercial value either to an agency or another body or person, and secondly, that its disclosure would, or could reasonably be expected to, destroy or diminish that value (paragraph 5.188).

Further, it is explained that it is a question of fact whether information has commercial value, and whether disclosure would destroy or diminish that value (paragraph 5.189). The Guidelines list factors which may assist in deciding in a particular case whether information has commercial value (paragraph 5.189) and discusses factors which are not decisive of information having a commercial value (paragraphs 5.190 and 5.191).

In its submission, Auscript contends that a number of clauses of the Federal Court contract and most of its appendices contain trade secrets and commercially valuable information. In summary it is contended that this includes information:

- detailing Auscript's proprietary and innovative solutions to give effect to the
 requirements of the Federal Court, including service delivery requirements, performance
 indicators, quality procedures, Auscript's confidential information, online ordering
 processes, pricing model, party sales model, account management functions, recording
 models and unique technology solutions, all of which were developed exclusively by
 Auscript for its clients;
- detailing how Auscript proposes to implement its solutions and specific details of the services it will provide under the contract which would only ever be disclosed under an obligation of confidence;
- that is associated with Auscript's pricing of services to the Federal Court;
- that is unique to Auscript's business and the services it offers, was developed by Auscript with the investment of considerable time, effort and money, is not generally known and in relation to which Auscript has taken significant measures to limit the dissemination of and guards the secrecy of;
- detailing the statistical reporting that Auscript will provide under the contract using the systems Auscript created for this purpose (which are a trade secret);
- detailing Auscript's innovative solutions for disaster and business continuity planning developed through a significant investment and in which Auscript retains intellectual property rights;
- detailing Auscript's software systems and technology solutions, including how Auscript uses that software and technology and its internal processes;
- detailing Auscript's relevant intellectual property as it relates to software, processes and systems which were designed and developed internally and which are both a trade secret and have commercial value; and
- detailing Auscript's partners, subcontractors and companies that provide services to Auscript under the contract with whom Auscript maintains commercial and strategic relationships with and uses in the provision of services to the Federal Court.

It is also contended that this information:

- is crucial to the profitability and viability of Auscript's continuing business operations and commercial activities;
- has a significant commercial value; and
- gives Auscript a competitive advantage

and that, if this information was disclosed, this would:

- negatively impact Auscript's business strategy and be detrimental to any further court reporting services offered by it;
- be detrimental to Auscript's business and service delivery models;
- reveal how Auscript has created and maintained its competitive advantage;
- cause significant damage to the viability and profitability of Auscript's pricing model and competitive advantage;
- enable Auscript's competitors to use that information against the interests of Auscript for those competitor's own competitive advantage, gain an unfair advantage and engage in predatory pricing designed to undercut competition in the market place;
- destroy the commercial value of that information; and
- as a result of that destruction, jeopardise Auscript's future business opportunities.

I have considered the submission received in detail and examined the Federal Court contract in full. I have also examined relevant documents from the tender, including the RFT.

I am satisfied that any consideration of whether a document is exempt under section 47 of the FOI Act must have regard to the document as a whole and not to its parts in isolation (although, as referred to below, the latter may be relevant for other purposes under the FOI Act).

The terms and conditions included in the Federal Court contract (contract terms and conditions) are identical to the draft terms of conditions of contract set out in the RFT, save and except that the contract terms and conditions:

- omits the word "DRAFT" from its title page;
- includes relevant details of Auscript as the contractor;
- corrects several typographical, format and other minor errors;
- includes definitions of several additional terms, for example "courtroom";
- includes some additional words in one clause for greater clarity;
- removes some punctuation and amalgamates two subclauses in another clause again for greater clarity;
- varies the term of the licence of the Contractor's Pre-existing Material from permanent to for the term of the Contract with the addition of a clause clarifying that the licence created does not include a right to exploit the Pre-existing Material for the Court's commercial purposes;
- includes clarification that one reporting requirement relevant to performance which the Federal Court can request is a copy of Auscript's audited financial statements and that Auscript must notify the Court should it become aware of any significant adverse change to its net operating profit or difficulty with its lenders that may affects its operation as a going concern;
- includes an additional clause clarifying Auscript's obligation in permitting the use of Preexisting Material in the event of termination or expiry of the Federal Court contract during the period of transition to an incoming service provider; and
- adjusts the list of contents and clause numbering appropriately for the addition and other changes mentioned above.

With the exception of the definition of one term relevant to the pricing model and structure adopted, I am not satisfied that, considered in isolation, the contract terms and conditions contains any trade secrets or commercially valuable information which meets the threshold in section 47 of the FOI Act. It is substantially identical to the draft terms and conditions of contract set out in the RFT which, through the tender process, came into the public domain and, in particular, was provided to a number of Auscript's competitors. Save and except for that one definition, the modifications made between the award and execution of the Federal Court contract were relatively minor, technical and uncontroversial and did not introduce any additional information that could fall within the protection of section 47.

The Federal Court contract, however, also contains a number of appendices and one of these contains a number of attachments.

The appendices and attachments comprising:

- statement of requirements ((including specifications for various services, formatting requirements, registry and courtroom locations, equipment ownership and protocols and arrangements for various functions); and
- real-time services requirements

were also included in the RFT. Again, if considered in isolation (either individually or as a group), as these were prepared by the Court, contain no information provided by Auscript and, in any event, also came into the public domain through the tender process, I am not satisfied that any of these contain any trade secrets or commercially valuable information.

Although the form of some of the remaining appendices was also included in the RFT each contains a significant amount of information which was provided by Auscript.

I am satisfied that the Federal Court contract contains some information which:

- was supplied and is owned by Auscript;
- is used by Auscript in the trade or business of supplying court reporting services;
- was developed exclusively by Auscript specifically to meet the needs of its clients;
- is unique to Auscript's business model in the delivery of the contracted services;
- results from a significant investment by Auscript in research and development both generally on solutions, technology, systems, methodology and processes for its business services and specifically for the roll-out of the contracted services;
- details Auscript's pricing structure and model, business systems and processes (including quality assurance), technology and associated services and other solutions and methodologies adopted for the purposes of the contract;
- was provided by Auscript prior to the award of the contract, is by its nature confidential, was requested by Auscript to be kept confidential and the Federal Court agreed to that request:
- was agreed to be contractor's confidential information for the purposes of the contract;
- is known to relevant court and Auscript staff for the purposes of the administration and management of the contract;
- can be disclosed to third parties under the confidentiality provisions of the contract only with Auscript's prior written consent or as authorised or required by law;
- would be disclosed by Auscript only under an obligation of confidence;
- is subject to intellectual property rights owned by Auscript;
- provides Auscript with a competitive advantage in delivering court reporting services;
- has a significant commercial value to Auscript and is important to the profitability and viability of Auscript's continuing business operations and commercial activities under the contract; and
- if known to Auscript's competitors, would provide a commercial advantage to them and cause Auscript's business significant and irreversible harm and damage.

As a consequence I am also satisfied that the Federal Court contract as a whole contains trade secrets as well as other information which has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if that information was disclosed. This means that in my view the contract is an exempt document under section 47 of the FOI Act.

However as, for the reasons set out below, it is reasonably practicable to prepare an edited copy of the contract under section 22 of the FOI Act, in practical terms it is only those portions of the

contract that are exempt under section 47 which I propose to withhold from access.

<u>Exemption – Material Obtained In Confidence</u>

It was also submitted on Auscript's behalf that the Federal Court contract is exempt under section 45 of the FOI Act as it contains material that was obtained in confidence and its disclosure would found an action, by Auscript, for breach of confidence. As I have already found that the document is exempt under section 47 it is not necessary to deal with this objection at length but will do so briefly for the assistance of any reviewer should any internal or external review of my decision be required.

As relevant, subsection 45(1) provides:

(1) A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

The Guidelines explain, as relevant, that the FOI Act expressly preserves confidentiality where that confidentiality would be actionable at common law or in equity (paragraph 5.142) and that the section 45 exemption operates as a separate and independent protection which may fall within the scope of other specific exemptions (paragraph 5.141). Further it is explained that to found an action for breach of confidence (meaning section 45 can apply) the following five criteria must be satisfied in relation to the information:

- it must be specifically identified;
- it must have the necessary quality of confidentiality;
- in must have been communicated and received on the basis of a mutual understanding of confidence;
- it must have been disclosed or threatened to be disclosed, without authority; and
- unauthorised disclosure of the information has or will cause detriment (paragraph 5.143.

The Guidelines also explain what is required to be met or satisfied in relation to each of these criteria (paragraphs 5.145 - 5.155).

As previously referred to I am satisfied that the Federal Court contract contains information which was provided by Auscript prior to the award of the contract; is by its nature confidential; was requested by Auscript to be kept confidential and the Federal Court agreed to that request; is known only to a limited group; and that, if disclosed, that disclosure would cause Auscript's business significant harm and damage. I am satisfied, however, that while all such information is confined to some appendices in the document and not in the contract terms and conditions save and except for one defined term, nevertheless the required consideration is to the document as a whole and not its individual parts.

I am therefore satisfied that the Federal Court contract is also an exempt document under section 45 of the FOI Act. As noted elsewhere, as it is reasonably practicable to prepare an edited copy with exempt material redacted, in practical terms the other parts of the contract that are not exempt can be released.

<u>Conditional Exemption – Business and Personal Privacy</u>

It was also submitted on Auscript's behalf that Federal Court contract is conditionally exempt:

- under section 47G of the FOI Act as it contains information concerning Auscript the disclosure of which would, or could reasonably be expected to, unreasonably affect Auscript's lawful business; and
- under section 47F of that Act as its disclosure would involve an unreasonable disclosure of personal information about a number of persons

and that, on balance, permitting access to the document under the FOI Act would be contrary to the public interest.

As I have already found that the document is exempt under both section 47 and 45 it is not necessary to deal with these objections at length but will do so very briefly for the assistance of any reviewer should any internal or external review of my decision be required.

The Guidelines explain the operation of the business information (paragraphs 6.157 - 6.187) and personal privacy (paragraphs 6.113 - 6.156) conditional exemption provisions of the FOI Act and the meaning and application of the public interest test which must be applied for conditionally exempt documents (paragraphs 6.1 - 6.33).

As previously referred to I am satisfied that the Federal Court contract contains business information about Auscript and that its disclosure would cause Auscript's business significant harm and damage.

In the submission made, Auscript contends (for the reasons briefly set out in that document) that the disclosure of the Federal Court contract would not promote the objects of the FOI Act, inform debate on a matter of public importance, promote effective oversight of public expenditure, allow a person to access his or her own personal information, contribute to the maintenance of peace and order and contribute to the administration of justice generally. It was also contended that that disclosure would potentially affect the Courts from obtaining similar information from third parties in the future and it could reasonably be expected to prejudice the competitive commercial activities of the Courts. Further it is contended that when these factors in favour of and against disclosure are considered disclosure, on balance, would be contrary to the public interest.

This submission, in my view, is overly simplistic and must, at least in part, be rejected. I am satisfied that disclosure would promote the objects of the FOI Act and the oversight of public expenditure. I am not satisfied that I can reject out of hand the potential that the disclosure would inform debate on a matter of public importance but I have been unable to identify any such a matter beyond the theoretic. At the theoretic level I am also satisfied that disclosure could advance the fair treatment of individuals and other entities in accordance with the law in their dealings with the Federal Court and contribute to innovation. I am satisfied, however, that disclosure would not provide any person with access to his or her personal information or contribute to the maintenance of peace and order or administration of justice in any of its forms. As relevant and as previously referred to, I am satisfied that disclosure would cause Auscript's business significant harm and damage and breach a mutual understanding of confidence. I am also satisfied that disclosure could reasonably be expected to impede the Federal Court (and potentially other agencies) ability to obtain confidential information.

Of the factors in favour of disclosure I give most weight to the promotion of the objects of the

FOI Act and the oversight of public expenditure but after taking into account the potential harm and damage to Auscript's business and the undesirability of breaching a mutual understanding of confidence I am satisfied that, on balance, disclosure of parts of the contract would be contrary to the public interest.

I am satisfied from my examination of the Federal Court contract that it contains some personal information. This is the names, position titles and business addresses of a number of officers and employees of the Federal Court and Auscript and it is sufficient for the individuals involved to be "apparent" or to be "reasonably ... ascertained" for the purposes of section 4(1) of the FOI Act. This information, however, is publically available from a range of sources, including the Federal Court and Auscript's websites and online social networking services (such as LinkedIn), a matter that I must have regard to in considering whether disclosure would be unreasonable (see Guidelines paragraph 83). I am therefore not satisfied that the disclosure of this personal information would be unreasonable.

Access to Edited Copy

Because I have found that the Federal Court contract is exempt, there is a further decision I am required to make.

As the Guidelines explain, if it is decided to refuse access to a document on the ground it is exempt consideration must be given under section 22 of the FOI Act to whether it would be reasonably practicable to prepare an edited copy of the document for release to the applicant (paragraph 3.85). The Guidelines also explain how the obligations under section 22 should be applied, notice that the edited copy has been prepared should be given and a suggested approach in preparing the edited copy (paragraphs 3.86 - 3.90).

The Federal Court contract is lengthy (226 pages) but, as I have already found, the contract terms and conditions, with one exception, and some of the appendices and attachments (the latter two, in fact, being the bulk in length of the contract as a whole) in isolation do not contain any trade secrets or other information which has a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if that information was disclosed. The remaining attachments are not lengthy. Some contain trade secrets and such commercially valuable information exclusively and some have such information inter-disbursed amongst other text.

As mentioned above, on 5 December 2014 you confirmed to me on the phone that if the Federal Court contract was exempt you would nevertheless like to obtain, if possible, an edited copy of the document with the exempt material deleted.

In its submission Auscript details the clauses and attachments to the Federal Court contract which it contends, at a minimum, should be deleted in the event that an edited copy of the Federal Court contract is provided, together with brief reasons for this.

I have found that, save and except for one defined term, the contract terms and conditions contain no information that is a trade secret or other commercially valuable information that would be, or could reasonably be expected to be, destroyed or diminished, or that would be conditionally exempt under section 47G, hence I have decided that subject to deletion of that

one defined term the whole of the contract terms and conditions may be released.

Having considered that part of the submission received in relation to the appendices and from my examination of the Federal Court contract, I am satisfied that some of the information in the Appendices is exempt on one or more of these grounds, but that it is reasonable practicable to prepare an edited copy of the Federal Court contract deleting the exempt content.

Review rights

If you are dissatisfied with my decision, currently you can apply for internal review or an external review by the Information Commissioner. The Government has, however, announced that the Information Commissioner is to be abolished with effect from 1 January 2015 although the amending legislation to implement this change has not yet passed all stages of the legislative process.

I would encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

If an Information Commissioner review is sought before 31 December 2014 and it is not finalised by the Information Commissioner then, under the Bill which is now before the Parliament, that review will be deemed to have been made to the Administrative Appeals Tribunal for review of the Information Commissioner's decision although an application fee will not have to be paid.

Internal review

Under section 54 of the FOI Act, you can apply to the Federal Court in writing to for an internal review of my decision. The internal review application must be made within 30 days of the date of this advice. The application can be sent to the Federal Court's email address for FOI requests and applications foi@fedcourt.gov.au

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

External review

Currently, under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing up to and including 31 December 2014, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

From 1 January 2015, under the Bill now before the Parliament, an external review can only be

made to the Administrative Appeals Tribunal and then only after an internal review.

Release of the edited copy of the Federal Court contract

Although I have decided that it is reasonably practicable to prepare an edited copy of the Federal Court contract deleting exempt content, under subsection 27(7) of the FOI Act the Federal Court is prevented from providing such an edited copy to the you until after all opportunities that Auscript has for review or appeal of this decision have run out.

Questions about this decision

If you have any questions about this decision, please contact me using the details below.

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone 02 9230 8336
www.fedcourt.gov.au





Telephone: (02) 9230 8567 Facsimile: (02) 9230 8535

DX 613 SYDNEY Internet:

www.fedcourt.gov.au

A.B.N. 49 110 847 399

Your Ref: Our Ref:

11th February 2015

FEDERAL COURT OF AUSTRALIA

NSW DISTRICT REGISTRY

LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Dear

Internal Review Application under the Freedom of Information Act 1982 (Cth)

As advised by email of 19 January 2015, Auscript Australasia Pty Ltd (Auscript) applied (on 12 January 2015) for an internal review of a decision to release to you an edited version of a contract between the Federal Court of Australia (Federal Court) and Auscript for the provision of court reporting services dated 25 March 2013 Ref. PA3171 (the Federal Court contract).

Introduction

- On 5 December 2014 Deputy Registrar John Mathieson made a decision to release to you (the "FOI Applicant") under the Freedom of Information Act (1982), ("the Act") an edited copy of a contract between the Federal Court of Australia (the "Court") and Auscript Australasia Pty Ltd (Auscript), dated 25 Match 2013 Ref. PA3171 ("the Contract") for the provision of court reporting services ("the original FOI Decision").
- 2. On 12 January 2015, Auscript, as an affected third party pursuant to Part VI (s (s 54A(2)) of the Act, submitted an application to internally review the original FOI decision to release an edited version of the Contract. Time was extended for Auscript to apply for an internal review of Deputy Registrar Mathieson's original FOI Decision until 12 January 2015.
- 3. Under s54C(3) of the Act, the Court has 30 days from the date the review application was received to advise you, and the FOI Applicant, of my review decision. The last day to advise of

my decision is today (11 February 2015.)

4. In this decision, unless stated otherwise:

The Act Freedom of Information Act (1982)

Applicant Australasia Pty Ltd (Auscript)

Contract Between the Federal Court of Australia and

Auscript dated 25 Match 2013 Ref. PA3171

Court Federal Court of Australia

Documents Includes: the conditions of tender; the

annexures (including annexure "A") to the conditions of tender; the draft contract and the

Contract

Executed contract Is the contract dated 25 March 2013 PA3171

FOI Applicant

Original FOI Decision Decision of Deputy Registrar John Mathieson of

5 December 2014 to release to the FOI Applicant

an edited copy of a contract

RFT Request for tender Reference

the provision of court reporting services

Tender Proposal Application by Auscript responding to the

Summary of Decision

- 5. For the reasons set out below, I have decided the contract is an exempt document for the purposes of the Act. I have also decided that, in addition to the material that was deleted in the edited copy of the contract by the original decision, the following sections of the contract be deleted as containing exempt information:
 - a) Clause 9.1.1 to 9.1.6 inclusive; to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to

disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).

- b) Clause 9.2.2; to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).
- Appendix 1; personal information of Auscript staff/ contractors: deleted under s47F as unreasonable disclosure of personal information that is contrary to the public interest;
- d) Appendix 3, Contract Price; Clause 1 (b) and (c) and (b) and (c); to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).
- e) Clause 12; Pricing for Traveling and Accommodation; to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).
- f) Clause 14, Primary Pricing for Real Time; to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).
- g) Appendix 6 unconditional financial undertaking; to be deleted as information that was obtained in confidence and is confidential (s45).
- 6. I have decided that the material contained in clause 9.1; clause 9.2.1 and in Attachments I and J

of Appendix 2; do not contain exempt content and are therefore not excluded from disclosure under the Act. Accordingly, the contents of this information will *not* be redacted in the edited version of the contract and will be available publicly.

Original Decision

- 7. On 5th December 2014, Deputy Registrar John Mathieson, an authorised delegate of the Court decided, upon finding that the contract was an exempt document (and conditionally exempt) on various grounds, to release an edited copy of the contract to you as the FOI applicant with the exempt content deleted. The edited version of the contract was provided to Auscript for consideration before being released to you. The edited copy deleted or censored clauses, sections and attachments to the contract which the Deputy Registrar considered contained exempt content.
- 8. In the summary of decision, the Deputy Registrar stated:

I have decided, because the Federal Court contract contains some material in the Appendices which is exempt under each of sections 45 and 47 of the FOI Act, that the contract is an exempt document under those sections. I have also decided that that contract contains some material of the kind to which the section 47G exemption applies, the disclosure of which, on balance, would be contrary to the public interest. I am therefore also of the view that the contract is conditionally exempt under section 47G of the FOI Act. I have considered the possible application of the section 47F personal information conditional exemption to parts of the contract, but do not consider the contract contains any information which is conditionally exempt under section 47F of the FOI Act.

It is only one defined term in the contract terms and conditions and certain material in the Appendices to the contract that, in my view, is exempt under one or more of sections 45, 47 or 47G. I have therefore considered whether it is reasonably practicable to prepare an edited copy of the Federal Court contract for release to the applicant, with the exempt content deleted. I consider that it is reasonably practicable to do so, and I attach a copy of the contract in the form I have decided it can be released.

9. Under s 27(7) of the Act, the edited copy cannot be, and has not been, released to you as the FOI Applicant until all rights of review or appeal available to Auscript have expired.

Key Issue

- 10. Shortly stated, the applicant has applied for a review of the original decision to disclose sections and appendices of the contract that contain, it is submitted, exempt information. Put alternatively, the applicant contends that specific sections of the contract should be deleted as information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); as information that concerns the business, commercial or financial affairs of the Applicant and that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G) and that the identification and description of Auscript staff at Appendix 1 of the Contract is to be deleted because it involves the unreasonable disclosure of personal information (s47F).
- 11. The applicant does not challenge the conclusion, in the original decision, that the contract is an exempt document for the purposes of the Act.
- 12. To similar effect, the Applicant does not challenge and does not seek a review of the original decision to release to the FOI applicant those sections that have already been deleted as exempt in the edited version of the contract approved in the original decision. The applicant however does, as is clear from para [10] above, contend that the edited version of the contract under the original decision fails to delete all exempt content. The Applicant claims that additional and specific sections of the contract are to be deleted as exempt information (or as containing material that is exempt) under s45 (information obtained in confidence), s47 (information of a commercial nature that has a commercial value), under s47G, as conditionally exempt information concerning the business affairs of the Applicant and under and under s47F (unreasonable disclosure of personal information).

Standard of review

- 13. Under s54C(3) and paragraph [9.34] of the Guidelines issued by the Australian Information Commissioner under section 93A of the Act ("the Guidelines"), I am required to reach an independent view (and make independent findings) on whether the specific sections of the contract to which the applicants refer are exempt from disclosure by reason of containing information or material that falls within one of the exemptions under the Act.
- 14. I have read the detailed submissions dated 12 January 2015 and 17 November 2014, I have examined each of the documents, as defined above at para [2], including the conditions of tender annexures to the Request for Tender (RFT); the applicant (Auscript) Tender Proposal; the draft contract circulated with the RFT documents; the executed contract dated 25 March 2013

and finally, the redacted (edited) version of the contract that deleted information that under the original decision contained exempt information.

15. The applicant only needs to establish that one of the exemptions applies to each particular section or portion of the contract for the information in that section to be deleted as exempt information. Although I am not being asked to review the original decision that the contract is an exempt document under the Act, a finding by me that any part of the contract contains exempt content would be sufficient for the entire contract to be an exempt document under the Act.

Background

- In 18 July 2012 the Court issued invited expressions of interests (EOI) for the provision of court reporting services.
- 17. On 17 September 2012 suitable and potential suppliers who submitted EOI were chosen and invited on to submit a proposal to a Request for Tender (RFT) made available through the AusTender website. Amongst other things, the RFT set out the conditions of tender and included a draft of the proposed terms and conditions for any resulting contract.
- 18. The applicant and four other providers were invited to submit a tender proposal addressing the conditions of tender set out in the RFT. It is fair to say that each person that was invited to and submitted a tender proposal were trade rivals competing for business in the court reporting and transcription market in Australia.
- 19. Each applicant and the applicant submitted a confidential tender proposal in accordance with the conditions of tender and the draft proposed terms of contract. It is clear from the conditions of tender (clause 1.2) that any information provided prior to tender would be treated as confidential and that under clause 1.6 of the annexure to the conditions of tender and the draft terms and conditions of contract any information set out in the confidentiality register (an attachment to the draft contract and ultimately the executed contract) would be subject to an express confidentiality regime.
- 20. The applicant submitted a confidentiality register with its tender proposal (as attachment 5) in accordance with clause 1.2 of the conditions of tender and a confidentiality register, in substantively similar terms at appendix [9] to the executed contract.
- 21. Following the prequalified tender process and assessment, the court reporting contract was awarded to Auscript.

- 22. On 25 March 2013, the contract between the court and Auscript was executed.
- 23. On 14 August 2014 you sent a Freedom of Information (FOI) request to the Commonwealth Treasury for the release of the contract awarded to Auscript.
- 24. On 4 November 2014 that part of the FOI request from you which was sent to the Treasury on 14 August 2014 had, with the consent of the Federal Court, been transferred to the Federal Court.
- 25. It is evident from the applicant's submissions that you (the FOI Applicant) are the president of Australasian Court Reporting Industry Association (ACRIA), an industry body, and is also the General Manager of Spark and Cannon Pty Ltd. Spark and Cannon is an industry competitor. Senior executives of other industry competitors are also executives of the ACRIA. The applicant refers to the release of tender evaluation documents for transcription services in Queensland by the Queensland Department of Justice (in August 2014, Reference number 141447) under the Right to Information Act (Qld) 2009. Some of the applicant's competitors, and the applicant, submitted an expression of interest and/ or a tender proposal for a court reporting contract in Queensland. From this material, I think it is fair to say that competition in the court reporting sector in Australia is high.
- 26. On 27 October 2014 the Court notified Auscript in writing of the FOI request from you.
- 27. On 17 November 2014 HopgoodGanim, Lawyers, provided on behalf of Auscript a written submission objecting to the release of the Federal Court contract on the grounds that that document was exempt under the Act or, alternatively, that it was conditionally exempt under that Act and that its release would be contrary to the public interest.
- 28. On 5 December 2014 the Court notified Auscript of the exemption objections had been upheld and that an edited version of the contract deleting all exempt content would be released. The edited version of the contract with the exempt content deleted was provided to Auscript.
- 29. You were also notified of the original decision on 5 December 2014.
- On 19 December 2014 Auscript applied to extend the time to lodge an internal review until 12
 January 2015.
- On 22 December 2014 I agreed to extend the time Auscript had to apply for an internal review to 12 January 2015.

32. The Review Application was lodged by email on 12 January 2015 and the court notified you as the FOI Applicant of the review application by email on 19 January 2015.

Confidentiality under the RTS & the Federal Court Contract

- 33. As noted at [17] above, each person (including the applicant) invited to participate in the prequalified tender submitted a confidential tender proposal in accordance with the conditions of tender and the draft proposed terms of contract. It is clear from the conditions of tender (clause 1.2) that any information provided prior to tender would be treated as confidential and that under the draft terms and conditions of contract (and clause 1.6 of the annexure 'A" to the conditions of tender) any information set out in the confidentiality register (an attachment to the draft contract and ultimately the executed contract) would be subject to an express confidentiality regime.
- 34. The applicant submitted a confidentiality register with its tender proposal (as attachment 5) in accordance with clause 1.2 of the conditions of tender and a confidentiality register, in substantively similar terms at appendix [9] to the executed contract.
- 35. I have considered the confidentiality terms and conditions of both the conditions of tender and the terms and conditions of the draft and executed contract and am satisfied that the both the court and applicant expressly agreed that the information in the confidentiality register accompanying the tender proposal was obtained in confidence and that upon execution of the contract that information would be subject to the confidentiality provisions of the contract. In that connection, I agree with and gratefully adopt the statement and summary of the confidentiality provisions set out in the original decision (at page [2] and [3]) as follows:

The draft terms and conditions for the contract included a confidentiality provision as well as an interpretation provision containing a number of definitions of terms used in that confidentiality provision. Under that provision the contracting parties are prevented from disclosing any information which, under the contract, is confidential without the prior written consent of the other party. It is however expressly provided that the parties will not be taken to have breached that obligation if, amongst other things, the disclosure is authorised or required by law or the information is in the public domain otherwise than due to a breach of the confidentiality obligations under the contract. It was also provided that information provided to the Federal Court by the contracting supplier of court reporting services which is listed in the contract was agreed to be included as confidential information under the contract." (page [2]); and at page [3]:

The Federal Court contract contains a confidentiality provision and relevant definitions in its interpretation provision which are substantially identical to those set out in the draft terms and conditions of contract included with the RFT. An appendix substantially identical to the confidentiality register included with Auscript's tender proposal was included in the Federal Court contract as the details of the contractor's confidential information.

36. The applicants submit and upon a review of the material I accept that the tender proposal submitted in accordance with the conditions of tender contained, were confidential and in many (but not necessarily all) respects contained commercially sensitive and commercial in confidence information that would, if disclosed, provide a competitor an important insight into various aspects of the applicant's commercial systems, technical expertise and business activities within the competitive transcription services sector. I will return shortly to what sections of the contract claimed by the applicant and the subject of this review contain exempt content to be deleted from the edited contract.

The Review Submissions

- 37. I have considered the review submissions dated 12 January 2015 and the submissions dated 17 November 2014 in support of the original decision. The submissions provide comprehensive information on Auscript's high speed, technology integrated recording and transcription services, details of its technical capabilities and interoperable software, systems, processes and methods of operation; specific information on its pricing methodology; that they have expended considerable effort and money in developing their software platforms; other information of a technical nature; and information that relates to matters of a business nature which, it is claimed, is commercially sensitive and not available to its competitors.
- 38. It is also evident from the Auscript submissions that you (as the FOI applicant) have a clear association with some of Auscript's competitors both as General Manager of Spark & Cannon and as President of ACRIA. Auscript submits that the release of the contract to you under the original decision will result in the document being released to a trade rival (possibly more than one trade rival). Armed with the contract, Auscript argues that trade rivals will be able to replicate, emulate or adapt their technology systems and exploit that information to their own competitive advantage and at Auscript's expense. If their competitors had access to this information, it could be copied enabling achievement of at least the same performance outcomes without incurring the expense in developing the IP that Auscript has. Auscript submits that their interoperable software, systems and processes are unique and are not

standard or common across the court reporting sector.

39. Under this review, Auscript has applied to have additional sections of the edited contract deleted as containing exempt information. I will return to some of the sections, clauses, appendices and attachments to the contract below in considering whether the applicant's claims that additional specific content is to be deleted as exempt under the Act is made out.

Applicable Legislation and legal principes

- 40. Under the Act a person has a legally enforceable right to be given access to an agencies document which includes, for the purposes of this application, the Court. Under the Act the Court may refuse a person access to a document that is an exempt document.
- 41. The main exemptions relied upon by the applicant in this review are the exemptions contained in s45 (information obtained in confidence), s47 (information of a commercial nature that has a commercial value) and the conditional exemptions in s47G, (information concerning the business affairs of the Applicant) and s47F (unreasonable disclosure of personal information).
- 42. As relevant; the exemption for documents containing material obtained in confidence is set out in subsection 45(1) of the FOI Act states:

A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

- 43. The exemption from disclosure for information of a commercial nature that has a commercial value under sub section 47(1) of the Act states:
 - . (1)A document is an exempt document if its disclosure under this Act would disclose:

(a)trade secrets; or

- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- 44. The applicant also relies upon two conditional exemptions. The conditional exemption for documents that involve the unreasonable disclosure of personal information is contained in sub section 47F(1) which states:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

- 45. The conditional exemption available for documents that could have an unreasonable adverse effect on the business, commercial or financial affairs of a person or undertaking is contained at s47G(1)(a) of the Act in the following terms.
 - (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- 46. Under s11A(5) a conditionally exempt document must be disclosed under the Act unless (in the circumstances) access to the documents would, on balance, be contrary to the public interest. Section 11B sets out the factors that favour disclosure in assessing whether release of a document would be contrary to the public interest. The Guidelines set out a non-exhaustive list of factors against disclosure under the public interest test. I will return to these later in this decision.
- 47. The applicable principles relevant to establishing whether (one or more of) the claimed exemptions applies, are set out in Guidelines. Under the Act, I must have regard to the published Guidelines. I will return to these principles in the course of reviewing the individual sections of the contract below Auscript claims contain exempt matter below.
- 48. Finally, s22 of the Act provides that the court must not refuse access to an exempt document if it is practicable to give the FOI applicant an edited copy of the document with the exempt matter deleted (or censored) and the FOI applicant would wish to be given such a copy. As noted in the original decision, (at page [10], you have requested an edited copy of the contract.

49. Finally, it is convenient at this point to note that disclosure under the Act is to the world at large without restriction. An agency cannot impose limitations upon that disclosure although a FOI applicant may voluntarily agree to limit the use, dissemination or wider circulation of the relevant information. No such agreement has been given.

Do the identified sections of the contract contain exempt matter?

50. I have considered and independently reviewed all of the relevant documents and both sets of submissions received from the applicant. For the particular sections of the contract to be deleted as exempt, the applicant only needs to establish that one of the statutory exemptions applies.

Commercially valuable information; trade secrets – s47(1) exemption; Unreasonable adverse effect on the Applicant's business operations (s 47G).

Contract clause 9.1

- 51. As the heading suggest, clause [9] sets out the contract provisions relating to the intellectual property in relevant contract material.
- 52. The applicant contends that the contents of various sub clauses in clause 9.1 are exempt as information that discloses trade secrets or information of a commercial nature and value in the relevant sense required by s47(1)(b) or as information that concerns the business, commercial or financial affairs of the applicant that if released, could reasonably be expected to unreasonably affect their transcription business (conditional exemption under s47G).
- 53. For the commercially valuable exemption in s47(1)(b) to be made out, the applicant must satisfy two conditions. First, that the relevant clause contains information of a commercial character and value and secondly, that the disclosure of this information would or could reasonably be expected to destroy or diminish the commercial value of the applicant's contract.
- 54. With respect to the first condition, considerations and factors that are relevant to establishing whether the 'relevant' Information has a commercial character and a commercial value are set out in the Guidelines at paragraph [5.188] to [[5.190]. One factor that the applicant submits is relevant is that the information in clause [9] is integral to its pricing structure and business model which, the applicant submits, and I accept, it has spent considerable time and effort in creating to obtain a competitive edge over trade rivals in the court reporting market.
- 55. Another factor that militates towards information having a commercial value is what a third party would be prepared to pay to obtain and use information about the applicant's product

and services. I accept the applicant's contentions that the relevant clauses describing the contracting parties' entitlements to the intellectual property in the contract material could provide competitors with a valuable insight into various aspects of the applicant's pricing structures, business operations and service delivery models which could be copied enabling achievement of at least some of the performance outcomes without incurring the expense and time in developing the IP etc that Auscript has.

- 56. Other considerations include that the information must not be in the public domain for it to have a commercial value; that the information has currency with competitors and that the information is sufficiently specific, and not in general terms, such that the disclosure could possibly enable trade rivals to emulate the transcription systems and services which they have developed, marketed and sell.
- 57. Having examined the contract, I am satisfied that:
 - a) the contents of clauses 9.1.1; 9.1.2; 9.1.3; 9.1.4 and 9.1.4 were not contained in the conditions of tender or the draft contract and were not otherwise in the public domain;
 - that all content relating to IP was provided during the tender process by the applicant in confidence, as listed in a confidentiality register as attachment (5) to the RTS,
 - c) Information in clause 9 relating to IP in the contract material is expressly identified as confidential in the confidentiality register of the executed contract at appendix [9].
 - d) That the relevant contract provisions are sufficiently specific and intertwined with the applicant's business model as to have a commercial value that if disclosed would or could affect the applicant's viability or profitability.
- 58. Having regard to the applicant's submissions on the contextual circumstances of this FOI application, I am prepared to infer that one or more of the applicant's competitors may be prepared to pay to obtain the pricing information contained in the executed contract and that under the Guidelines this is a factor that militates towards the pricing information having a commercial value.
- 59. After taking each of these matters to which I have referred into account, I am satisfied that the information in clauses 9.1.1 to 9.1.4 has a commercial character and has a commercial value to the applicant.
- 60. I have *not* reached the same conclusion with respect to clause 9.1 however. That clause is, except for the reference to Appendix 8, in substantively identical terms to the corresponding

- clause in the draft contract circulated with the RTS documents. It is difficult to see how clause 9.1 could be of commercial value to the applicant given that it is in the public domain.
- 61. Returning to the second limb of s47(1) exemption, I must be satisfied that the release of the clauses relating to the applicants IP entitlements under the contract would, or could reasonably be expected to destroy or diminish the value of applicants business. According to the Guidelines, an expectation that the release of the relevant information would (or could) destroy or diminish the commercial value of that information must be reasonably based; the impact on value must be not be minimal or nominal although it is not necessary to establish on the balance of probabilities that that the commercial value could reasonably be expected to be destroyed or diminished.
- 62. The applicant submits, and I accept that, the disclosure of the information in clause 9.1.1 to 9.1.6 (but excluding clause 9.1) in relation to the structure of IP rights, could allow a competitor, with sufficient technical knowledge and experience in the transcription business or other members of ACRIA to ascertain aspects of the applicant's operations and in doing so could obtain a commercial advantage in future tendering processes within the court reporting sector.
- 63. On this basis, I find that the disclosure of clauses 9.1.1 to 9.1.6 to a competitor could reasonably be expected to diminish or destroy the commercial value of the applicants' business and as a corollary could reasonably be expected to be of considerable value to trade rivals within the transcription sector.
- 64. I have considered the content of clause 9.2.2 and find that the information relating to the licence for the pre-existing material was not in the draft contract or conditions of tender and therefore not in the public domain. I accept that this information relates to the terms on which the applicant entered into a contract with the court; that this term (perhaps in aggregate with the other clauses of the contract claimed by the applicant to be exempt) could be easily extrapolated and used by competitor's in future tender proposals etc. I am also satisfied, applying the above principles, that this information is an integral part of the overall pricing methodology and services model that underpins the applicant's contract with the court and is therefore of considerable commercial value to them which value could be diminished or adversely affected if released under the Act.
- 65. As to clause 9.2.1, there is only one modification that I can discern from the corresponding clause in the draft contract accompanying the conditions of tender, and am not persuaded that this modification, viewed in isolation or with the contract as a whole, contains or reveals, in any material way, aspects of the applicant's commercial activities. Having regard to the content of

- clause 9.2.1, I am not satisfied that the release of this information, even if it has a commercial value, could diminish or destroy the value of the applicant's business in the relevant sense.
- 66. The applicant's also contend that the information set out in the clauses above (in Part 9) is conditionally exempt from disclosure and should be deleted under s47G of the Act. The applicant's submit that the clauses contain information that concerns their business, commercial or financial affairs which if disclosed could reasonably be expected to have an unreasonable adverse effect on their business or commercial affairs.
- 67. For an exemption under s47G to be made out, I have to be satisfied of two things. *First*, that the document discloses information concerning the applicant's commercial, business or financial affairs; and *secondly*, that disclosure would or could reasonably be expected to have an unreasonable adverse effect on their business or commercial affairs; or would be reasonably likely to prejudice the future supply of information to the court. If the contents are conditionally exempt under s47G, the content is nonetheless to be released unless the applicant can demonstrate that it would be contrary to the public interest to do so (ss11A(5) and 11B of the Act). I will return to this qualification later in this decision.
- 68. The meaning of 'business affairs' was considered in Re Stewart and Department of Transport (1993) 1 QAR 227 at [103] to be "the affairs of a business undertaking which is carried on in an organised way (whether it be full-time or only intermittent) with the purpose of obtaining profits or gains (whether or not they actually be obtained). Applying this test, I am satisfied that the clauses in Part 9 of the executed contract contain information that concerns the business affairs of the applicant as to meet the first strand of s47G.
- 69. I am also satisfied (for the reasons given above at [52-63]) that the disclosure of the information in clauses 9.1.1 to 9.1.5 if released would or could reasonably be expected to have an unreasonable adverse effect on the applicant's business or commercial affairs. For the avoidance of doubt, I am not satisfied that disclosure of clause 9.1 would have an adverse effect to the requisite degree.

Appendix 2 - Statement of Requirements

70. Turning to attachments "I" and "J" of Appendix 2, these documents set out specifications for schedules of court room technology in all registries. The applicant contends that the information in these attachments was provided during pre-contract negotiations with the court, was provided in confidence, relates to the applicant's software, systems and processes and is crucial to the applicant's business model and continued profitability and viability; is

commercially valuable and could, if released, reasonably cause that commercial value to be diminished or destroyed. The attachments set out details of court room technology equipment in all registries.

- 71. I have examined the contents of the schedules. It is not clear to me why releasing the inventory of the audio and recording equipment, most of which is in general and descriptive terms, has a commercial value in the relevant sense and how, as the applicants submit, disclosure of the schedule of that equipment is linked to or would provide a third party with an important insight into the applicant's business systems and workflow models for recording, exporting and transcribing information in an efficient and reliable way from geographically dispersed court rooms. There does not seem to me to be anything unique or special about the nature, configuration or location of this equipment in the requisite sense. There is no evidence that equipment has been modified or configured across the registries for the applicant's use. To the contrary: the various items of equipment identified in the attachment appear to be standard recording equipment that would be common throughout the court reporting sector. In addition, the submissions do not (adequately) address the extent to which the inventory of equipment in open court rooms is not information that is already in the public domain. In this connection, most of the equipment referred to in the schedule can be observed in open court rooms in the various court registries. Separately, and importantly, the applicant's submissions do not explain what commercial value is to be ascribed to this equipment for me to be sufficiently satisfied that this value could be compromised/ diminished in the relevant sense under s47.
- 72. To similar effect, I am not satisfied that releasing the schedule of court room technology described in the attachment to a trade rival would, or could reasonably, put the applicant at a competitive disadvantage or that a competitor armed with this information would, or could, reasonably be expected to be in a an advantageous position to negotiate or secure future transcription contracts in preference to the applicant.
- 73. It follows that the applicant has failed to persuade me that the schedule of equipment in attachments "I" and "J" of appendix 2 should be deleted from the edited contract as containing commercially valuable content. Nor for completeness do I consider that this information would satisfy the requirements of being a trade secret to be exempt under s47(1)(a). In this aspect, I attach significance to my findings in paragraph [71] above that the release of this information to a competitor would not be liable to cause real or significant harm to the applicant in the relevant sense (refer to para [5.186] of the Guidelines).

74. While the submissions establish that the schedule of court room technology concerns the business, commercial or financial affairs of the applicant, in the relevant sense, I cannot conclude, for the reasons in para [71], that the release of the schedule could reasonably be expected to give rise to the matters set out in s47G(1)(a) or (b) of the Act. I will deal with the claim that this information is exempt as confidential information (under s45) below.

Appendix 3 - Contract Price

Clause 1 General – Pricing Structure (b) and (c) and (b) and (c)

- 75. I have examined the contents of paragraphs (b) and (c)(twice appearing) of clause 1 of appendix 3 of the executed contract which deals with pricing structure for the provision of transcription services by the applicant under the contract. I agree with the applicant's submission that there is no reference to the details or any specific requirement to address these matters in the conditions of tender or the draft contract accompanying the RTS. I accept that this pricing information is sufficiently specific in nature, sets out details of the applicant's pricing rates; is and remains current and relevant to the applicant's ongoing operations; was communicated in confidence in the tender proposal (per attachment 5 of the tender proposal and condition 1.6 of annexure A to the RTS conditions); is expressly categorised as confidential information in the confidentiality register in appendix 9 and under clause 12 of the executed contract; has a commercial value to the applicant that is linked to its current operating model and important to its continued profitability and viability and that the release of that detail could reasonably be expected to diminish or destroy that commercial value by enabling a competitor to realign their business / pricing models to negotiate better rates in preference to or at the expense of the applicant. I also find that a disclosure of this information could reasonably be expected to have an unreasonable adverse effect on the applicant's business, commercial and financial affairs for substantially the same reasons.
- 76. On this basis, I find that the applicant has established that paragraphs (b) and (c)(twice appearing) of clause 1 of appendix 3 of the executed contract relating to pricing structure is exempt under ss 47 and conditionally exempt under 47G of the Act.

Clause 12, PRICING FOR TRAVELLING AND ACCOMMODATION FOR THE COURT AND OTHER ORGANISATIONS and Clause 11: Copying and Service Fees

77. Clause 12 of appendix 3 to the contract sets out details of the applicant's pricing rates for travel and accommodation in providing the transcription services that were not, as would be self-evident, contained in the draft contract or conditions of tender. The table itself in clause 12 is

not exempt because the table format and relevant service criteria corresponds to the table in paragraph [3.4.1] of the annexures to the conditions of tender. Clause 11 sets out details of the

Applicant's copying and service fees which details were not in the RFT documents or draft contract. The table format used in clause 11 is not exempt because it corresponds to the table in paragraph [3.3.62] of the annexures to the conditions of tender. I accept that the charge rates in the tables at clauses 11 and 12 of appendix 3 is information that was provided in confidence, was expressly categorised as confidential information in the confidentiality register in appendix 9 of the executed contract; that while the information has no particular technicality, it is important and relevant to the applicant's pricing methodology, overall commercial strategy and has a commercial value. I am also persuaded that the pricing rates developed by the applicant have ongoing relevance to the applicant's continued viability and the profitability of its service model. I am also satisfied the disclosure of the pricing rates developed by the applicant has ongoing relevance to the applicant's continued viability and the viability of its service model which could, if released, reasonably be expected to diminish or destroy that commercial value. I also find that a disclosure of this information could reasonably be expected to have an unreasonable adverse effect on the applicant's business, commercial and financial affairs.

Clause 14 - Primary pricing for real Time transcript

- 78. The applicant contends that the details of their pricing structure for real time transcripts is unique and would if released provide trade rivals with important insight into their business model and services. The applicant submits that information about its pricing for real time transcripts is not known to or available to its competitors and that the release of such information would enable those competitors to exploit that information to their own advantage at the applicant's expense.
- 79. Based on the submissions that have been made and having examined and compared the details set out in table A of clause 14 of the executed contract with clause 3.61 and 3.62 of the annexures to the conditions of tender (and draft contract), I am satisfied that the pricing information for real time transcript services stipulated in the executed contract differs in material respects to the specifications in draft contract. The table format and the items appearing in the left hand column under the heading: "Costs per Party", against which the pricing rates are provided is not, however, to be deleted. This is because tender proponents were required (not necessarily in the table format) to provide costs on a per party and party shared costs basis; for real time services (see paragraph 3.6.2(a) of the annexure to the conditions of tender). However, I am satisfied that the content and pricing rates in clause 14 of

the appendix contains and reveals the applicant's pricing methodology/ structure which has a commercial value, which if disclosed, could reasonably be expected to diminish or destroy that commercial value.

80. I also find that a disclosure of this information could reasonably be expected to have an unreasonable adverse effect on the applicant's transcription business, commercial and financial affairs. I am satisfied therefore that this clause is to be deleted as containing exempt content under ss47 and conditionally exempt 47G of the Act.

The Public Interest Test (s11A(5)) -business affairs conditional exemption

- 81. While I have found that some of the clauses above are also conditionally exempt under s47G of the Act, it is not necessary for me to reach a concluded view on whether it would be contrary to the public interest to release this information. This is because I have decided that the relevant sections of the contract that are conditionally exempt are also exempt under s47 as commercially valuable information. Nonetheless, for completeness, I will deal with the applicant's contention briefly.
- 82. Under s11A(5) I must now decide if the release of this content would on balance be contrary to the public interest. Section 11B then sets out four factors favouring disclosure which must, if relevant, be considered when assessing whether disclosure of a document would be contrary to the public interest. Of the factors in favour of disclosure set out in section 11B, the main factor of relevance in this matter, in my opinion, is: promote the objects of the Act na possibly oversight promote effective oversight of public expenditure. The Guidelines set out non-exhaustive lists of factors in favour of disclosure and those against disclosure. Of the factors in favour of disclosure set out in the Guidelines, the most relevant factor is: promote effective oversight of public expenditure. Of the factors against disclosure set out in the Guidelines, the most relevant factors are: could reasonably be expected to prejudice an agency's ability to obtain similar information or confidential information in the future.
- 83. The decision making required of me by s11A(5) does not involve a mere arithmetic exercise. It is simply not a case of determining whether there are more factors in the public interest as opposed to factors that suggest it is contrary to the public interest. The exercise is more subtle. It includes an assessment of which of the criteria in the Act (and Guidelines) is more or less significant than others in the circumstances before me.
- 84. In my view, and with some hesitation, I do not think the applicant has made out their case that the court, as an agency for relevant purposes under the Act, may have some difficulty in

obtaining similar information or confidential information in the future. The applicant's claims are of a general nature and not substantiated by reference to any evidence as to the likelihood that others would not voluntarily provide the court with confidential information or be reasonably likely to impair the ability of the court to obtain similar information in the future. If follows, in my opinion, that it would not be contrary to the public interest to release the conditionally exempt content

- 85. Another factor the applicants contend is relevant to the public interest test in ss11A(5) & 11B is that the FOI applicant is motived or actuated by ulterior purposes in seeking the release of the applicant's contract with the court. In this connection, the applicant has provided and for present purposes I accept the background information on the link of the FOI applicant to industry competitors (see [25] above for a summary of the relevant facts). Where the public interest lies in a particular matter is a matter of judgment and degree having regard to the circumstances in which the FOI request was made and that apply at the time of the FOI decision.
- 86. While there could be alternative plausible explanations why the FOI applicant has requested access to the contract between the applicant and the Court, I attach significant weight on the accumulation of material before that there is a real possibility that the release of information relating to the applicant's business affairs could adversely affect the applicant's commercial operations, as factors that militate against the public interest in disclosing this material at this time. Accordingly, in my view, disclosure of the relevant information relating to the applicant's business affairs would, on this basis, is contrary to the public interest. In any event, the relevant clauses do not have to be released because the information in those clauses contains, as noted above, both conditionally exempt information and exempt information.

Material obtained in Confidence. s45 Exemption

- 87. The applicant also relies upon the confidentiality exemption in s45 for each section of the contract that I have considered above.
- 88. Under the Guidelines (paragraph 5.141) there are a number of factors that are relevant to establishing whether confidence inheres in the relevant document and whether, as the terms of s45 require, disclosing that information would found an action for breach of confidence.

 Relevant factors under the Guidelines that I must have regard to are that the information:
 - a) must be specifically identified;
 - b) must have the necessary quality of confidentiality;

- must have been communicated and received on the basis of a mutual understanding of confidence;
- d) must have been disclosed or threatened to be disclosed, without authority; and
- e) if disclosed without authorisation (ie unauthorised disclosure) has or will cause detriment (paragraph 5.143) to the party who has provided the information.
- 89. The Guidelines also explain what is required to be met or satisfied in relation to each of these criteria (paragraphs 5.145 5.155).
- 90. In relation to sub clauses [9.1.1] to [9.1.5] and [9.2.2] of the contract, I am satisfied these sub clauses set out specific information in relation to the applicant's IP rights in and to the contract material; that this information was communicated in confidence with an expectation of and, under the executed contract, a legally enforceable right to confidentiality. I am also satisfied as to the confidentiality of the contents of the relevant clauses having examined and compared the contract and the conditions of tender and the draft contract circulated with the RFT and that the content of the relevant clauses did not feature in the RFT documents or draft contract. The contents are therefore not in the public domain. Equally, I am satisfied that disclosure of this information is not authorised by the applicant; does not fall within one of the exceptions or qualifications to the parties confidentiality obligations (in clause 12.3 of the executed contract). Based on the submissions and my findings at [51-69] above that disclosure of this information could destroy or diminish the commercial value of the applicant's business by more than a nominal or minimal amount, I am satisfied that unauthorised disclosure will cause detriment, in the relevant sense. While it's strictly not necessary, given my conclusions at [51-69] above that these clauses are exempt as commercially valuable information; I have also concluded that these clauses are exempt as information obtained in confidence under s45. In other words, the executed contract expressly precludes the disclosure of the relevant clauses of the contract as confidential information.
- 91. For the same reasons given at [90] above, the confidentiality exemption does not apply to clause [1.1] or [2.1] because both clauses are in substantively mirror terms to the conditions of tender and draft contract circulated with the RFT which are documents in the 'public domain'. There is therefore nothing inherently confidential or secret about this information, either at common law or under clause 12.3 of the executed contract, and its release could not give rise to an action for breach of confidence.
- 92. As the attachments 'I' and "J" of appendix 2 relating to the statement of requirements, I have

found the schedule of equipment even though given in confidence and specified in the confidentiality register of the executed contract as confidential, but for the reasons give earlier in this decision, because details of the equipment is within the public domain the confidentiality protections do not apply (under clause 12.3(g) of the executed contract). Additionally, the description of the equipment recorded in the schedule is general and there is nothing in the material before me to show how releasing the details recorded in the schedule would likely adversely affect the continued transcription services of the applicant. I have therefore concluded that this schedule is not exempt under s45.

- 93. I also consider that in appendix 3, the clauses dealing with pricing structure and rates in paragraphs (b) and (c)(twice appearing) of clause 1; clauses 11 and 12 on copying fees and accommodation expenses and clause 14 on pricing for real time transcript of appendix 3, for the reasons given above at [75-80] contain confidential material that is exempt under s45 and accordingly that this material is to be deleted.
- 94. More contentiously, the applicant contends that specific information relating to the identity of the guarantor and any financial undertakings made in Appendix 6 Unconditional Financial Undertaking is exempt as material obtained in confidence. The applicant submits, and the documents I have inspected support a finding that the Unconditional Financial Undertaking was included in the confidentiality register (as attachment 5) in the applicant's tender proposal, is categorised as confidential information in the corresponding register as appendix 9 of the executed contract and that this information is not in the public domain.
- 95. I have set out at [88] above what factors must be considered in assessing whether the s45 exemption applies. Dealing with each strand briefly.
- 96. As to condition (a), I accept that the information is specific and identifies the name of the guarantor and the amount guaranteed.
- 97. As to conditions (b) and (c) the applicant contends and based on the material before me I accept that the name of the guarantor and the guaranteed amount (under the instrument) was sent and received in confidence and that there is no evidence that the particular details of the undertaking or amount is in the public domain. While the general form of undertaking was an attachment to the conditions of tender which, according to annexure D (part 4) of the RTS, would be considered by the court in assessing a tenderer's financial capability, it can be inferred from the documents and from the circumstances in which the information was provided that the details of the financial undertaking (as to name of the guarantor or value) would not be disclosed. I have examined and compared the draft form of undertaking and the executed

- undertaking and am satisfied that these details were not included in the draft circulated with the RFT. There is no material before me to suggest that details of the guarantor or the amount/ value have been divulged to third parties or is in the public domain.
- 98. As to condition (d) there is no evidence before me that the applicant has given consent to the disclosure of the information or that such disclosure is required under the (so called) 'iniquity rule' or principle (for information to be released to a proper authority in respect of crimes, civil wrongs or serious misdeeds of public importance).
- 99. As to condition (e), I must consider whether unauthorised disclosure of the information in the documents sought would cause detriment. As the Guidelines explain, the Administrative Appeals Tribunal (AAT) has applied this element in numerous cases, but it is not certain whether it must be established. The uncertainty arises because of an argument that an equitable breach of confidence operates upon the conscience (to respect the confidence) and not on the basis of damage caused. The Guidelines say that, despite this uncertainty, it would be prudent to assume that establishing detriment is necessary. In any event, detriment is not difficult to establish. The High Court has said that '[i]t may be a sufficient detriment to the citizen that disclosure of information relating to his affairs will expose his actions to public discussion and criticism'. And the AAT has said that 'the detriment may be the disclosure itself in circumstances in which the disclosure is neither consented to nor otherwise justified. That disclosure may be accompanied by embarrassment, distress or the like or by tangible loss or it may simply be unconscionable.
- 100. While it's not entirely clear from the submissions what detriment either the applicant or the guarantor would suffer or be likely to suffer if the name and value of the guarantee were disclosed, I accept that the threshold is a low one and that the release of this information, which is otherwise confidential, may cause some embarrassment to the applicant. Alternatively the release of information concerning the applicant's financial capacity may in some way affect its ongoing ability to negotiate and secure future business opportunities in the transcription sector, or the terms on which it could secure future opportunities. It is not for me to speculate. It is sufficient for the purposes of this review that the release of this information could cause detriment in the relevant sense.
- 101. In these circumstances I am satisfied that details of the guarantor and guarantee value are to be deleted as confidential material under s45. The form and content of the undertaking (guarantee) in all other respects however is not be deleted (and is not exempt) because it mirrors the draft form of undertaking which was appendix 6 to the draft contract circulated with

the RFT documents.

Personal Information – s 47F conditional exemption

- 102. Names, position titles and business addresses of particular persons employed/ contractors engaged by the applicant are set out in detail in appendix 1 of the executed contract. The applicants contend in their written submissions of 17 November 2014 that disclosing these details would 'involve' the unreasonable disclosure of personal information about those persons for the purposes of the conditional exemption in s47F.
- 103. There are two aspects to the personal information exemption. *First*, whether the disclosure of the information contained in the document will 'involve' the disclosure of personal information about a person other than the FOI applicant. There can however, only be a disclosure of 'personal information if the document is capable, either directly or indirectly, of identifying the person whose personal information is mentioned. The *second* aspect is whether the disclosure of personal information about a person is 'unreasonable'. If I find that the material is personal information, and conditionally exempt, I must nonetheless disclose it unless access to the document would be contrary to the public interest. I will return to this aspect later in my decision.
- 104. As to the first aspect, there are a number of factors and considerations that, under the Guidelines (at para [6.116]), are relevant in establishing whether (or not) particular information is personal information about a person. Having reviewed the contract and considered the applicable principles, I find that:
 - information in the form of a person's name in the appendix to the contract is sufficient to identify that person; (Guideline para [6.118]);
 - information in the contract that discloses the individual staff member's name, business title
 and business address/ location is information that is personal information to the individual
 staff members named in the contract. That is, the contract contains information personal to
 the person(s) named; (see Guideline para [6.125]).
- 105. Thus I am satisfied that the first limb of s 47F is made out.
- 106. To satisfy the exemption, however, disclosure of the personal information must be unreasonable. The test of unreasonableness involves a balancing of competing interests. On the one hand protecting the right to personal privacy of an individual whose personal information may be unreasonably disclosed by granting access to the information against the

object of the Act to extend as far as possible the right of the community to access to information in the possession of government or an agency.

107.In carrying out this balancing exercise, the following factors and considerations are relevant: firstly, all the surrounding circumstances including whether disclosure to the world at large would be unreasonable, not whether disclosure to an applicant would be unreasonable, secondly, the interest, motive or the purpose for which the FOI applicant requires release including the possibility the information will be disclosed to the world at large; thirdly, the wishes and views of those whose personal information will be disclosed including any desire that person has for the information to be kept confidential; fourth, the context in which the personal information is contained or appear.

108. The applicants submit that:

- There's a real possibility the people (or contractors) named in the contract could be contacted directly by litigants or others for information that is highly secure and contains sensitive content,
- They have concerns about the personal safety and welfare of their staff by reference to a number of incidents described in the submissions including reported incidents of staff being threatened, harassed and verbally abused;
- There may be ulterior purposes why this information is being sought;
- d) The information was obtained and provided in confidence and the employees named in the contract do not wish to have their personal information released;
- e) There is no good public interest that would be achieved by the release of this information.
- 109.On the other hand, factors that could militate against non- disclosure is the availability of this information from public sources including, as noted in the original decision, (at page [8]) "....from a number of sources including the Federal Court and Auscript's websites and online social networking services (such as LinkedIn)".
- 110.In many respects this is a difficult aspect of this review application. While contact information for the staff (contractors) may be available via the applicant's website (among other places) I am very mindful of the applicant's submissions on the personal safety of their staff. The submission goes into some detail on various incidents and there is no reason for me to doubt that these concerns are genuine and made in good faith. The history recited indicates that the concerns are not vague, speculative or theoretical and that if disclosed there is a real possibility

of future threat to those persons named in the appendix. It follows that I am satisfied, on balance that the release of this personal information would be unreasonable and is conditionally exempt as personal information under s47F.

The Public Interest Test (s11A(5)) - personal privacy

- 111.I have found that information relating to personal privacy of the applicant's staff is conditionally exempt under s47 as personal information. Under s11A(5) I must now decide if the release of this content would on balance be contrary to the public interest.
- 112. Section 11B then sets out four factors favouring disclosure which must, if relevant, be considered when assessing whether disclosure of a document would be contrary to the public interest. Those four factors are as follows:
- 113.Of the factors in favour of disclosure set out in section 11B, the only factor of relevance in this matter, in my opinion, is: promote the objects of the Act.
- 114. The Guidelines set out non-exhaustive lists of factors in favour of disclosure and those against disclosure. Of the factors in favour of disclosure set out in the Guidelines, the most relevant factor is: promote effective oversight of public expenditure. Of the factors against disclosure set out in the Guidelines, the most relevant factors are: could reasonably be expected to prejudice the protection of an individual's right to privacy and could reasonably be expected to harm the interests of an individual or group of individuals.
- 115.I have considered the factors in favour of disclosure. I am not satisfied that disclosure of staff (contractor) personal information contained in appendix 1 will promote any of the public interest objects or factors set out in the Act or the Guidelines.
- in the relevant document would unreasonably affect an individual's privacy. As noted at [83] above, the decision making required of me is more than a mathematical exercise. The risk to personal safety recited by the applicant is a weighty consideration for me in determining whether the release of this information would be contrary to the public interest. The overriding consideration for me however is to balance the competing factors to determine where the balance of public interest lies based on the particular facts of the matter at the time the decision is made. This exercise involves an assessment of which of the criteria in the Act (and Guidelines) is more or less significant than others in the circumstances before me.

117. Given the nature and seriousness of the concerns raised by the applicant and the potential risk

to the individuals named, I have concluded that it would be contrary to the public interest to

release this information at this time and that the public interest in the protection of these

persons' individual's privacy outweighs any factors in favour of disclosure. I have reached this

conclusion even though the names of the staff can (apparently) be located on the applicant's

website.

Is editing the contents of the contract 'reasonably practicable'? s22 of the Act

118.I have concluded that it is possible and reasonably practicable for the exempt contents of the

contract to be deleted and for an edited version of the contract to be released to the FOI

applicant censoring the exempt content. I understand that you would be interested in receiving

an edited version of the contract.

119.In that connection, an edited version of the contract that deletes content that I have held to be

exempt has been sent to Auscript. I have also independently reviewed the content that was

deleted as exempt under the original decision and affirm that this material should be deleted as

exempt on the grounds identified in that decision.

120.As you know, in accordance with s27(7) of the Act, the Court is precluded from providing you

with the edited version of the contract until the appeal rights and rights of review available to

Auscript have expired.

Review rights

121.If Auscript is dissatisfied with my decision, you may apply to the Information Commissioner to

review my decision. An application for review by the Information Commissioner must be made

in writing within 28 days of this decision and be lodged in one of the following ways:

Online:

https://forms.business.gov.au/aba/oaic/foi-review-/

Email

enquiries@oaic.gov.au

Post:

GPO Box 2999, Canberra ACT 2601

In person:

Level 3, 175 Pitt Street, Sydney NSW

Note: More information about Information Commissioner Review is available on the Office of the Australian

Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

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Questions about this decision

If Auscript or its lawyers have any questions about this decision, please contact me using the details below.



Michael Wall

District Registrar (NSW & ACT)

Tel: 02 9230 8544 Fax: 02 9230 8535

Email: michael.wall@fedcourt.gov.au



Telephone: (02) 9230 8567 Facsimile: (02) 9230 8535

DX 613 SYDNEY Internet:

www.fedcourt.gov.au

A.B.N. 49 110 847 399

Your Ref: Our Ref:

11th February 2015

FEDERAL COURT OF AUSTRALIA

NSW DISTRICT REGISTRY

LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Internal Review Application under the Freedom of Information Act 1982 (Cth)

This letter corrects typographical errors in sub paragraphs [5(a)] to [5(e) but is otherwise identical to the letter sent to you by email at 8.49pm on Tuesday 10 February 2015.

By application dated 12 January 2015 Auscript Australasia Pty Ltd (Auscript) has sought an internal review of a decision to release an edited version of a contract between the Federal Court of Australia (Federal Court) and Auscript for the provision of court reporting services dated 25 March 2013 Ref. PA3171 (the Federal Court contract).

Introduction

- On 5 December 2014 Deputy Registrar John Mathieson made a decision to release to
 (the "FOI Applicant") under the Freedom of Information Act (1982), ("the Act") an edited
 copy of a contract between the Federal Court of Australia (the "Court") and Auscript Australasia
 Pty Ltd (Auscript), dated 25 Match 2013 Ref. PA3171 ("the Contract") for the provision of court
 reporting services ("the original FOI Decision").
- On 12 January 2015, Auscript, as an affected third party pursuant to Part VI (s (s 54A(2)) of the
 Act, submitted an application to internally review the original FOI decision to release an edited
 version of the Contract. Time was extended for Auscript to apply for an internal review of
 Deputy Registrar Mathieson's original FOI Decision until 12 January 2015.
- 3. Under s54C(3) of the Act, the Court has 30 days from the date the review application was

received to advise you, and the FOI Applicant, of my review decision. The last day to advise of my decision is 11 February 2015.

4. In this decision, unless stated otherwise:

Freedom of Information Act (1982) The Act Auscript Australasia Pty Ltd (Auscript) Applicant Between the Federal Court of Australia and Contract Auscript dated 25 Match 2013 Federal Court of Australia Court Includes: the conditions of tender; the **Documents** annexures (including annexure "A") to the conditions of tender; the draft contract and the Contract Is the contract dated 25 March 2013 Executed contract FOI Applicant Decision of Deputy Registrar John Mathieson of Original FOI Decision 5 December 2014 to release to the FOI Applicant an edited copy of a contract for Request for tender RFT the provision of court reporting services Application by Auscript responding to the Tender Proposal

Summary of Decision

- 5. For the reasons set out below, I have decided the contract is an exempt document for the purposes of the Act. I have also decided that, in addition to the material that was deleted in the edited copy of the contract by the original decision, the following sections of the contract be deleted as containing exempt information:
 - a) Clause 9.1.1 to 9.1.6 inclusive; to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence

and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).

- b) Clause 9.2.2; to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).
- Appendix 1; personal information of Auscript staff/ contractors: deleted under s47F as unreasonable disclosure of personal information that is contrary to the public interest;
- d) Appendix 3, Contract Price; Clause 1 (b) and (c) and (b) and (c); to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).
- e) Clause 12; Pricing for Traveling and Accommodation; to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).
- f) Clause 14, Primary Pricing for Real Time; to be deleted as exempt information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); and on the basis that it would be contrary to the public interest to disclose information that concerns the business, commercial or financial affairs of the Applicant that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G).
- Appendix 6 unconditional financial undertaking; to be deleted as information that was obtained in confidence and is confidential (s45).

6. I have decided that the material contained in clause 9.1; clause 9.2.1 and in Attachments I and J of Appendix 2; do not contain exempt content and are therefore not excluded from disclosure under the Act. Accordingly, the contents of this information will not be redacted in the edited version of the contract and will be available publicly.

Original Decision

- 7. On 5th December 2014, Deputy Registrar John Mathieson, an authorised delegate of the Court decided, upon finding that the contract was an exempt document (and conditionally exempt) on various grounds, to release an edited copy of the contract to the FOI applicant with the exempt content deleted. The edited version of the contract was provided to Auscript for consideration before being released to the FOI Applicant. The edited copy deleted or censored clauses, sections and attachments to the contract which the Deputy Registrar considered contained exempt content.
- 8. In the summary of decision, the Deputy Registrar stated:

I have decided, because the Federal Court contract contains some material in the Appendices which is exempt under each of sections 45 and 47 of the FOI Act, that the contract is an exempt document under those sections. I have also decided that that contract contains some material of the kind to which the section 47G exemption applies, the disclosure of which, on balance, would be contrary to the public interest. I am therefore also of the view that the contract is conditionally exempt under section 47G of the FOI Act. I have considered the possible application of the section 47F personal information conditional exemption to parts of the contract, but do not consider the contract contains any information which is conditionally exempt under section 47F of the FOI Act.

It is only one defined term in the contract terms and conditions and certain material in the Appendices to the contract that, in my view, is exempt under one or more of sections 45, 47 or 47G. I have therefore considered whether it is reasonably practicable to prepare an edited copy of the Federal Court contract for release to the applicant, with the exempt content deleted. I consider that it is reasonably practicable to do so, and I attach a copy of the contract in the form I have decided it can be released.

9. Under s 27(7) of the Act, the edited copy cannot be, and has not been, released to the FOI

Applicant until all rights of review or appeal have expired.

Key Issue

- and appendices of the contract that contain, it is submitted, exempt information. Put alternatively, the applicant contends that specific sections of the contract should be deleted as information that is commercial in nature and has a commercial value (s47); as information that was obtained in confidence and is confidential (s45); as information that concerns the business, commercial or financial affairs of the Applicant and that could reasonably be expected to have an unreasonable adverse effect on the Applicant's business/ commercial operations (s 47G) and that the identification and description of Auscript staff at Appendix 1 of the Contract is to be deleted because it involves the unreasonable disclosure of personal information (s47F).
- 11. The applicant does not challenge the conclusion, in the original decision, that the contract is an exempt document for the purposes of the Act.
- 12. To similar effect, the Applicant does not challenge and does not seek a review of the original decision to release to the FOI applicant those sections that have already been deleted as exempt in the edited version of the contract approved in the original decision. The applicant however does, as is clear from para [10] above, contend that the edited version of the contract under the original decision fails to delete all exempt content. The Applicant claims that additional and specific sections of the contract are to be deleted as exempt information (or as containing material that is exempt) under s45 (information obtained in confidence), s47 (information of a commercial nature that has a commercial value), under s47G, as conditionally exempt information concerning the business affairs of the Applicant and under and under s47F (unreasonable disclosure of personal information).

Standard of review

- 13. Under s54C(3) and paragraph [9.34] of the Guidelines issued by the Australian Information Commissioner under section 93A of the Act ("the Guidelines"), I am required to reach an independent view (and make independent findings) on whether the specific sections of the contract to which the applicants refer are exempt from disclosure by reason of containing information or material that falls within one of the exemptions under the Act.
- 14. I have read the detailed submissions dated 12 January 2015 and 17 November 2014, I have examined each of the documents, as defined above at para [2], including the conditions of tender annexures to the Request for Tender (RFT); the applicant (Auscript) Tender Proposal; the

draft contract circulated with the RFT documents; the executed contract dated 25 March 2013 and finally, the redacted (edited) version of the contract that deleted information that under the original decision contained exempt information.

15. The applicant only needs to establish that one of the exemptions applies to each particular section or portion of the contract for the information in that section to be deleted as exempt information. Although I am not being asked to review the original decision that the contract is an exempt document under the Act, a finding by me that any part of the contract contains exempt content would be sufficient for the entire contract to be an exempt document under the Act.

Background

- In 18 July 2012 the Court issued invited expressions of interests (EOI) for the provision of court reporting services.
- 17. On 17 September 2012 suitable and potential suppliers who submitted EOI were chosen and invited on to submit a proposal to a Request for Tender (RFT) made available through the AusTender website. Amongst other things, the RFT set out the conditions of tender and included a draft of the proposed terms and conditions for any resulting contract.
- 18. The applicant and four other providers were invited to submit a tender proposal addressing the conditions of tender set out in the RFT. It is fair to say that each person that was invited to and submitted a tender proposal were trade rivals competing for business in the court reporting and transcription market in Australia.
- 19. Each applicant and the applicant submitted a confidential tender proposal in accordance with the conditions of tender and the draft proposed terms of contract. It is clear from the conditions of tender (clause 1.2) that any information provided prior to tender would be treated as confidential and that under clause 1.6 of the annexure to the conditions of tender and the draft terms and conditions of contract any information set out in the confidentiality register (an attachment to the draft contract and ultimately the executed contract) would be subject to an express confidentiality regime.
- 20. The applicant submitted a confidentiality register with its tender proposal (as attachment 5) in accordance with clause 1.2 of the conditions of tender and a confidentiality register, in substantively similar terms at appendix [9] to the executed contract.
- 21. Following the prequalified tender process and assessment, the court reporting contract was

awarded to Auscript.
22. On 25 March 2013, the contract between the court and Auscript was executed.
23. On 14 August 2014 sent a Freedom of Information (FOI) request to the Commonwealth Treasury for the release of the contract awarded to Auscript.
24. On 4 November 2014 that part of the FOI request from which was sent to the Treasury on 14 August 2014 had, with the consent of the Federal Court, been transferred to the

Federal Court.

high.

- 26. On 27 October 2014 the Court notified Auscript in writing of the FOI request from
- 27. On 17 November 2014 of provided on behalf of Auscript a written submission objecting to the release of the Federal Court contract on the grounds that that document was exempt under the Act or, alternatively, that it was conditionally exempt under that Act and that its release would be contrary to the public interest.
- 28. On 5 December 2014 the Court notified Auscript of the exemption objections had been upheld and that an edited version of the contract deleting all exempt content would be released. The edited version of the contract with the exempt content deleted was provided to Auscript.
- 29. The FOI applicant was also notified of the original decision on 5 December 2014.
- On 19 December 2014 Auscript applied to extend the time to lodge an internal review until 12
 January 2015.
- 31. On 22 December 2014 I agreed to extend the time Auscript had to apply for an internal review

to 12 January 2015.

32. The Review Application was lodged by email on 12 January 2015 and the court notified the FOI Applicant, of the review application by email on 19 January 2015.

Confidentiality under the RTS & the Federal Court Contract

- 33. As noted at [17] above, each person (including the applicant) invited to participate in the prequalified tender submitted a confidential tender proposal in accordance with the conditions of tender and the draft proposed terms of contract. It is clear from the conditions of tender (clause 1.2) that any information provided prior to tender would be treated as confidential and that under the draft terms and conditions of contract (and clause 1.6 of the annexure 'A" to the conditions of tender) any information set out in the confidentiality register (an attachment to the draft contract and ultimately the executed contract) would be subject to an express confidentiality regime.
- 34. The applicant submitted a confidentiality register with its tender proposal (as attachment 5) in accordance with clause 1.2 of the conditions of tender and a confidentiality register, in substantively similar terms at appendix [9] to the executed contract.
- 35. I have considered the confidentiality terms and conditions of both the conditions of tender and the terms and conditions of the draft and executed contract and am satisfied that the both the court and applicant expressly agreed that the information in the confidentiality register accompanying the tender proposal was obtained in confidence and that upon execution of the contract that information would be subject to the confidentiality provisions of the contract. In that connection, I agree with and gratefully adopt the statement and summary of the confidentiality provisions set out in the original decision (at page [2] and [3]) as follows:

The draft terms and conditions for the contract included a confidentiality provision as well as an interpretation provision containing a number of definitions of terms used in that confidentiality provision. Under that provision the contracting parties are prevented from disclosing any information which, under the contract, is confidential without the prior written consent of the other party. It is however expressly provided that the parties will not be taken to have breached that obligation if, amongst other things, the disclosure is authorised or required by law or the information is in the public domain otherwise than due to a breach of the confidentiality obligations under the contract. It was also provided that information provided to the Federal Court by the contracting supplier of court reporting services

which is listed in the contract was agreed to be included as confidential information under the contract." (page [2]); and at page [3]:

The Federal Court contract contains a confidentiality provision and relevant definitions in its interpretation provision which are substantially identical to those set out in the draft terms and conditions of contract included with the RFT. An appendix substantially identical to the confidentiality register included with Auscript's tender proposal was included in the Federal Court contract as the details of the contractor's confidential information.

36. The applicants submit and upon a review of the material I accept that the tender proposal submitted in accordance with the conditions of tender contained, in many (but not necessarily all) respects confidential and commercially sensitive information that would, if disclosed, provide a competitor an important insight into various aspects of the applicant's commercial systems, technical expertise and business activities within the competitive transcription services sector. I will return shortly to what sections of the contract claimed by the applicant and the subject of this review contain exempt content to be deleted from the edited contract.

The Review Submissions

- 37. I have considered the review submissions dated 12 January 2015 and the submissions dated 17 November 2014 in support of the original decision. The submissions provide comprehensive information on Auscript's high speed, technology integrated recording and transcription services, details of its technical capabilities and interoperable software, systems, processes and methods of operation; specific information on its pricing methodology; that they have expended considerable effort and money in developing their software platforms; other information of a technical nature; and information that relates to matters of a business nature which, it is claimed, is commercially sensitive and not available to its competitors.
- 38. It is also evident from the Auscript submissions that the FOI applicant has a clear association with some of Auscript's competitors both as

 Auscript submits that the release of the contract to under the original decision will result in the document being released to all trade rivals. Armed with the contract, Auscript argues that trade rivals will be able to replicate, emulate or adapt their technology systems and exploit that information to their own competitive advantage and at Auscript's expense. If their competitors had access to this information, it could be copied enabling achievement of at least the same performance outcomes without incurring the expense in developing the IP that Auscript has. Auscript submits that their interoperable

software, systems and processes are unique and are not standard or common across the court reporting sector.

39. Under this review, Auscript has applied to have additional sections of the edited contract deleted as containing exempt information. I will return to some of the sections, clauses, appendices and attachments to the contract below in considering whether the applicant's claims that additional specific content is to be deleted as exempt under the Act is made out.

Applicable Legislation and legal principles

- 40. Under the Act a person has a legally enforceable right to be given access to an agencies document which includes, for the purposes of this application, the Court. Under the Act the Court may refuse a person access to a document that is an exempt document.
- 41. The main exemptions relied upon by the applicant in this review are the exemptions contained in s45 (information obtained in confidence), s47 (information of a commercial nature that has a commercial value) and the conditional exemptions in s47G, (information concerning the business affairs of the Applicant) and s47F (unreasonable disclosure of personal information).
- 42. As relevant; the exemption for documents containing material obtained in confidence is set out in subsection 45(1) of the FOI Act states:

A document is an exempt document if its disclosure under this Act would found an action, by a person (other than an agency, the Commonwealth or Norfolk Island), for breach of confidence.

- 43. The exemption from disclosure for information of a commercial nature that has a commercial value under sub section 47(1) of the Act states:
 - . (1)A document is an exempt document if its disclosure under this Act would disclose:

(a)trade secrets; or

- (b) any other information having a commercial value that would be, or could reasonably be expected to be, destroyed or diminished if the information were disclosed.
- 44. The applicant also relies upon two conditional exemptions. The conditional exemption for documents that involve the unreasonable disclosure of personal information is contained in sub section 47F(1) which states:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

- 45. The conditional exemption available for documents that could have an unreasonable adverse effect on the business, commercial or financial affairs of a person or undertaking is contained at s47G(1)(a) of the Act in the following terms.
 - (1) A document is conditionally exempt if its disclosure under this Act would disclose information concerning a person in respect of his or her business or professional affairs or concerning the business, commercial or financial affairs of an organisation or undertaking, in a case in which the disclosure of the information:
 - (a) would, or could reasonably be expected to, unreasonably affect that person adversely in respect of his or her lawful business or professional affairs or that organisation or undertaking in respect of its lawful business, commercial or financial affairs; or
 - (b) could reasonably be expected to prejudice the future supply of information to the Commonwealth, Norfolk Island or an agency for the purpose of the administration of a law of the Commonwealth or of a Territory or the administration of matters administered by an agency.
- 46. Under s11A(5) a conditionally exempt document must be disclosed under the Act unless (in the circumstances) access to the documents would, on balance, be contrary to the public interest. Section 11B sets out the factors that favour disclosure in assessing whether release of a document would be contrary to the public interest. The Guidelines set out a non-exhaustive list of factors against disclosure under the public interest test. I will return to these later in this decision.
- 47. The applicable principles relevant to establishing whether (one or more of) the claimed exemptions applies, are set out in Guidelines. Under the Act, I must have regard to the published Guidelines. I will return to these principles in the course of reviewing the individual sections of the contract below Auscript claims contain exempt matter below.
- 48. Finally, s22 of the Act provides that the court must not refuse access to an exempt document if it is practicable to give the FOI applicant an edited copy of the document with the exempt matter deleted (or censored) and the FOI applicant would wish to be given such a copy. As noted in the original decision, (at page [10], the FOI applicant has requested an edited copy of

the contract.

49. Finally, it is convenient at this point to note that disclosure under the Act is to the world at large without restriction. An agency cannot impose limitations upon that disclosure although a FOI applicant may voluntarily agree to limit the use, dissemination or wider circulation of the relevant information.

Do the identified sections of the contract contain exempt matter?

50. I have considered and independently reviewed all of the relevant documents and both sets of submissions received from the applicant. For the particular sections of the contract to be deleted as exempt, the applicant only needs to establish that one of the statutory exemptions applies.

Commercially valuable information; trade secrets – s47(1) exemption; Unreasonable adverse effect on the Applicant's business operations (s 47G).

Contract clause 9.1

- 51. As the heading suggest, clause [9] sets out the contract provisions relating to the intellectual property in relevant contract material.
- 52. The applicant contends that the contents of various sub clauses in clause 9.1 are exempt as information that discloses trade secrets or information of a commercial nature and value in the relevant sense required by s47(1)(b) or as information that concerns the business, commercial or financial affairs of the applicant that if released, could reasonably be expected to unreasonably affect their transcription business..
- 53. For the exemption in s47(1)(b)to be made out, the applicant must satisfy two conditions. First, that the relevant clause contains information of a commercial character and value and secondly, that the disclosure of this information would or could reasonably be expected to destroy or diminish the commercial value of the applicant's contract.
- 54. With respect to the first condition, considerations and factors that are relevant to establishing whether the 'relevant' Information has a commercial character and a commercial value are set out in the Guidelines at paragraph [5.188] to [[5.190]. One factor that the applicant submits is relevant is that the information in clause [9] is integral to its pricing structure and business model which, the applicant submits, and I accept, it has spent considerable time and effort in creating to obtain a competitive edge over trade rivals in the court reporting market.

- 55. Another factor that militates towards information having a commercial value is what a third party would be prepared to pay to obtain and use information about the applicant's product and services. I accept the applicant's contentions that the relevant clauses describing the contracting parties' entitlements to the intellectual property in the contract material could provide competitors with a valuable insight into various aspects of the applicant's pricing structures, business operations and service delivery models which could be copied enabling achievement of at least some of the performance outcomes without incurring the expense and time in developing the IP etc that Auscript has.
- 56. Other considerations include that the information must not be in the public domain for it to have a commercial value; that the information has currency with competitors and that the information is sufficiently specific, and not in general terms, such that the disclosure could possibly enable trade rivals to emulate the transcription systems and services which they have developed, marketed and sell.

57. Having examined the contract, I am satisfied that:

- a) the contents of clauses 9.1.1; 9.1.2; 9.1.3; 9.1.4 and 9.1.4 were not contained in the conditions of tender or the draft contract and were not otherwise in the public domain;
- that all content relating to IP was provided during the tender process by the applicant in confidence, as listed in a confidentiality register as attachment (5) to the RTS,
- c) Information in clause 9 relating to IP in the contract material is expressly identified as confidential in the confidentiality register of the executed contract at appendix [9].
- d) That the relevant contract provisions are sufficiently specific and intertwined with the applicant's business model as to have a commercial value and that if disclosed would or could affect the applicant's viability or profitability.
- 58. Having regard to the applicant's submissions on the contextual circumstances of this FOI application, I am prepared to infer that one or more of the applicant's competitors may be prepared to pay to obtain the pricing information contained in the executed contract and that under the Guidelines this is a factor that militates towards the pricing information having a commercial value.
- 59. After taking each of these matters to which I have referred into account, I am satisfied that the information in clauses 9.1.1 to 9.1.4 has a commercial character and has a commercial value to the applicant.

- 60. I have *not* reached the same conclusion with respect to clause 9.1 however. That clause is, except for the reference to Appendix 8, in substantively identical terms to the corresponding clause in the draft contract circulated with the RTS documents. It is difficult to see how clause 9.1 could be of commercial value to the applicant given that it is in the public domain.
- 61. Returning to the second limb of s47(1) exemption, I must be satisfied that the release of the clauses relating to the applicants IP entitlements under the contract would, or could reasonably be expected to destroy or diminish the value of applicants business. According to the Guidelines, an expectation that the release of the relevant information would (or could) destroy or diminish the commercial value of that information must be reasonably based; the impact on value must be not be minimal or nominal although it is not necessary to establish on the balance of probabilities that that the commercial value could reasonably be expected to be destroyed or diminished.
- 62. The applicant submits, and I accept that, the disclosure of the information in clause 9.1.1 to 9.1.6 (but excluding clause 9.1) in relation to the structure of IP rights, could allow a competitor, with sufficient technical knowledge and experience in the transcription business, such as the FOI applicant, or other members of ACRIA to ascertain aspects of the applicant's operations and in doing so could obtain a commercial advantage in future tendering processes within the court reporting sector.
- 63. On this basis, I find that the disclosure of clauses 9.1.1 to 9.1.6 to a competitor could reasonably be expected to diminish or destroy the commercial value of the applicants' business and as a corollary could reasonably be expected to be of considerable value to trade rivals within the transcription sector.
- 64. I have considered the content of clause 9.2.2 and find that the information relating to the licence for the pre-existing material was not in the draft contract or conditions of tender and therefore not in the public domain. I accept that this information relates to the terms on which the applicant entered into a contract with the court; that this term (perhaps in aggregate with the other clauses of the contract claimed by the applicant to be exempt) could be easily extrapolated and used by competitor's in future tender proposals etc. I am also satisfied, applying the above principles, that this information is an integral part of the overall pricing and services model that underpins the applicant's contract with the court and is therefore of considerable commercial value to them which value could be diminished or adversely affected if released under the Act.
- 65. As to clause 9.2.1, there is only one modification that I can discern from the corresponding

clause in the draft contract accompanying the conditions of tender, and am not persuaded that this modification, viewed in isolation or with the contract as a whole, contains or reveals, in any material way, aspects of the applicant's commercial activities. Having regard to the content of clause 9.2.1, I am not satisfied that the release of this information, even if it has a commercial value, could diminish or destroy the value of the applicant's business in the relevant sense.

- 66. The applicant's also contend that the information set out in the clauses above (in Part 9) is exempt from disclosure and should be deleted under s47G of the Act. The applicant's submit that the clauses contain information that concerns their business, commercial or financial affairs which if disclosed could reasonably be expected to have an unreasonable adverse effect on their business or commercial affairs.
- 67. For an exemption under s47G to be made out, I have to be satisfied of two things. First, that the document discloses information concerning the applicant's commercial, business or financial affairs; and secondly, that disclosure would be contrary to the public interest because disclosure would or could reasonably be expected to have an unreasonable adverse effect on their business or commercial affairs; or would be reasonably likely to prejudice the future supply of information to the court. If the contents are conditionally exempt under s47G, the content is nonetheless to be released unless the applicant can demonstrate that it would be contrary to the public interest to do so (ss11A(5) and 11B of the Act). I will return to this qualification later in this decision.
- 68. The meaning of 'business affairs' was considered in Re Stewart and Department of Transport (1993) 1 QAR 227 at [103] to be "the affairs of a business undertaking which is carried on in an organised way (whether it be full-time or only intermittent) with the purpose of obtaining profits or gains (whether or not they actually be obtained). Applying this test, I am satisfied that the clauses in Part 9 of the executed contract contain information that concerns the business affairs of the applicant as to meet the first strand of s47G.
- 69. I am also satisfied (for the reasons given above at [52-63]) that the disclosure of the information in clauses 9.1.1 to 9.1.5 if released would or could reasonably be expected to have an unreasonable adverse effect on the applicant's business or commercial affairs. For the avoidance of doubt, I am not satisfied that disclosure of clause 9.1 would have an adverse effect to the requisite degree.

Appendix 2 – Statement of Requirements

70. Turning to attachments " I" and "J" of Appendix 2, these documents set out specifications for

schedules of court room technology in all registries. The applicant contends that the information in these attachments was provided during pre-contract negotiations with the court, was provided in confidence, relates to the applicant's software, systems and processes and is crucial to the applicant's business model and continued profitability and viability; is commercially valuable and could, if released, reasonably cause that commercial value to be diminished or destroyed. The attachments set out details of court room technology equipment in all registries.

- 71. I have examined the contents of the schedules. It is not clear to me why releasing the inventory of the audio and recording equipment, most of which is in general and descriptive terms, has a commercial value in the relevant sense and how, as the applicants submit, disclosure of the schedule of that equipment is linked to or would provide a third party with an important insight into the applicant's business systems and workflow models for recording, exporting and transcribing information in an efficient and reliable way from geographically dispersed court rooms. For example, a digital recording PC with 4 channel interface box would be required in most court rooms where there's remote recording; one channel for the judge/ court; another for the legal representatives and another for the witness box. There does not seem to me to be anything unique or special about the nature, configuration or location of this equipment in the requisite sense. There is no evidence that equipment has been modified or configured across the registries for the applicant's use. To the contrary: the various items of equipment identified in the attachment appear to be standard recording equipment that would be common throughout the court reporting sector. In addition, the submissions do not (adequately) address the extent to which the inventory of equipment in open court rooms is not information that is already in the public domain. In this connection, most of the equipment referred to in the schedule can be observed in open court rooms in the various court registries. Separately, and importantly, the applicant's submissions do not explain what commercial value is to be ascribed to this equipment for me to be sufficiently satisfied that this value could be compromised/ diminished in the relevant sense under s47.
- 72. To similar effect, I am not satisfied that releasing the schedule of court room technology described in the attachment to a trade rival would, or could reasonably, put the applicant at a competitive disadvantage or that a competitor armed with this information would, or could, reasonably be expected to be in a an advantageous position to negotiate or secure future transcription contracts in preference to the applicant.
- 73. It follows that the applicant has failed to persuade me that the schedule of equipment in attachments "I" and "J" of appendix 2 should be deleted from the edited contract as containing

commercially valuable content. Nor for completeness do I consider that this information would satisfy the requirements of being a *trade secret* to be exempt under s47(1)(a). In this aspect, I attach significance to my findings in paragraph [71] above that the release of this information to a competitor would not be liable to cause real or significant harm to the applicant in the relevant sense (refer to para [5.186] of the Guidelines).

74. While the submissions establish that the schedule of court room technology concerns the business, commercial or financial affairs of the applicant, in the relevant sense, I cannot conclude, for the reasons in para [71], that the release of the schedule could reasonably be expected to give rise to the matters set out in s47G(1)(a) or (b) of the Act. I will deal with the claim that this information is exempt as confidential information (under s45 below).

Appendix 3 - Contract Price

Clause 1 General – Pricing Structure (b) and (c) and (b) and (c)

- 75. I have examined the contents of paragraphs (b) and (c)(twice appearing) of clause 1 of appendix 3 of the executed contract which deals with pricing structure for the provision of transcription services by the applicant under the contract. I agree with the applicant's submission that there is no reference to the details or any specific requirement to address these matters in the conditions of tender or the draft contract accompanying the RTS. I accept that this pricing information is sufficiently specific in nature, sets out details of the applicant's pricing rates; is and remains current and relevant to the applicant's ongoing operations; was communicated in confidence in the tender proposal (per attachment 5 of the tender proposal and condition 1.6 of annexure A to the RTS conditions); is expressly categorised as confidential information in the confidentiality register in appendix 9 of the executed contract; has a commercial value to the applicant that is linked to its current operating model and important to its continued profitability and viability and that the release of that detail could reasonably be expected to diminish or destroy that commercial value by enabling a competitor to realign their business / pricing models to negotiate better rates in preference to or at the expense of the applicant. I also find that a disclosure of this information could reasonably be expected to have an unreasonable adverse effect on the applicant's business, commercial and financial affairs for substantially the same reasons.
- 76. On this basis, I find that the applicant has established that paragraphs (b) and (c)(twice appearing) of clause 1 of appendix 3 of the executed contract relating to pricing structure is

exempt under ss 47 and conditionally exempt under 47G of the Act.

Clause 12, PRICING FOR TRAVELLING AND ACCOMMODATION FOR THE COURT AND OTHER ORGANISATIONS and Clause 11: Copying and Service Fees

77. Clause 12 of appendix 3 sets out details of the applicant's pricing model for travel and accommodation in providing the transcription services that were not, as would be self-evident, contained in the draft contract or conditions of tender. I accept that this information was provided in confidence, was expressly categorised as confidential information in the confidentiality register in appendix 9 of the executed contract; that while the information has no particular technicality, it is important and relevant to the applicant's pricing methodology, overall commercial strategy and has a commercial value. I am also persuaded that the pricing rates developed by the applicant have ongoing relevance to the applicant's continued viability and the viability of its service model. I am also satisfied the disclosure of the pricing rates developed by the applicant has ongoing relevance to the applicant's continued viability and the viability of its service model which could, if released, reasonably be expected to diminish or destroy that commercial value. I also find that a disclosure of this information could reasonably be expected to have an unreasonable adverse effect on the applicant's business, commercial and financial affairs.

Clause 14 - Primary pricing for real Time transcript

- 78. The applicant contends that the details of their pricing structure for real time transcripts is unique and would if released provide trade rivals with important insight into their business model and services. The applicant submits that information about its pricing for real time transcripts is not known to or available to its competitors and that the release of such information would enable those competitors to exploit that information to their own advantage at the applicant's expense.
- A of clause 14 of the executed contract and compared it with clause 3.61 and 3.62 of the annexures to the conditions of tender, it is evident that tender applicants were required to submit a per folio unit charge for 'official transcript' but only an hourly or daily rate (and not a per folio rate) in respect of real time transcript services. I attach significant weight on the different pricing arrangements for real time and other transcripts referred to in clause 3.6.2 of the conditions of tender and the folio unit pricing methodology proposed by the applicant and (ultimately) accepted by the court in clause 14 of appendix 3 (of the executed contract). Another factor militating towards exemption under s47 is the parties' agreement that pricing

- information for real time transcript is confidential information (refer to the confidentiality register at appendix 9 of the executed contract) that has a commercial value.
- 80. Having made that finding, I conclude that the pricing information for real time transcript services stipulated in the executed contract has a commercial value and if disclosed, could reasonably be expected to diminish or destroy that commercial value. I also find that a disclosure of this information could reasonably be expected to have an unreasonable adverse effect on the applicant's transcription business, commercial and financial affairs. I am satisfied therefore that this clause is to be deleted as containing exempt content under ss47 and conditionally exempt 47G of the Act.

The Public Interest Test (s11A(5)) -business affairs conditional exemption

- 81. While I have found that some of the clauses above are also conditionally exempt under s47G of the Act, it is not necessary for me to reach a concluded view on whether it would be contrary to the public interest to release this information. This is because I have decided that the relevant sections of the contract that are conditionally exempt are exempt under s47 as commercially valuable information. Nonetheless, for completeness, I will deal with the applicant's contention briefly.
- 82. Under s11A(5) I must now decide if the release of this content would on balance be contrary to the public interest. Section 11B then sets out four factors favouring disclosure which must, if relevant, be considered when assessing whether disclosure of a document would be contrary to the public interest. Of the factors in favour of disclosure set out in section 11B, the main factor of relevance in this matter, in my opinion, is: promote the objects of the Act na possibly oversight promote effective oversight of public expenditure. The Guidelines set out non-exhaustive lists of factors in favour of disclosure and those against disclosure. Of the factors in favour of disclosure set out in the Guidelines, the most relevant factor is: promote effective oversight of public expenditure. Of the factors against disclosure set out in the Guidelines, the most relevant factors are: could reasonably be expected to prejudice an agency's ability to obtain similar information or confidential information in the future.
- 83. The decision making required of me by s11A(5) does not involve a mere arithmetic exercise. It is simply not a case of determining whether there are more factors in the public interest as opposed to factors that suggest it is contrary to the public interest. The exercise is more subtle. It includes an assessment of which of the criteria in the Act (and Guidelines) is more or less significant than others in the circumstances before me.

- 84. In my view, and with some hesitation, I do not think the applicant has made out their case that the court may have some difficulty in obtaining similar information or confidential information in the future. The applicant's claims are of a general nature and not substantiated by reference to any evidence as to the likelihood that others would not voluntarily provide the court with confidential information or be reasonably likely to impair the ability of the court to obtain similar information in the future. If follows, in my opinion, that it would not be contrary to the public interest to release the conditionally exempt content. However where (as here) a document is both a conditionally exempt document and an exempt document (here: the sections identified above as exempt) the document (here the sections of the contract) does not have to be released.
- 85. Another factor the applicants contend is relevant to the public interest test in ss11A(5) & 11B is that the FOI applicant is motived or actuated by ulterior purposes in seeking the release of the applicant's contract with the court. In this connection, the applicant has provided and for present purposes I accept the background information on the link of the FOI applicant to industry competitors (see [25] above for a summary of the relevant facts). Where the public interest lies in a particular matter is a matter of judgment and degree having regard to the circumstances in which the FOI request was made and that apply at the time of the FOI decision.
- 86. While there could be alternative plausible explanations why the FOI applicant has requested access to the contract between the applicant and the Court, I attach significant weight on the accumulation of material before me both as to the apparent object of the request and the real possibility that the release of information relating to the applicant's business affairs could adversely affect the applicant's commercial operations, as factors that militate against the public interest in disclosing this material at this time. Accordingly, in my view, disclosure of the relevant information relating to the applicant's business affairs would be contrary to the public interest.

Material obtained in Confidence. s45 Exemption

- 87. The applicant also relies upon the confidentiality exemption in s45 for each section of the contract that I have considered above.
- 88. Under the Guidelines (paragraph 5.141) there are a number of factors that are relevant to establishing whether confidence inheres in the relevant document and whether, as the terms of s45 require, disclosing that information would found an action for breach of confidence.

 Relevant factors under the Guidelines that I must have regard to are that the information:

- a) must be specifically identified;
- b) must have the necessary quality of confidentiality;
- must have been communicated and received on the basis of a mutual understanding of confidence;
- d) must have been disclosed or threatened to be disclosed, without authority; and
- e) if disclosed without authorisation (ie unauthorised disclosure) has or will cause detriment (paragraph 5.143) to the party who has provided the information.
- 89. The Guidelines also explain what is required to be met or satisfied in relation to each of these criteria (paragraphs 5.145 5.155).
- 90. In relation to sub clauses [9.1.1] to [9.1.5] and [9.2.2] of the contract, I am satisfied set out specific information in relation to the applicant's IP rights in and to the contract material; that this information was communicated in confidence with an expectation of and, under the executed contract, a legally enforceable right to confidentiality. I am also satisfied as to the confidentiality of the contents of the relevant clauses having examined and compared the contract and the conditions of tender and the draft contract circulated with the RFT. Equally, I am satisfied that disclosure of this information is not authorised by the applicant; does not fall within one of the exceptions or qualifications to the parties confidentiality obligations (in clause 12.3 of the executed contract). Based on the submissions and my findings at [51-69] above that disclosure of this information could destroy or diminish the commercial value of the applicant's business by more than a nominal or minimal amount, I am satisfied that unauthorised disclosure will cause detriment, in the relevant sense. Although it's strictly not necessary, given my conclusions at [51-69] above that these clauses are exempt as commercially valuable information; I have also concluded that these clauses are exempt as information obtained in confidence under s45. In other words, the executed contract expressly precludes the disclosure of the relevant confidential information.
- 91. For the same reasons given at [90] above, the confidentiality exemption does not apply to clause [1.1] or [2.1] because both clauses are in substantively mirror terms to the conditions of tender and draft contract circulated with the RFT which are documents in the 'public domain'.

 There is therefore nothing inherently confidential or secret about this information and its release could not give rise to an action for breach of confidence.
- 92. As the attachments 'I' and "J" of appendix 2 relating to the statement of requirements, I have

found the schedule of equipment even though given in confidence and specified in the confidentiality register of the executed contract as confidential, is within the public domain; that the description of the equipment is general and that there is nothing in the material before me to show how releasing the details recorded in the schedule would likely adversely affect the continued transcription services of the applicant. I have therefore concluded that this schedule is not exempt under s45.

- 93. I also consider that in appendix 3, the clauses dealing with pricing structure and rates in paragraphs (b) and (c)(twice appearing) of clause 1; clause 12 on copying fees and accommodation expenses and clause 14 on pricing for real time transcript of appendix 3, for the reasons given above at [75-80] contain confidential material that is exempt under s45 and accordingly that this material is to be deleted.
- 94. More contentiously, the applicant contends that specific information relating to the identity of the guarantor and any financial undertakings made in Appendix 6 Unconditional Financial Undertaking is exempt as material obtained in confidence. The applicant submits, and the documents I have inspected support a finding that the Unconditional Financial Undertaking was included in the confidentiality register (as attachment 5) in the applicant's tender proposal, is categorised as confidential information in the corresponding register as appendix 9 of the executed contract and that this information is not in the public domain.
- 95. I have set out at [88] above what factors must be considered in assessing whether the s45 exemption applies. Dealing with each strand briefly.
- 96. As to condition (a), I accept that the information is specific and identifies the name of the guarantor and the amount guaranteed.
- 97. As to conditions (b) and (c) the applicant contends and based on the material before me I accept that the name of the guarantor and the guaranteed amount (under the instrument) was sent and received in confidence and that there is no evidence that the particular details of the undertaking or amount is in the public domain. While the general form of undertaking was an attachment to the conditions of tender which, according to annexure D (part 4) of the RTS, would be considered by the court in assessing a tenderer's financial capability, it can be inferred from the documents and from the circumstances in which the information was provided that the details of the financial undertaking (as to name of the guarantor or value) would not be disclosed. I have examined and compared the draft form of undertaking and the executed undertaking and am satisfied that the these details were not included in the draft circulated with the RFT. There is no material before me to suggest that details of the guarantor or the

amount/ value have been divulged to third parties or is in the public domain.

- 98. As to condition (d) there is no evidence before me that the applicant has given consent to the disclosure of the information or that such disclosure is required under the (so called) 'iniquity rule' or principle (for information to be released to a proper authority in respect of crimes, civil wrongs or serious misdeeds of public importance).
- 99. As to condition (e), I must consider whether unauthorised disclosure of the information in the documents sought would cause detriment. As the Guidelines explain, the Administrative Appeals Tribunal (AAT) has applied this element in numerous cases, but it is not certain whether it must be established. The uncertainty arises because of an argument that an equitable breach of confidence operates upon the conscience (to respect the confidence) and not on the basis of damage caused. The Guidelines say that, despite this uncertainty, it would be prudent to assume that establishing detriment is necessary. In any event, detriment is not difficult to establish. The High Court has said that '[i]t may be a sufficient detriment to the citizen that disclosure of information relating to his affairs will expose his actions to public discussion and criticism'. And the AAT has said that 'the detriment may be the disclosure itself in circumstances in which the disclosure is neither consented to nor otherwise justified. That disclosure may be accompanied by embarrassment, distress or the like or by tangible loss or it may simply be unconscionable.
- 100. While it's not entirely clear from the submissions what detriment either the applicant or the guarantor would suffer or be likely to suffer if the name and value of the guarantee were disclosed, I accept that the threshold is a low one and that the release of this information, which is otherwise confidential, may cause some embarrassment to the applicant. Alternatively the release of information concerning the applicant's financial capacity may in some way affect its ongoing ability to negotiate and secure future business opportunities in the transcription sector, or the terms on which it could secure future opportunities. It is not for me to speculate. It is sufficient for the purposes of this review that the release of this information could cause detriment in the relevant sense.
- 101. In these circumstances I am satisfied that details of the guarantor and guarantee value are to be deleted as confidential material under s45.

Personal Information – s 47F conditional exemption

102. Names, position titles and business addresses of particular persons employed by the applicant are set out in detail in appendix 1 of the executed contract. The applicants contend in their

written submissions of 17 November 2014 that disclosing these details would 'involve' the unreasonable disclosure of personal information about those persons for the purposes of the conditional exemption in s47F.

- 103. There are two aspects to the personal information exemption. *First*, whether the disclosure of the information contained in the document will 'involve' the disclosure of personal information about a person other than the FOI applicant. There can however, only be a disclosure of 'personal information if the document is capable, either directly or indirectly, of identifying the person whose personal information is mentioned. The *second* aspect is whether the disclosure of personal information about a person is 'unreasonable'. If I find that the material is personal information, and conditionally exempt, I must nonetheless disclose it unless access to the document would be contrary to the public interest. I will return to this aspect later in my decision.
- 104. As to the first aspect, there are a number of factors and considerations that, under the Guidelines (at para [6.116]), are relevant in establishing whether (or not) particular information is personal information about a person. Having reviewed the contract and considered the applicable principles, I find that:
 - information in the form of a person's name in the appendix to the contract is sufficient to identify that person; (Guideline para [6.118]);
 - information in the contract that discloses the individual staff member's name, business title
 and business address/ location is information that is personal information to the individual
 staff members named in the contract. That is, the contract contains information personal to
 the person(s) named; (see Guideline para [6.125]).
- 105. Thus I am satisfied that the first limb of s 47F is made out.
- 106. To satisfy the exemption, however, disclosure of the personal information must be unreasonable. The test of unreasonableness involves a balancing of competing interests. On the one hand protecting the right to personal privacy of an individual whose personal information may be unreasonably disclosed by granting access to the information against the object of the Act to extend as far as possible the right of the community to access to information in the possession of government or an agency.
- 107.In carrying out this balancing exercise, the following factors and considerations are relevant: firstly, all the surrounding circumstances including whether disclosure to the world at large

would be unreasonable, not whether disclosure to an applicant would be unreasonable, secondly, the interest, motive or the purpose for which the FOI applicant requires release including the possibility the information will be disclosed to the world at large; thirdly, the wishes and views of those whose personal information will be disclosed including any desire that person has for the information to be kept confidential; fourth, the context in which the personal information is contained or appear.

108. The applicants submit that:

- There's a real possibility the people named in the contract will be contacted directly by litigants or others for information that is highly secure and contains sensitive content,
- They have concerns about the personal safety and welfare of their staff by reference to a number of incidents described in the submissions including reported incidents of staff being threatened, harassed and verbally abused;
- c) There may be ulterior purposes why this information is being sought;
- The information was obtained and provided in confidence and the employees named in the contract do not wish to have their personal information released;
- e) There is no good public interest that would be achieved by the release of this information.
- 109.On the other hand, factors that could militate against non- disclosure is the availability of this information from public sources including, as noted in the original decision, (at page [8]) "....from a number of sources including the Federal Court and Auscript's websites and online social networking services (such as LinkedIn)".
- 110.In many respects this is a difficult aspect of this review application. While contact information for the staff may be available via the applicant's website (among other places) I am very mindful of the applicant's submissions on the personal safety of their staff. The submission goes into some detail on various incidents and there is no reason for me to doubt that these concerns are genuine and made in good faith. The history recited indicates that the concerns are not vague, speculative or theoretical and that if disclosed there is a real possibility of future threat to those persons named in the appendix. It follows that I am satisfied, on balance that the release of this personal information would be unreasonable and is conditionally exempt as personal information under s47F.

The Public Interest Test (s11A(5)) - personal privacy

- 111.I have found that information relating to personal privacy of the applicant's staff is conditionally exempt under s47 as personal information. Under s11A(5) I must now decide if the release of this content would on balance be contrary to the public interest.
- 112. Section 11B then sets out four factors favouring disclosure which must, if relevant, be considered when assessing whether disclosure of a document would be contrary to the public interest. Those four factors are as follows:
- 113.Of the factors in favour of disclosure set out in section 11B, the only factor of relevance in this matter, in my opinion, is: promote the objects of the Act.
- 114. The Guidelines set out non-exhaustive lists of factors in favour of disclosure and those against disclosure. Of the factors in favour of disclosure set out in the Guidelines, the most relevant factor is: promote effective oversight of public expenditure. Of the factors against disclosure set out in the Guidelines, the most relevant factors are: could reasonably be expected to prejudice the protection of an individual's right to privacy and could reasonably be expected to harm the interests of an individual or group of individuals.
- 115.I have considered the factors in favour of disclosure. I am not satisfied that disclosure of staff personal information contained in appendix 1 will promote any of the public interest objects or factors set out in the Act or the Guidelines.
- in the relevant document would unreasonably affect an individual's privacy. As noted at [83] above, the decision making required of me is more than a mathematical exercise. The risk to personal safety recited by the applicant is a weighty consideration for me in determining whether the release of this information would be contrary to the public interest. The overriding consideration for me however is to balance the competing factors to determine where the balance of public interest lies based on the particular facts of the matter at the time the decision is made. This exercise involves an assessment of which of the criteria in the Act (and Guidelines) is more or less significant than others in the circumstances before me.
- 117. Given the nature and seriousness of the concerns raised by the applicant and the potential risk to the individuals named, I have concluded that it would be contrary to the public interest to release this information at this time and that the public interest in the protection of these persons' individual's privacy outweighs any factors in favour of disclosure. I have reached this conclusion even though the names of the staff can (apparently) be located on the applicant's website.

Is editing the contents of the contract 'reasonably practicable'? s22 of the Act

118.I have concluded that it is possible and reasonably practicable for the exempt contents of the

contract to be deleted and for an edited version of the contract to be released to the FOI

applicant censoring the exempt content.

119.In that connection, I have prepared an edited version of the contract that deletes content that I

have held to be exempt. I have also independently reviewed the content that was deleted as

exempt under the original decision and affirm that this material should be deleted as exempt on

the grounds identified in that decision. The edited version of the contract that accompanies this

decision deletes the exempt content referred to in both my decision and the original decision.

120.In accordance with s27(7) of the Act, the Court will not release the edited version of the

contract until the appeal rights and rights of review of the applicant have expired.

Review rights

121.If Auscript is dissatisfied with my decision, you may apply to the Information Commissioner to

review my decision. An application for review by the Information Commissioner must be made

in writing within 28 days of this decision and be lodged in one of the following ways:

Online: https://forms.business.gov.au/aba/oaic/foi-review-/

Email enquiries@oaic.gov.au

Post: GPO Box 2999, Canberra ACT 2601

In person: Level 3, 175 Pitt Street, Sydney NSW

Note: More information about Information Commissioner Review is available on the Office of the

Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-

reviews.

Questions about this decision

If Auscript or its lawyers have any questions about this decision, please contact me using the details

below.

Yours sincerely

Michael Wall

District Registrar (NSW & ACT)

Tel: 02 9230 8544 Fax: 02 9230 8535

Email: michael.wall@fedcourt.gov.au

From: External FOI
To:

Subject: RE: Judgment Documents

Date: Tuesday, 4 November 2014 2:06:09 PM

UNCLASSIFIED

Dear

I acknowledge receipt of your request below addressed to the Court's Freedom of Information access email address. It is not clear whether you intended to make this request under the *Freedom of Information Act 1982* (FOI Act) or if it is just a general enquiry.

If your request is under the FOI Act, I am authorised under subsection 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to FOI requests.

A request for access to documents under the FOI Act can be made to the Federal Court only in relation to documents which relate to the management and administration of the Court's registry and office resources (see s 5(1), FOI Act). Access to documents relating to proceedings in the Court are governed, not by the FOI Act, but the *Federal Court of Australia Act 1976* and the Federal Court Rules.

As a result any FOI request to access court documents is outside the scope of and cannot be dealt with under the FOI Act.

If you are disagree with this decision you may apply for an internal review by another officer in the Court or for an external review by the Information Commissioner.

Under section 54 of the FOI Act any request for an internal review must be made within 30 days of this letter. It must be in writing but can be by email sent to FOI@fedcourt.gov.au.

Under section 54L of the FOI Act any request for an external review must be made within 60 days of this letter. It must be in writing and can be lodged with the Information Commissioner in any of the following ways:

online: https://forms.australia.gov.au/forms/oaic/foi-review/

email: <u>enquiries@oiac.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney

However, if you wish only to know how you might inspect a Federal Court file and obtain copies of available documents, you can find this information on the Court's website at:

Yours sincerely,

John Mathieson
Deputy Registrar
Principal Registry

Federal Court of Australia www.fedcourt.gov.au

From:

Sent: Sunday, 2 November 2014 7:49 AM **To:** External FOI

Subject: Judgment Documents

How do I access all court documents from a case in 2009? I need the documents to apply

for a working visa in Canada?

Thank you,

From: Ian Irving

Cc:

Subject: FW: Enquiry to FOI email account Date: Tuesday, 13 January 2015 11:10:49 AM Attachments: 20150113 OUD6216-98 Form 4.pdf



To:

I refer to your email request below and our subsequent telephone conversation in which you clarified that you wanted to inspect the native title compensation application filed by the Mitakoodi/Mayi People.

As we discussed, the Federal Court has rules about which documents on a court file may be inspected without the leave of the Court by someone who is/was not a party to that matter. An application that starts a case, such as the compensation application you have requested to see, is a document which you do not need the leave of the Court in order to inspect (see Federal Court Rule 2.32(2)(a)).

For ease of access, I have attached a scanned copy of the document you requested to see.

Regards

lan

Ian Irving | Deputy Registrar - Principal Registry Federal Court of Australia | Law Courts Building Queens Square SYDNEY NSW 2000 p. 02 9230 8887 | f. 02 9223 1906 | e. ian.irving@fedcourt.gov.au | www.fedcourt.gov.au

From:

Sent: Thursday, 8 January 2015 4:18 PM

To: External FOI Subject:

Good afternoon could you please advise how I can request an FOI document for a Application for Compensation Claim (Form 4) for Native Title Royalties for Mitakoodi/Mayi People.

Kind regards



From: External FOI
To:

Subject: Request for information

Date: Friday, 27 February 2015 3:54:16 PM

Attachments: <u>image001.jpg</u>

UNCLASSIFIED
Dear
I refer to the request which you sent, on behalf of address. I am authorised under section 23 of the <i>Freedom of Information Act 1982</i> (FOI Act) to make decisions in relation to FOI requests.
A request for access to documents under the FOI Act can be made to the Federal Court only in relation to documents which relate to the management and administration of the Court's registry and office resources (see s 5(1), FOI Act). Access to documents relating to proceedings in the Court are governed, not by the FOI Act, but the <i>Federal Court of Australia Act 1976</i> and the Federal Court Rules.
As a result any FOI request to access court documents is outside the scope of and cannot be dealt with under the FOI Act.
If you are disagree with this decision you may apply for an internal review by another officer in the Court or for an external review by the Information Commissioner.
Under section 54 of the FOI Act any request for an internal review must be made within 30 days of this letter. It must be in writing but can be by email sent to FOI@fedcourt.gov.au.
Under section 54L of the FOI Act any request for an external review must be made within 60 days of this letter. It must be in writing and can be lodged with the Information Commissioner in any of the following ways:
online: https://forms.australia.gov.au/forms/oaic/foi-review/
email: <u>enquiries@oiac.gov.au</u>
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney
In the circumstances as outlined by you in your request and, of course, the authorisation
provided (a copy of which you attached to the request), I have searched the Court's
database of proceedings. The petition was
mentioned before a Registrar on 27 October 2005 and 16 March 2006 but no orders were made
and the petition subsequently lapsed by operation of subsection 52(4) of the <i>Bankruptcy Act</i>
1966. I can find no record of any other proceeding taken against either in the

If you wish to inspect the file to the above proceeding and obtain copies of available documents, you can find information on how this can be done on the Court's website at:

Federal Court or the Federal Circuit Court.

I hope this information is of assistance.

Yours sincerely,

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone 02 9230 8336
www.fedcourt.gov.au

From:

Sent: Tuesday, 24 February 2015 4:17 PM

To: External FOI

Subject: Request for information

is under the care of Wesley Mission as a financial counselling client. Please find authority attached.

She has concerns that in the last 10 years, after her failed business (trading as may have been bankrupted by a creditor. On behalf of the client, could we please request information if there has been a court judgment against her. According to the client she may have received a bankruptcy notice or a sequestration order but she has not done anything about it due to her circumstances. She is not certain if this has actually happened or if she is just thinking about it.

The client is 76 years old. She is grieving the loss of her husband. She is also undergoing a lot of stress and anxiety because of the loss of her properties, her business, her life savings and her livelihood. If there is anything outstanding, she would like to put a closure to it. Please help us obtain information, if any.

Please call me on or reply to this email to discuss this matter.

Thank you and kind regards,

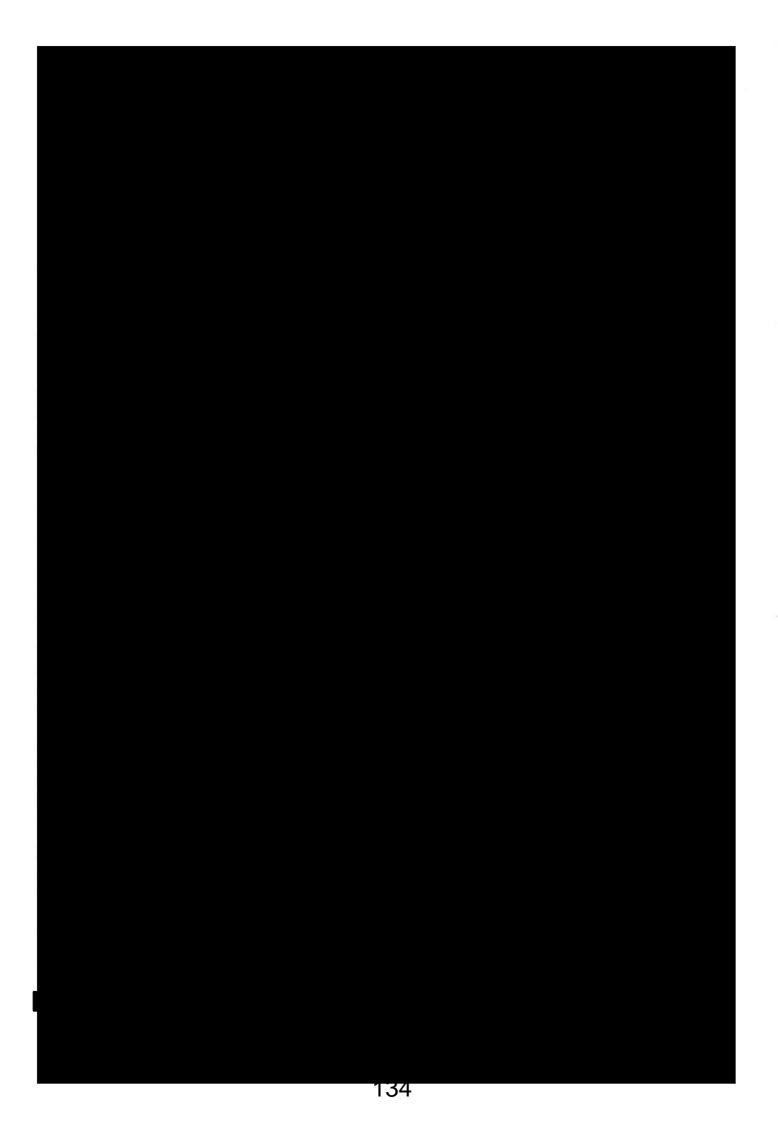


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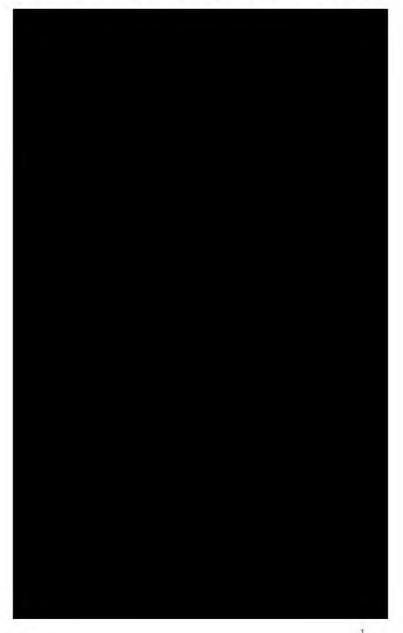
From:

Sent: 27 June 2015 10:34

To: 'Vic Federal Court Registry E-mail' Subject: Further FOI Application

Dear Registrars Allway and Byrne,

I ask you to consider this as a further application under the provisions of the Freedom of Information Act 1982 (Cth) for a copy of any document or thing related to me that is in your possession and control that has not been filed in any proceeding related to me that is not the subject of exercise of Judicial discretion on the documents filed in those proceedings.





John Mathieson

From:
Sent: Saturday, 30 May 2015 5:21 PM
To: Victoria@fedcourt.gov.au

Cc: John Mathieson

Subject: FW:

Attachments: Kline v Official Secretary to the Governor General pdf

Dear Deputy Registrar Allway

Cc Registrar Byrne

Deputy Registrar Mathieson

With the greatest of respect to this learned court and its personnel it is transparent to me that the court has embarked on a relentless campaign of breaching my constitutional rights of access to justice, and in so doing the court has breach my Human Rights.

I do not make this assertion lightly, frivolously or vexatiously, I have at all times found the staff of Registry that I have dealt with to be of the highest calibre and professionalism, I am deeply saddened by the conduct of those exercising the discretion of the court and the failure to exercise the powers entrusted to them in accordance with law and equity.

I sensed the involvement of Registrar Caporale some time ago in the administration of my affairs who like Justice Davies has an unenviable reputation of lack of fairness.

There have been three vexatious litigant judgments made against me in this court; none of which have considered the merits of my applications which is a fundamental step in making such an order.

It is worthy to note that the Honourable Burchardt J followed the correct path in

Some background

21. It should be noted that both parties have filed materials that are, in a sense, objectionable. On the part of the respondent, there is reference to findings of the Supreme Court of South Australia that is a vexatious litigant. That may be so, but that is not a relevant consideration in these circumstances. The applicant has not been found to be a vexatious litigant by this Court and it is mappropriate for the respondent to seek to be mirch this application in that way.

The Federal Court has been wholly reliant on judicial conclusions reached some 7 years ago in South Australia to form its view and has been wilfully blind to the changed factual circumstances that are before the Honourable Beach J.

The Federal Court thus far as a whole has embarked on a campaign to besmirch my reputation and deny my constitutional right of access to justice. I believe this conduct to be part of an engineered process which will become evident from the materials you seek to deny my access to.

The FOI Materials produced by the Australian Taxation Office between June and August 2014 have not been in my possession before.

Had those materials been before the Supreme Court of South Australia had the benefit of reviewing those materials I have no doubt that the situation would be very different.

The Federal Court has had that opportunity not once but in fact 7 times to refer to those materials in its judgments and has deliberately failed to consider those materials in any of its reasons thus far.

With respect this court has misapplied the principles behind FCR 1.34 which in itself is an extremely significant High Court Issue; I believe the court has also not correctly interpreted the provisions of s17 of the Federal Court of Australia Act 1976 (Cth)

s17 Exercise of jurisdiction in open court and in Chambers

(1) Except where, as authorized by this Act or another law of the Commonwealth, the jurisdiction of the Court is exercised by a Judge sitting in Chambers, the jurisdiction of the Court shall be exercised in open court.

I have reviewed the citation *Kline v Official Secretary to the Governor General* [2013] HCA 52 and have referred to that authority in my correspondence with the Deputy Registrar of the Principle Registry of the Federal Court a copy of which email dated 26th April 2015 is set out below.

As you are aware I requested FOI in respect to documents of an administrative character in my applications dated the 6th & 7th March 2015 a period of 84 days has now elapsed and not a document is in sight.

It appears to me that the reference by you to documents of an Administrative Nature is well canvassed within that authority in which regard your reference is too restrictive. See below excerpt from their Honours Reasons (citations not included)

51 In Bienstein , the respondent denied the applicant's request for access to all documents relating to the case management of her matters before it. It was decided in Bienstein that ss 5 and 6 of the FOI Act were not intended to extend so far as requiring the giving of access to documents that would put judicial independence, or the independence of other institutions, at risk. However, it was also decided that the verbiage "relates to matters of an administrative nature", as it occurs in s 5 of the FOI Act, can include documents relating to judicial functions and decision-making. The next step in the reasoning was that documents which would not impinge on the independence essential to the exercise of judicial or decision-making functions were documents relating to matters of an administrative nature. That reasoning was relied on by the appellant to support the proposition that the only documents of the Official Secretary which were excluded from disclosure under s 6A(1) were documents relating to the substantive powers and functions of the Governor-General as decision-maker. That aspect of the reasoning in Bienstein is erroneous.

First, the references in the extrinsic materials to examples of "administrative matters", such as the number of sitting days of a court, were misread in Bienstein as suggesting that even documents held by a court which related to individual cases might be characterised as documents "relating to 'matters of an administrative nature'."

Secondly, it was decided that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. However, that reasoning, deriving from the different factual circumstances in Fingleton v The Queen, accords no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act. Only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters. The approach in Bienstein, relied on by the appellant, is not apt for application to s 6A(1). That approach would not accord proper weight to the circumstance that the Governor-General is not subject to the operation of the FOI Act and would result in an impractical and

unwieldy approach to the application of s 6A(1), contrary to the provision that public access to information is to be achieved promptly and at the lowest reasonable cost

Your decision is silent to those communiques held by the Federal Court of Australia that fall into the categories described by Senator Evans at para 49-50.

In brief, s 6A(1) of the FOI Act, which was inserted in 1984, drew upon the language of ss 5(1) and 6, which were included in the FOI Act as originally enacted. In the relevant parliamentary debates, Senator Evans described the operation of ss 5 and 6 and explained their object. He said ⁵⁰:

> "courts, judicial offices, certain industrial tribunals and their registries of are not exempt from the operation of the [FOI] Act so far as their administrative procedures, properly so-called, are concerned."

50 The Senator went on to explain that the inclusion of ss 5 and 6 would secure a legitimate public interest in "efficient administration" and was not intended to intrude on the independence of the judiciary 1.

As you know I have requested access to documents that also fall under the provisions of the FOI Act, I am simply seeking to determine how the judicial officers and other members of the court were instructed to deal with matters related to me.

If of course the Judicial Officers all exercised discretion free from outside influence than there can be no issue from my perspective, however I find the avoidance of provision of any documentation by you and Deputy Registrar whatsoever most concerning

I find it surprising that this far the Court Registrars have declined to give access to any documents whatsoever which clearly must be a nonsense and against what the Parliament has intended as ventilated by the Senator above

Reference should also be made to the observation of Spigelman CJ in John Fairfax Publications v District Court at [99] that in a free society <u>public access to the conduct of the courts and the results of deliberations in the courts is a human right:</u>

" ... as well as a mechanism for ensuring the integrity and efficacy of the institutions of the administration of justice."

His Honour Jacobsen J of this learned Court in Bianca Hope Rinehart v Georgina Hope Rinehart [2014] FCA 1241

"It should also be observed that, in this Court, the open justice principle is ordinarily engaged when proceedings are commenced: see rule 2.32 (2)(a) of the Federal Court Rules 2011. See also Llewellyn v Nine Network Australia Pty Ltd [2006] FCA 836; (2006) 154 FCR 293 at [23]. The only exception to this is that a non-party (including the media) is not entitled to inspect a document listed in rule 2.32 that the Court has ordered to be confidential: see rule 2.32 (3) of the Federal Court Rules."

Finkelstein J in Australian Competition and Consumer Commission v ABB Transmission and Distribution Limited (No 3) [2002] FCA 609, (2002) ATPR 41-873 thus observed:

"[7] The question that I must resolve is what principle should be applied when deciding whether to allow inspection in cases where leave is required. In giving the answer I propose to confine myself to those cases where a non-party seeks access to material which has been relied upon by the judge. In such a case I have no doubt that the proper approach is that access should be allowed unless the interests of justice require a different course. It is only by adopting this approach that, in a practical sense, the principle of open justice will be preserved. Put differently, in my view there is a strong presumption in favour of allowing any member of the public who wishes to do so to inspect any document or thing that is put into evidence. Inspection should only be refused in exceptional

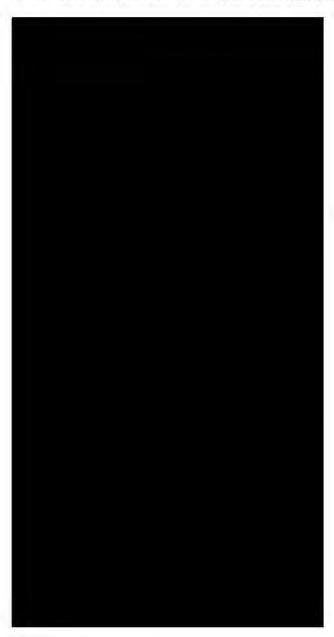
circumstances. I think that the position is a fortiori when the material has been read by the judge in private and is not read out in court. If that material is not made available for inspection then the manner in which the case has been conducted will only be known to the parties. That is an unacceptable position."

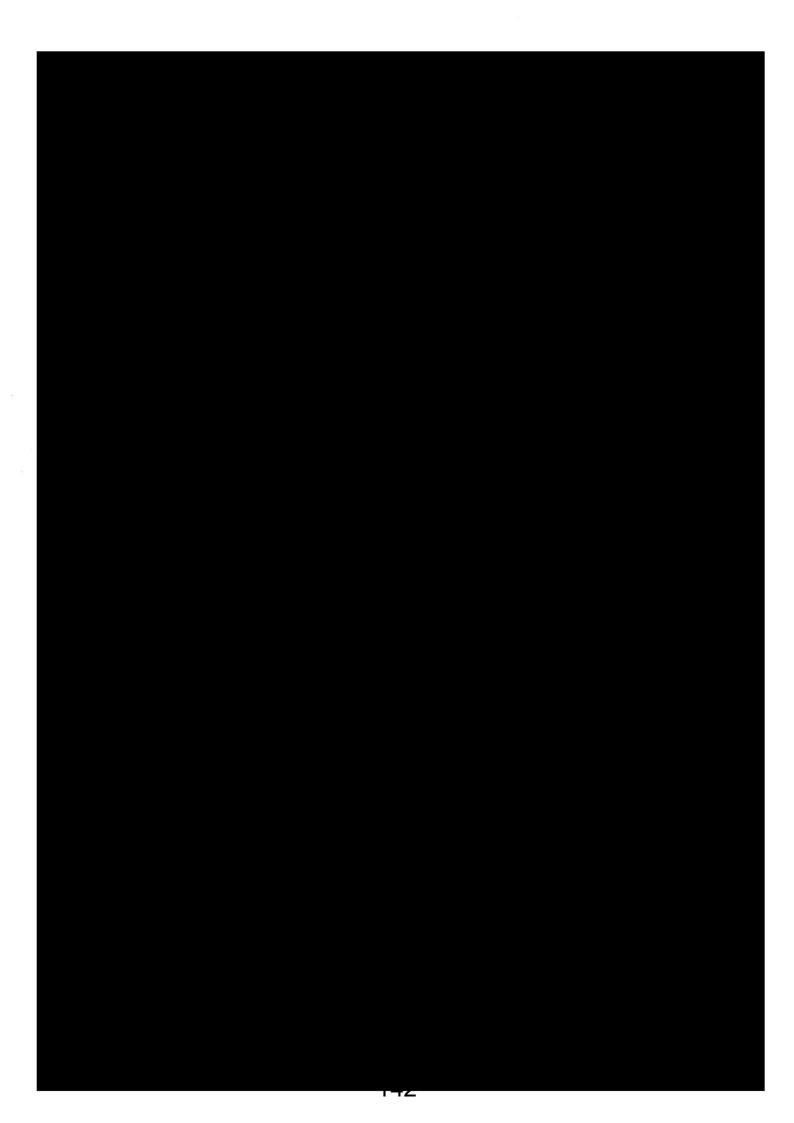
Similarly, Allsop J (as his Honour then was) in Richardson v Commissioner of Taxation [2006] FCA 1306, 64 ATR 267 observed:

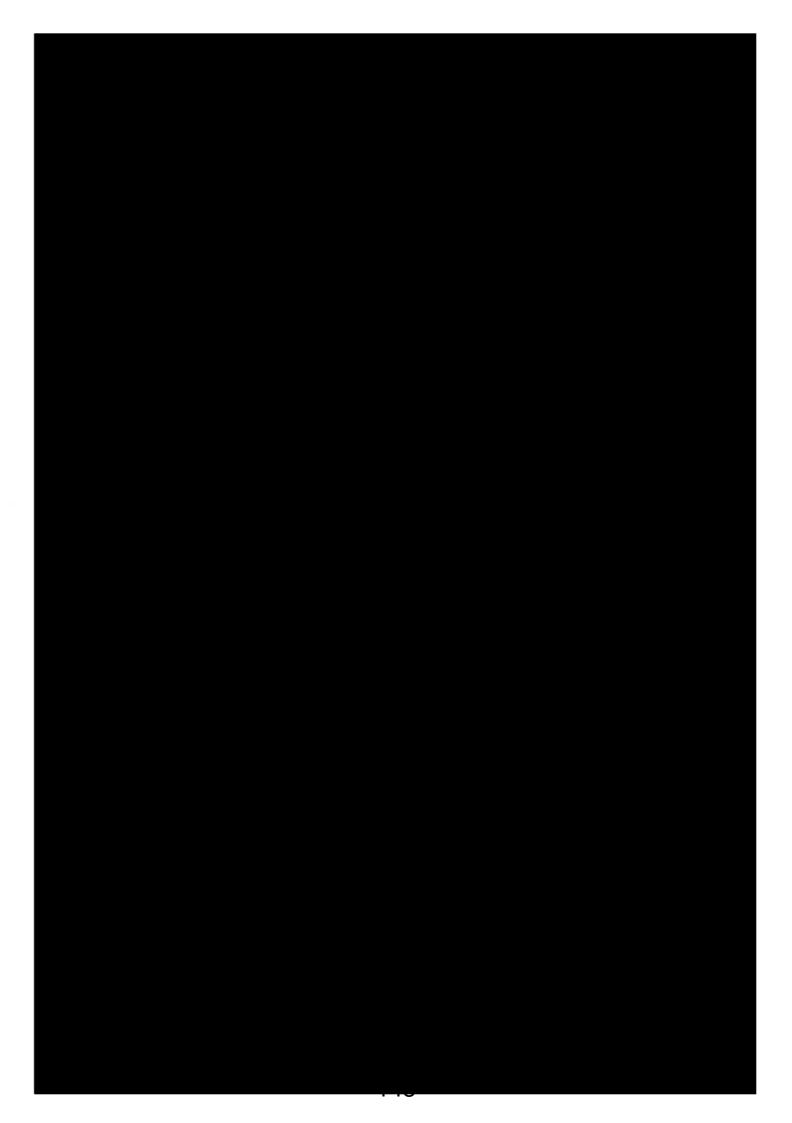
"[3] ... It is sufficient for me to say that the ... approach that I am taking is based on a view which is contained in and underlies O 46, r 6; that is, that, prima facie, a document which stands as a pleading, that is a document which defines the controversy which this court in the exercise of judicial power seeks to quell, should be made public. The reason for this approach is that not only should the public hear what is said at the final hearing of a case or at the arguing of a motion, but also the public is entitled to understand the nature of the controversy which the court is charged with quelling. It is an important governmental function of the third arm of government and the public is entitled to understand its processes and what is happening."

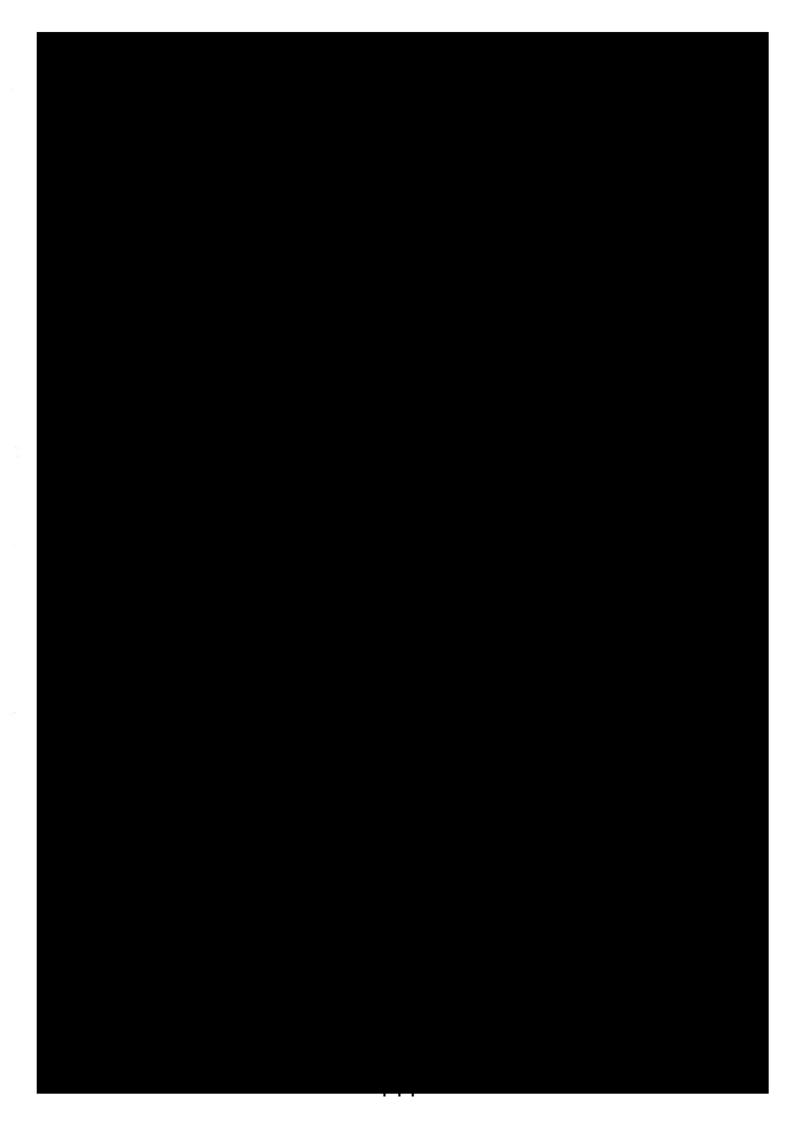
I request that you immediately review your decision.

Most recently the inherent conflict of the Federal Court became apparent from a communique from Registrar Byrne of the Federal Circuit Court which I have addressed in a separate communique.



























From:

Sent: 26 April 2015 11:27

To: 'External FOI'

Subject: RE: VID 600 of 2014 & VID 557 of 2014

Attn. John Mathieson Deputy Registrar Federal Court of Australia Principle Registry

Dear Registrar

Thank you for your communication dated 16th March 2015 received by me on the 9th April 2015.

I have not had the time to properly consider that communique until this juncture; I have reviewed the citation Kline v Official Secretary to the Governor General [2013] HCA 52

It appears to me that the reference by you to documents of an Administrative Nature is well canvassed within that authority in which regard your reference is too restrictive. See below excerpt from their Honours Reasons (citations not included)

51 In Bienstein , the respondent denied the applicant's request for access to all documents relating to the case management of her matters before it. It was decided in Bienstein that ss 5 and 6 of the FOI Act were not intended to extend so far as requiring the giving of access to documents that would put judicial independence, or the independence of other institutions, at risk. However, it was also decided that the verbiage "relates to matters of an administrative nature", as it occurs in s 5 of the FOI Act, can include documents relating to judicial functions and decision-making. The next step in the reasoning was that documents which would not impinge on the independence essential to the exercise of judicial or decision-making functions were documents relating to matters of an administrative nature. That reasoning was relied on by the appellant to support the proposition that the only documents of the Official Secretary which were excluded from disclosure under s 6A(1) were documents relating to the substantive powers and functions of the Governor-General as decision-maker. That aspect of the reasoning in Bienstein is erroneous.

First, the references in the extrinsic materials to examples of "administrative matters", such as the number of sitting days of a court, were misread in Bienstein as suggesting that even documents held by a court which related to individual cases might be characterised as documents "relating to 'matters of an administrative nature'."

Secondly, it was decided that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely

related to judicial independence would not need protection from the operation of the FOI Act. However, that reasoning, deriving from the different factual circumstances in Fingleton v The Queen, accords no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act. Only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters. The approach in Bienstein, relied on by the appellant, is not apt for application to s 6A(1). That approach would not accord proper weight to the circumstance that the Governor-General is not subject to the operation of the FOI Act and would result in an impractical and unwieldy approach to the application of s 6A(1), contrary to the provision that public access to information is to be achieved promptly and at the lowest reasonable cost

Your decision is silent to those communiques held by the Federal Court of Australia that fall into the categories described by Senator Evans at para 49-50.

Of course I must agree that the relevant Judicial officers are not Authorities within the meaning of the FOI Act, however were it not for the existence of the Federal Court of Australia as an Authority the Judicial Officers would not be officers.

In writing to their Honours I used their Judicial Titles as Officers of the Federal Court of Australia, in the same way as I now write to you. The Authority involved is the Federal Court of Australia and I have sought production of all relevant documents also held by Registry and the Judicial Officers as Officers of the Federal Court.

Your decision seems to result in a net effect that there are no documents of an administrative nature held by the Authority and or/any of its officers Judicial or otherwise......with respect I believe this state of affairs cannot be the case is such circumstances as surround me.

Given that I have only recently received your decision I ask that the time to apply for an extension of time for an internal review is extended and that the Court undertakes that internal review. Please advise the Court's position in this regard at your earliest opportunity as I will need to apply to the Office of the Australian Information Commissioner in the Alternative.

The FOI requests referred to in your letter are self-explanatory however in order to simplify and perhaps expand the request I confirm that I seek a list of and a copy of any documents of an administrative nature held by an officer of the Federal Court of Australia, Judicial or otherwise related to proceedings commenced by me in the court between the 1st January 2014 and today's date.

This request should include any documents or thing and minutes of meetings related to your correspondence dated 16th April 2015.

On the 15th & 24th April 2015 I filed and served the attached Notices to Admit in the Federal Circuit Court

While I conceded these notices are far from perfect I believe they are self-explanatory and reveal the depth of jurisdictional error caused by the Bias created from the Vexatious Litigant orders; I have sought pro-bono referral in various proceedings or alternatively arbitration which requests have consistently fallen on deaf ears.

I do not wish to be considered argumentative however at this juncture it is my firm view that his Honour fell into Jurisdictional Error in the making of his reasons in judgments were made in a manner that was rushed and without considering the evidence and submissions before the Honourable Judge.

No doubt this is a function of instructions given to His Honour by another

I observe that His Honour has not yet delivered his reasons in respect to the hearing of

Relevantly the Third Respondent in
to set aside various Statutory Letters of Demand issued and served by me on the 10 th March 2015 which subject material was a matter in respect of consent orders dated 1 st August 2014 made by the Honourable Mortimer J when I withdrew all Statutory Letters of Demand issued and served by me in 2014 that were the subject of
The Court has placed great reliance on the sequestration order made against me on the 24 th September 2004 as to standing in respect to the Judgments made in the Melbourne Registry which also relevantly refer to the orders made in the Supreme Court of South Australia that also placed reliance on the sequestration order made against me.
In order to cause an absence of doubt; that order was made in circumstances where the Default Judgment given in DCCIV-2003-1666 Could not and did not exist as a matter of the operation of the <i>A New Tax System (Goods and Services Tax) Act</i> 1999 (Cth) which GST Mistake was corrected on the 6 th & 7 th October 2008 in accordance with the findings of this Honourable Court in <i>KAP Motors v Federal Commissioner of Taxation</i> .
The evidence has been before the court in
It is to my great regret that I allowed the Court Books to be prepared by the Solicitors for the Respondents in that meant the relevant evidence was Not before the Honourable Justice Mortimer.
I am wholly dissatisfied with my own performance on the 5 th August 2014 in the hearing before Her Honour and my own failure to provide an outline of submissions in respect to that matter to Her Honour, however that was a function of being under siege by the Deputy Commissioner of Taxation as part of a relentless campaign in the Supreme Court of Victoria with hearings on the 4 th and 6 th August before the Honourable associate Justice Mukhtar inamongst others.
Had I been better prepared the relevant evidence would have been before Her Honour and I believe Her Honour would NOT have made the orders dated 21 st November 2014, I have found her Honour to be fair in many respects however I believe that Her Honour would not have made those orders and findings if Her Honour had made a decision on the merits.
Due to the same pressures involved at the time Deputy President Forgie agreed to adjourn proceedings in until December due to an emotional collapse by me on the 18 th September 2014.; with the benefit of hindsight I should have applied to adjourn the proceedings heard on the 5 th August so that I could gather my wits and properly prepare.
Also relevantly I have filed and served the attached Notices to Admit in an and and and dated 6 th April 2015.
I observe that despite affidavits sworn by the Applicant dated 31 st March 2015 the Applicant has this far not served or filed a Notice disputing the facts set out in the Notices to Admit in those proceedings consequently there can be no genuine dispute as 14 days has elapsed and the Applicant is taken to have admitted the facts.
On the 21 st April 2009 I was discharged from Bankruptcy; by force of s129AA of the Bankruptcy Act 1966 (Cth) the assets of my Bankrupt Estate have revested in me on the 22 nd April 2015I have delayed writing this communique until after the passing of the sixth anniversary of my Discharge from Bankruptcy that was given in respect to a debt that could not and did not legally exist and hade in any event been paid.

I have been greatly disturbed by the conduct of the Honourable Justice Davies who is given to the habit of shaking of the Head and rolling of eyes which was again in evidence in the last hearing of

The Mind-set of the Honourable Pagone J was clearly tainted in His Honours reasons on the 26th February 2015 in which circumstance His Honour also did not make a finding on the Merits. One would have thought that in order for an order to be made under s37AO of the Act it would be pivotal to make a finding on the merits in the proceeding in

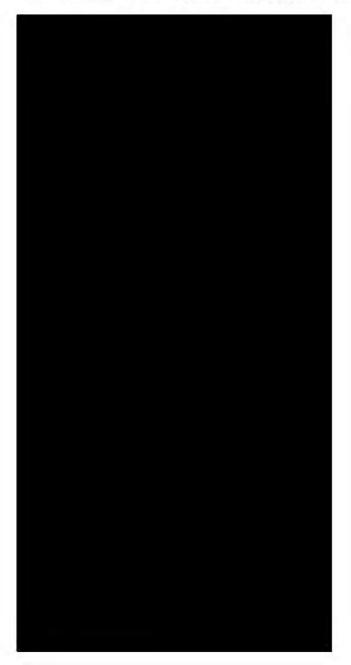
which the orders are sought.

The issues arising from the materials I seek are extremely serious and I believe of a constitutional nature relating as they do to my affidavit dated 28th April 2014 filed in proceedings in this Honourable Court, consequently I have advised the Appeal Co-ordinator that I have taken steps to seek the issuing of 5 summons to show cause in respect to;

- 1. for issue of Constitutional Writ of Certiorari
- 2, for issue of Constitutional Writ of Certiorari
- 3. for issue of Constitutional Writ of Certiorari
- 4. for issue of Constitutional Writ of Mandamus
- 5. The Inspector General of Bankruptcy for issue of Constitutional Writ of Mandamus

In the absence of the production of the documents sought under FOI I advise I will have no alternative than to seek orders for discovery against the Federal Court of Australia, Its Judicial Officers and its administrative officers in the High Court of Australia.

Please confirm the Courts position with respect to Internal review by return email



On the 6 th March 2015 I applied pursuant to the provisions of the FOI Act for access to documents in the administration of a number of Court proceedings to the Associates of the Honourable Pagone J, Beach J, Mortimer J, the Chief Justice and the Victoria Registry of the court as set out below.
Please confirm to me that these applications were forwarded to your office





Telephone: (02) 9230 8336
Facsimile: (02) 9223 1906
DX 613 SYDNEY

A.B.N. 49 110 847 399

LEVEL 16
LAW COURTS BUILDING
Your Ref:
Our Ref:
SYDNEY NSW 2000

3 July 2015

Your requests under the Freedom of Information Act 1982

Dear

I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

On 2 July 2015 you sent an email to the Court requesting under the *Freedom of Information Act* 1982 (FOI Act) "copies of all correspondence drafted and signed by transmitted and/or sent to the Federal Court of Australia in the matter." You noted that you are the applicant in that matter. I believe that you made a typographical error in that request in the reference to the relevant proceeding and that you intended to refer to That proceedin

In your email you also requested a waiver of all fees for this request explaining that the disclosure of the requested information to you is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the Government and is not primarily in your commercial interest.

The Federal Court (including its registries and staff) is a prescribed authority for the purposes of the FOI Act although its judicial officers are not (see subsection 5(1) FOI Act and paragraph 2.6 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)). The FOI Act, however, does <u>not</u> apply to any request for access to a document of the Court <u>unless the document relates to matters of an administrative nature</u> (see also subsection 5(1) FOI Act and paragraph 2.7 of the Guidelines). For completeness, although not relevant to your request, since 12 April 2013, the FOI Act also does not apply to the handling of judicial complaints within the Court (see subsection 5(1A) FOI Act and paragraph 2.6 of the Guidelines).

The High Court of Australia has recently clarified that the phrase "matters of an administrative nature" refers only to documents that concern "the management and administration of registry and office resources" (see Kline v Official Secretary to the

Governor General [2013] HCA 52 at [47]) and not to documents relating to the exercise of substantive powers and functions of adjudication or tasks that are referable to this (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [45]). (See also paragraphs 2.7 and 2.8 of the Guidelines.)

Any correspondence in the possession of the Federal Court drafted and signed by Ashurst Australia transmitted and/or sent to the Court in matter ACD43/2014 clearly relate to proceedings which are before the court and are not documents of an administrative nature within the meaning of the FOI Act. As such the FOI Act does not apply to them and no request under that Act can validly be made in relation to them (see paragraphs 2.6 to 2.8 of the Guidelines).

If you are dissatisfied with my decision, you may apply an for internal review or an Information Commissioner review.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines which I have referred to earlier in the reasons for my decision. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me by phone on the phone number shown on page 1 of this letter.

Yours sincerely



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906 DX 613 SYDNEY A.B.N. 49 110 847 399 Your Ref:

13 July 2015

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Your request under the Freedom of Information Act 1982

As you know I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

On 2 July 2015 you sent an email to the Court requesting under the *Freedom of Information Act* 1982 (FOI Act) "copies of all correspondence drafted and signed by transmitted and/or sent to the Federal Court of Australia in the matter." On 3 July 2014 I wrote to you in relation to that request noting that it believed that you had made a typographical error in the reference to the proceeding number and that you intended to refer to but, for the reasons I set out in detail in that letter, I refused that FOI request. In summary this was because the FOI Act only applies, in the case of the Federal Court, to documents relating to matters of an administrative nature and, as any correspondence in the possession of the Court which would be within the scope of your request would relate to a proceeding in the Court, these would not therefore be documents of an administrative nature.

On 4 July 2015 you sent an email to the Court requesting that your FOI request of 2 July 2015 be extended to include copies of all notes or similar material, including File Notes taken from telephone conversations held between Ashurst Australia and the Federal Court.

I do not believe that it is possible to extend a FOI request that has already been refused by adding additional parts to it, although this may be able to be done by mutual agreement if a review is sought of the refusal decision. I am not aware that any review of this decision has been sought although, as the time to make such a request has not yet expired, it may be something which you are still contemplating.

I will assume, however, that an extension as requested can be given notwithstanding that I have already refused the initial FOI request.

As I explained in my decision on 3 July 2015, the Federal Court (including its registries and staff) is a prescribed authority for the purposes of the FOI Act although its judicial officers

are not (see subsection 5(1) FOI Act and paragraph 2.6 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)). The FOI Act, however, does <u>not</u> apply to any request for access to a document of the Court <u>unless the document relates to matters of an administrative nature</u> (see also subsection 5(1) FOI Act and paragraph 2.7 of the Guidelines). For completeness, although not relevant to your request, since 12 April 2013, the FOI Act also does not apply to the handling of judicial complaints within the Court (see subsection 5(1A) FOI Act and paragraph 2.6 of the Guidelines).

The High Court of Australia has recently clarified that the phrase "matters of an administrative nature" refers only to documents that concern "the management and administration of registry and office resources" (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [47]) and not to documents relating to the exercise of substantive powers and functions of adjudication or tasks that are referable to this (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [45]). (See also paragraphs 2.7 and 2.8 of the Guidelines.)

Any notes or similar material, including File Notes, in the possession of the Federal Court relating to proceeding ACD43/2014 clearly relate to proceedings which are before the court and are not documents of an administrative nature within the meaning of the FOI Act. As such the FOI Act does not apply to them and no request under that Act can validly be made in relation to them (see paragraphs 2.6 to 2.8 of the Guidelines).

To the extent that this can be a decision in relation to an extended request and you are dissatisfied with it, you may apply an for internal review or an Information Commissioner review.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines which I have referred to earlier in the reasons for my decision. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me by phone on the phone num	ıber
shown on page 1 of this letter.	

Yours sincerely



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref: FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

> LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

20 July 2015



Dear ,

Your request under the Freedom of Information Act 1982

As you know I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

On 2 July 2015 you sent an email to the Court requesting under the FOI Act "copies of all correspondence drafted and signed by transmitted and/or sent to the Federal Court of Australia in the matter." On 3 July 2014 I wrote to you in relation to that request noting that I believed that you had made a typographical error in the reference to the proceeding number and that you intended to refer to set out in detail in that letter, I refused that FOI request. In summary this was because the FOI Act only applies, in the case of the Federal Court, to documents relating to matters of an administrative nature and, as any correspondence in the possession of the Court which would be within the scope of your request would relate to a proceeding in the Court, these would not therefore be documents of an administrative nature.

On 4 July 2015 you sent an email to the Court requesting that your FOI request of 2 July 2015 be extended to include copies of all notes or similar material, including File Notes taken from telephone conversations held between Ashurst Australia and the Federal Court. On 13 July 2014 I wrote to you indicating that I did not believe it was possible to extend a FOI request which had already been refused but indicating that, if it is possible to do so, I would nevertheless refuse that request for the reasons set out in my letter. In summary this was because the FOI Act only applies, in the case of the Federal Court, to documents relating to matters of an administrative nature and, as any such notes or similar material taken from telephone conversations held between Ashurst Australia and the Federal Court in the possession of the Court which would be within the scope of your request would relate to a proceeding in the Court, these would not therefore be documents of an administrative nature.

On 20 July 2015 you sent an email to the Court requesting under the FOI Act "copies of all correspondence drafted by law firm transmitted and/or sent to the Federal Court of Australia in the matter and the correspondence including file notes or discussion notes form telephone conversations." This request is substantially the same as your earlier requests (as above) which I have already considered and refused. Again, I believe it contains a typographical error in the reference you make to the relevant proceeding and that you intended to refer to

As I explained in my decisions on 3 and 13 July 2015, the Federal Court (including its registries and staff) is a prescribed authority for the purposes of the FOI Act although its judicial officers are not (see subsection 5(1) FOI Act and paragraph 2.6 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)). The FOI Act, however, does <u>not</u> apply to any request for access to a document of the Court <u>unless the document relates to matters of an administrative nature</u> (see also subsection 5(1) FOI Act and paragraph 2.7 of the Guidelines). For completeness, although not relevant to your request, since 12 April 2013, the FOI Act also does not apply to the handling of judicial complaints within the Court (see subsection 5(1A) FOI Act and paragraph 2.6 of the Guidelines).

The High Court of Australia has recently clarified that the phrase "matters of an administrative nature" refers only to documents that concern "the management and administration of registry and office resources" (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [47]) and not to documents relating to the exercise of substantive powers and functions of adjudication or tasks that are referable to this (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [45]). (See also paragraphs 2.7 and 2.8 of the Guidelines.)

Any correspondence, including letters, emails or other correspondence as well as notes or discussion notes from telephone discussion, in the possession of the Federal Court relating to proceeding clearly relate to proceedings which are before the court and are not documents of an administrative nature within the meaning of the FOI Act. As such the FOI Act does not apply to them and no request under that Act can validly be made in relation to them (see paragraphs 2.6 to 2.8 of the Guidelines).

If you are dissatisfied with my decision, you may apply for an internal review or an Information Commissioner review.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines which I have referred to earlier in the reasons for my decision. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me by phone on the phone number shown on page 1 of this letter.

Yours sincerely



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

3 July 2015

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Your requests under the Freedom of Information Act 1982

I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

On 3 July 2015 you sent an email to the Court requesting under the *Freedom of Information Act* 1982 (FOI Act) "copies of the following:

- (a) all briefing material provided to Justice Buchanan drafted by the Federal Court for Hearing held 2 July 2015. Some of the material maybe background material advising of pertinent matters and of which Justice Buchanan may rely upon for the Hearing; and
- (b) all correspondence drafted by the Federal Court in relation to the appointment of Justice Buchanan for the matter."

In the subject line of your email you identified the "matter" you were referring to as proceeding which is a

In your email you also requested a waiver of all fees for this request explaining that the disclosure of the requested information to you is in the public interest because it is likely to contribute significantly to public understanding of the operation or activities of the Government and is not primarily in your commercial interest.

The Federal Court (including its registries and staff) is a prescribed authority for the purposes of the FOI Act although its judicial officers are not (see subsection 5(1) FOI Act and paragraph 2.6 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)). The FOI Act, however, does <u>not</u> apply to any request for access to a document of the Court <u>unless the document relates to matters of an administrative nature</u> (see also subsection 5(1) FOI Act and paragraph 2.7 of the Guidelines). For completeness, although not relevant to your request, since 12 April 2013, the FOI Act also does not apply to the handling of judicial complaints within the Court (see subsection 5(1A) FOI Act and paragraph 2.6 of the Guidelines).

The High Court of Australia has recently clarified that the phrase "matters of an administrative nature" refers only to documents that concern "the management and administration of registry and office resources" (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [47]) and not to documents relating to the exercise of substantive powers and functions of adjudication or tasks

that are referable to this (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [45]). (See also paragraphs 2.7 and 2.8 of the Guidelines.)

Any briefing material or correspondence that was within the scope of your request would clearly relate to proceedings which are before the court and are not documents of an administrative nature within the meaning of the FOI Act. As such the FOI Act does not apply to them and no request under that Act can validly be made in relation to them (see paragraphs 2.6 to 2.8 of the Guidelines).

If you are dissatisfied with my decision, you may apply for an internal review or an Information Commissioner review.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines which I have referred to earlier in the reasons for my decision. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me by phone on the phone number shown on page 1 of this letter.

Yours sincerely



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref: 1

30 September 2015

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Your requests under the Freedom of Information Act 1982

I am authorised under section 23(1) of the Freedom of Information Act 1982 (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

On 28 September 2015 the Court received from you a letter in which you note that Justice Perry has produced a practice directions document for matters involving a self-represented litigant, querying whether Justice Perry has issued a similar document for matters not involving a self-represented litigant and, if so, requesting under the Freedom of Information Act 1982 (FOI Act) a copy of the latter document.

The FOI Act has a very limited application to the Federal Court. The Court's judges are excluded from the operation of the FOI Act entirely (see section 5(1)(b)). Otherwise the FOI Act does not apply to a request for access to a document in the possession or control of the Court's registry unless the document relates to matters of an administrative nature (see subsection 5(1) and paragraph 2.6 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)). The High Court of Australia has recently clarified that the phrase "matters of an administrative nature" refers only to documents that concern "the management and administration of registry and office resources" (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [47]) and not to documents relating to the exercise of substantive powers and functions of adjudication or tasks that are referable to this (see Kline at [45] and also paragraphs 2.7 and 2.8 of the Guidelines.)

Access to documents filed in or issued by the Court is available under the Federal Court Rules, subject to payment of inspection and copying fees (unless exempted), and the Court provides a considerable amount of information about its management of cases on its website. in Practice Notes and in a range of other practice documents. In addition, Court personnel have a discretion to provide information and documents prepared by the Court if this is in the public interest subject, of course, to any confidentiality restrictions.

For the assistance of litigants and the legal representatives of litigants, Justice Perry has developed information providing general guidance on matters dealt with in her docket. These are distributed on her behalf by staff of the NSW District Registry to the litigants or legal

representatives of litigants, as appropriate, in each matter which is allocated to her docket. Separate documents are used depending on whether the relevant matter has one of more litigants who are unrepresented or where all the litigants are represented.

The information document you are seeking is not available under the FOI Act as it is used only for a case which has been commenced in the Court and allocated to the docket of Justice Perry and otherwise does not relate to the management and administration of registry and office resources. Nevertheless it has been widely distributed and provides useful information about cases managed in Justice Perry's docket. Accordingly, in the exercise of my discretion, I am attaching a copy as you have requested.

Even though I have decided to provide you with a copy of the document you are seeking, I am required to provide you with information about how you could seek a review of my decision that this document is not available under the FOI Act.

If you are dissatisfied with this decision, you may apply for an internal review or an Information Commissioner review.

Under section 54 of the FOI Act, you may apply in writing to the Court for an **internal review** of my decision. The **internal review** application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about **Information Commissioner review** is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines which I have referred to earlier in the reasons for my decision. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me by phone on the phone number shown on page 1 of this letter.

Yours sincerely

John Mathieson Deputy Registrar







From:

To: External FOI
Subject: FOI request

Date: Wednesday, 21 October 2015 11:52:59 AM

Dear Sir/Madam.

I write seeking information under the Freedom of Information Act, specifically all correspondence over the past two years between the Chief Justice and the chief executive officer/registrar of the Federal Court; and all correspondence between the Chief Justice or CEO/registrar of the Federal Court and the chief justice or CEO of the Family Court or the chief judge or CEO of the Federal Circuit Court chief justice regarding court funding or courts administration, and in particular, any possible restructure of or change to courts administration.

I expect this request to be administered by the Federal Court, not the department, and would, of course, be agreeable to release of the documents outside of the FOI Act.

I advise that I am not interested in duplicate copies of documents or documents that have already been publicly released, or media releases, media articles or media statements. I also reserve the right to withdraw this request should the information I seek be released under FOI to individuals or organisations prior to finalisation of my FOI application, and ask that I be notified accordingly. If the estimate of charges is excessive, I reserve the right to narrow the scope of this application or, alternatively, split it into separate parts. I would also prefer documents to be released electronically via email.

Finally, given policies on disclosure logs differ across government, and remain a subject for debate, I would ask that The Australian be notified of the planned timing of the release of documents to us, and be given the full 10 business days allowed under the Act to research and prepare any articles for publication before the release is posted on any disclosure log. The Australian would also appreciate the option of being able to place the application on hold at any stage, in accordance with the Act, if timing or other factors become an issue. Your assistance on these matters would also help your agency provide any background or clarifying information.

If I can be of any assistance with the processing of any aspect of these requests, please do not hesitate to contact me on (07) 3666-7456 or FOI@theaustralian.com.au

Confirmation of receipt of this letter, and the scope of my request, would be appreciated. My postal address is:

The Australian GPO Box 2145

Brisbane QLD 4001

Kind regards,





Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

5 January 2016

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Freedom of Information Request

I am writing to advise you of my decision about your request under the *Freedom of Information Act 1982* (FOI Act) for access to documents which you sent to the Federal Court of Australia (Federal Court) on 21 October 2015.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request.

Scope of Request

On 22 October 2015 I sent an email to you acknowledging your request and confirming that I would contact you once my preliminary inquiries about it were completed.

On 11 November 2015 we spoke by phone and you agreed that the scope of your request (covering the period of two years) was limited to:

- correspondence between the Chief Justice and Registrar of the Federal Court
- correspondence between the Chief Justice of the Federal Court, Chief Justice of the Family Court of Australia (Family Court), Chief Judge of the Federal Circuit Court of Australia (Federal Circuit Court) and/or Chief Executive Officer of the Family Court and Federal Circuit Court
- correspondence between the Registrar of the Federal Court, Chief Justice of the Family Court, Chief Judge of the Federal Circuit Court and/or Chief Executive Officer of the Family Court and Federal Circuit Court

regarding court funding or courts administration or any possible restructure of or change of courts administration.

This was confirmed by emails exchanged between us on 13 November 2015.

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 - 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act). It does not apply to Judicial Officers (paragraph 5(1)(b) of the FOI Act) or to any documents relating to the handling of complaints about Judicial Officers (subsections 5(1A) to (1C) of the FOI Act). Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act (paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase "matters of an administrative nature" and held that it refers to documents that concern the "management and administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

Correspondence in the Possession of the Chief Justice

As the FOI Act does not apply to the Judicial Officers of the Federal Court (which, of course, includes the Chief Justice) any request for access to a document that is in the possession of the Chief Justice is outside of the scope of the FOI Act and no valid FOI request can be made in relation to it.

This includes all correspondence sent or received by the Chief Justice of the Federal Court to or from any person or entity. In the context of your request, this means that an item of correspondence sent or received by the Chief Justice of the Federal Court to or from the Registrar of the Federal Court is not accessible under the FOI Act in the hands of the Chief Justice but, provided it is a document of an administrative nature within the meaning of the FOI Act and subject of course to any exemption under that Act which might apply, it is nevertheless accessible under that Act in the hands of the Registrar.

To the extent that your request relates to correspondence that is in the possession of the Chief Justice, that correspondence is not accessible under the FOI Act and your request for access to it is refused.

Correspondence in the Possession of the Court

I arranged for court staff to undertake comprehensive searches of electronic folders and other records maintained in the Principal Registry of the Federal Court for the period from 22 October 2013 to 21 October 2015 for any correspondence between the Registrar of the Federal Court and any of the Chief Justice of the Federal Court, Chief Justice of the Family Court, Chief Judge of the Federal Circuit Court and/or Chief Executive Officer of the Family Court and Federal Circuit Court regarding court funding or courts administration or any possible restructure of or change of courts administration. In addition, I spoke to all key personnel of the Federal Court (including the Registrar) and support staff and the searches undertaken were refined and extended based on their and my knowledge and recollections. I also liaised with key personnel in the Family Court and Federal Circuit Court.

As a result I identified 22 documents which fell within the scope of your request as follows (in chronological order):

Document No.	Date	Brief Description
1.	15.1.14	Email from Federal Court Registrar to Federal Court Chief Justice re: Courts Review
2.	14.7.14	Email from Federal Court Registrar to All Federal Court Judges (including Chief Justice) and Others re: Electronic Court Files
3.	1.9.14	Email from Federal Court Registrar to Chief Justice and Others re: Employment of New Director Corporate Services [note: although this email refers to "some brief information" being attached it, in fact, included no attachment]
4.	15.10.14	Email from Federal Circuit Court Chief Judge to Federal Court Registrar re: Electronic Court Files for the Federal Circuit Court
5.	23.10.14	Email from Federal Court Registrar to All Federal Court Judges (including Chief Justice) and Others re: Email Security Tagging
6.	2.2.15	Email from Family Court and Federal Circuit Court CEO to Federal Court Registrar and attached letter from Family Court and Federal Circuit Court CEO to a Deputy Secretary Attorney-General's Department re: Ernst & Young Costing Model
7.	10.2.15	Email from Family Court and Federal Circuit Court CEO to Federal Court Registrar and attached letter (with enclosures) from Family Court and Federal Circuit Court CEO to a Deputy Secretary Attorney-General's Department re: Shared Services Review of the Family Court, Federal Circuit Court and Federal Court
8.	24.2.15	Memorandum from Federal Court Chief Justice to All Federal Court Staff (including Registrar) re: National Court Framework
9.	27.3.15	Email from Federal Court Registrar to All Federal Court Judges (including Chief Justice) and Others as well as attached memorandum re: Electronic Court File improvements
10.	20.4.15	Memorandum from Federal Court Chief Justice to All Federal Court Judges and Staff (including Registrar) re: National Court Framework Update
11.	7.5.15	Memorandum from Federal Court Chief Justice to All Federal Court Judges and Staff (including Registrar) re: National Court Framework Allocation Processes
12,	24.6.15	Memorandum from Federal Court Chief Justice to All Federal Court Judges and Staff (including Registrar) re: National Court Framework - Changes to eLodgment and ECF to support the National Court Framework
13.	1.7.15	Email from Federal Court Registrar to All Federal Court Judges (including Chief Justice) and Others as well as attached memorandum re: Changes to eLodgment and Electronic Court File
14.	1.7.15	support for National Court Framework Letter from Family Court Chief Justice to Family Court and Federal Circuit Court CEO re: Drafting Instructions in relation to Proposed Courts Administration Bill
15.	14.7.15	Memorandum from Federal Court Chief Justice to All Federal Court Judges, Registrar, National Operations Registrar and All Staff re: Duty Systems within the Court under the National Court Framework
16.	17.7.15	Memorandum from Federal Court Registrar to all Federal Court (including Chief Justice) Judges and Others re: First Anniversary of

		the Introduction of the Electronic Court File
17.	22.7.15	Email from Federal Court Registrar to Federal Court Chief Justice re: Phone on Associates' Desks in Courtrooms
18.	14.8.15	Letter from Federal Circuit Court CEO to Federal Court Registrar re: Consideration of Resource Transfers
19.	9,9.15	Email from Federal Court Chief Justice to Federal Court Registrar and Another with email from Family Court and Federal Circuit Court National Media and Public Affairs Manager to each of Federal Court Chief Justice and Registrar re: Media Issues
20.	9.9.15	Email from Federal Court Registrar to Federal Court Chief Justice and Another with email from Family Court and Federal Circuit Court National Media and Public Affairs Manager to each of Federal Court Chief Justice and Registrar re: Media Issues
21.	24.9.15	Email from Federal Court Chief Justice to Federal Court Registrar with email from Executive Assistant to Family Court Chief Justice to Federal Court Chief Justice re: Courts Administration Amendment Bill 2015
22.	9.10.15	Letter from Federal Court Registrar to Family Court and Federal Circuit Court CEO re: Ongoing Management of Casetrack

Personal Information

Documents numbered 4, 6, 7, 9, 13, 16, 18, 19, 20, 21 and 22 or the attachments to them (other than the attachments to documents 6 and 21 [for those attachments see the section below headed "Deliberative Material"]) contain telephone numbers, facsimile numbers and/or email addresses of individuals who are, in the context of each relevant document, identifiable. As a result that information is personal information within the meaning of the FOI Act. As I advised in my email to you of 20 November 2015, I consulted with the individuals concerned about possible contentions that these documents may be conditionally exempt under section 47F of the FOI Act and access to them would, on balance, be contrary to the public interest for the purposes of subsection 11A(5) of that Act. In response the Federal Court received an objection, with reasons, to the release of the relevant documents on behalf of some individuals if that included those relevant individuals' personal information. I have taken that objection and the reasons advanced into account in making my decision on your request in relation to these documents.

Save and except for the telephone and mobile telephone numbers and email address of the Federal Circuit Court's National Media & Public Affairs Manager (which are published by that Court on its website as contacts for members of the media) which appear in documents numbered 19 and 20, the relevant personal information in each of these documents is neither well known nor generally publicly available. Its disclosure would have no demonstrable relevance to the affairs or workings of government and would neither enhance transparency or accountability nor achieve any other public purpose. Its release would infringe the personal privacy of each of the individuals concerned and interfere with the efficiency of his or her work and, where relevant, that of his or her support staff and, in turn, impact adversely on the operations of the Federal Court, Family Court or Federal Circuit Court. As a result disclosure of any of these documents in their original form would be an unreasonable disclosure of personal information and, as a consequence, each is conditionally exempt under section 47F of the FOI Act.

Releasing each of these documents in that original form would, on balance, be contrary to the public interest test set out in subsection 11A(5) of the FOI Act. The disclosure of the relevant personal information would not contribute in any meaningful way in promoting the objects of the FOI Act, inform debate on a matter of public importance, promote effective oversight of public expenditure or allow a person to access his or her own personal information but (as already noted) that disclosure would infringe the personal privacy of the individuals involved and interfere with the efficiency of his or her work and, where relevant, that of his or her support staff and, in turn, impact adversely on the operation of the Federal Court, Family Court or Federal Circuit Court.

It is possible, in each case, for the Federal Court to prepare an edited or redacted copy of the document modified by deletion to remove each piece of personal information as provided for under section 22 of the FOI Act. To be clear, however, the published contact telephone numbers and email address of the Federal Circuit Court's National Media & Public Affairs Manager in documents numbered 19 and 20 remain unedited.

I have therefore decided to grant you access to copies of each of these documents edited in this way.

As noted above, following consultation with the individuals concerned about the personal information which was contained in the various items of correspondence, an objection was received from some individuals to the release of the relevant items if that included that individual's personal information. As the decision I have made means that this personal information will be deleted from any copy of the relevant items that is released, that objection does not apply. As a consequence, there is no requirement to give notice of my decision to that individual under subsection 27(5) of the FOI Act or to delay the release of documents under subsection 27(6) of that Act until all opportunities for review or appeal have run out. To avoid any doubt about this I have confirmed with the individuals concerned that, in view of the decision I have made, no objection as proposed remains.

Deliberative Material

Attachment to Document 6

The attachment to the document numbered 6 is a letter from the Family Court and Federal Circuit Court CEO to a Deputy Secretary of the Attorney-General's Department dated 2 February 2015. The opinion, advice and recommendations in that letter was prepared and given in the course of, or for the purposes of, the deliberative processes of the Family Court, Federal Circuit Court and the Department, particularly in regard to the costing of corporate functions and services and opportunities for savings. It contains some operational information (as defined by section 8A of the FOI Act) and purely factual information but this is so intertwined with the opinion, advice and recommendations given and made that it is not practical to separate it. As a result this document is also conditionally exempt under section 47C of the FOI Act.

I also considered whether access to this document at this time would, on balance, be contrary to the public interest test set out in subsection 11A(5) of the FOI Act.

Unlike other conditional exemptions under the FOI Act, the conditional exemption relating to deliberative process has no requirement of harm being demonstrated. Balancing factors in

favour or against disclosure as set out in section 11B of that Act in relation to each of those other conditional exemptions is thus informed by reference to the specific harm which must have been shown to exist.

In favour of disclosure is that the document may inform the community about the development of relevant policy by the Government; provide some of the background to Government decision making and reasons for some decisions it has made; enhance the scrutiny of government decision making; and inform public debate. It is, however, unlikely that the document would otherwise promote the objects of the FOI Act and it would not allow a person to access his or her own personal information. Because the opinions, advice and recommendations given and made were provided in a very tight timeframe and in speculation and anticipation of policy considerations then under deliberation, the value of the letter in enhancing scrutiny and informing public debate is, however, likely to be limited.

Against disclosure is that the release of the document could reasonably be expected to prejudice the ability of the Attorney-General and his Department to obtain in the future full, frank and candid opinion, advice and recommendations on short notice from federal courts on any proposed changes which may impact on the administration of a federal court including in regard to financial matters.

In balancing these competing factors I have not had regard to any of the "irrelevant factors" set out in subsection 11B(4) of the FOI Act (i.e. embarrassment to or loss of confidence in the Government, resultant misinterpreting or misunderstanding of the document, high seniority in the agency of the author of the document and access to the document resulting in confusion or unnecessary debate).

I have decided that the factors as above against disclosure outweigh those as above in favour of the release of the document. Consequentially disclosure of this letter would, on balance, be contrary to the public interest at this time.

I have also considered but decided that it would not be possible to prepare an edited or redacted copy of the document modified by deletion to remove exempt material as provided for under section 22 of the FOI Act. The deletions required would be so extensive that the resulting document would be of no value to you whatsoever.

Attachment to Document 21

The attachment to the document numbered 21 is a document which was provided to the Commonwealth Attorney-General by the Chief Justice of the Family Court on 23 September 2015 regarding matters then under consideration by the Attorney and the Government in relation to the then proposed Courts Administration Legislation Amendment Bill 2015. It contains no operational information (as defined by section 8A of the FOI Act) and no purely factual material. It however sets out opinion, advice and recommendations prepared and given in the course of consultation and for the purposes of the deliberative processes in regard to parts of the then proposed Bill and functions and administration of the Federal Court, Family Court and Federal Circuit Court. As a consequence this document is conditionally exempt under section 47C of the FOI Act.

I also considered whether access to this document at this time would, on balance, be contrary to the public interest test set out in subsection 11A(5) of the FOI Act.

Unlike other conditional exemptions under the FOI Act, the conditional exemption relating to deliberative process has no requirement of harm being demonstrated. Balancing factors in favour or against disclosure as set out in section 11B of that Act in relation to each of those other conditional exemptions is thus informed by reference to the specific harm which must have been shown to exist.

This is not possible in undertaking this exercise regarding the deliberative process conditional exemption and this can be informed only by the circumstances of the relevant situation. As relevant here, I note that the document was created for the purposes of a consultation between the Attorney-General and the Chief Justice of the Family Court regarding a proposal then under consideration for, among other things, amendment of the enabling Act which created the Family Court and under which its administrative affairs operate.

I also note that the Bill in relation to which the consultation took place was introduced in the Commonwealth Parliament on 2 December 2015, has been referred for inquiry by the Senate's Legal and Constitutional Affairs Legislation Committee, the Committee has invited public submissions by 7 January 2016 and is due to report on the Bill by 2 February 2016. In favour of disclosure is that the document may inform the community about the development of relevant policy by the Government; provide some of the background to Government decision making and reasons for some decisions it has made; enhance the scrutiny of government decision making; and inform public debate. It is, however, unlikely that the document would otherwise promote the objects of the FOI Act and it would not allow a person to access his or her own personal information.

Against disclosure is that the release of the document could reasonably be expected to prejudice the ability of the Attorney-General to obtain in the future full, frank and candid opinion, advice and recommendations from the head of jurisdiction of a federal court on any proposed legislative change which may impact on the administration of a federal court or other sensitive issues. Further such release could reasonably be expected to impact adversely on the relationship of trust between an Attorney-General and a head of jurisdiction of a federal court in consulting confidentially about matters relating to the administration of federal courts and justice generally.

In balancing these competing factors I have not had regard to any of the "irrelevant factors" set out in subsection I1B(4) of the FOI Act (i.e. embarrassment to or loss of confidence in the Government, resultant misinterpreting or misunderstanding of the document, high seniority in the agency of the author of the document and access to the document resulting in confusion or unnecessary debate).

I have decided that the factors as above against disclosure significantly outweigh those as above in favour of the release of the document. This is, in my view, particularly so at the present time when the Bill is under scrutiny by a Parliamentary Committee during which interested persons and entities may give opinion and comment on the Bill and, should public hearings be held, the Bill or parts of it may be debated publicly.

As a result disclosure of this document would, on balance, be contrary to the public interest both generally and, particularly, at this time. I have also considered but decided that it would not be possible to prepare an edited or redacted copy of the document modified by deletion to remove exempt material as provided for under section 22 of the FOI Act. The deletions required would be so extensive that the resulting document would be of no value to you whatsoever.

Legal Professional Privilege

The Courts Administration Legislation Amendment Bill 2015 was prepared by the Office of Parliamentary Counsel (OPC) on instructions given by the Attorney-General's Department. OPC is an independent agency created by the Parliamentary Counsel Act 1970 responsible for the preparation of laws for introduction into the Commonwealth Parliament. The drafting process includes providing confidential legal advice on issues such as how policy might be achieved by legislation; whether the drafted instrument conforms to the policy objective or does so subject to variations or exception; and whether the drafted instrument can legally or validly be made. The relationship between the Commonwealth of Australia (through the instructing Department or agency) and OPC in relation to all aspects of the preparation of such laws is one of client and lawyer and all steps in the process of providing instructions for and preparation of the drafted instrument (which is frequently an iterative process) is at law protected by legal professional privilege. This protection extends to communications with third parties if that communication was for the dominant purpose of the giving of drafting instructions (see the decision of the Full Court of the Federal Court in State of New South Wales v Betfair Pty Ltd [2009] FCAFC 160 at [36]). This legal profession privilege protection may be waived but only by the "client".

A document which is subject to legal professional privilege which has not been waived is exempt from disclosure by virtue of section 42 of the FOI Act.

Document numbered 14 is a letter dated 1 July 2015 from the Family Court Chief Justice to the Family Court and Federal Circuit Court CEO which was received by the Federal Court Registrar at a meeting held on 1 July 2015 of representatives of the Attorney-General's Department, Federal Court, Family Court, Federal Circuit Court, Department of Prime Minister and Cabinet and Department of Finance. That meeting was convened, in part, to discuss the drafting instructions for the relevant Bill which had been given by the Attorney-General's Department to OPC by letter on 29 June 2015. The Family Court Chief Justice requested that a copy of her letter be tabled at the meeting and provided to all participants. The Chief Justice's letter includes quotations from or paraphrasing of parts of the drafting instructions, sets out opinion and advice and poses questions about a number of aspects of the instructions and issues for consideration in relation to the policy objective.

This letter was written by an informed third party for discussion with the Department giving drafting instructions to OPC, as well as other informed third parties, about the initial drafting instructions provided. As such its dominant purpose was to assist and further the giving of instructions so that the appropriate policy objective would be achieved. The letter is therefore subject to legal professional privilege.

The Attorney-General's Department managed all steps in giving and updating instructions to OPC in relation to this Bill and considering progressive drafted instruments closely and in confidence. It has not expressly waived legal professional privilege in relation to the relevant documents (including the Chief Justice's letter as above) or done so impliedly.

I have also considered but decided that it would not be possible to prepare an edited or redacted copy of the Chief Justice's letter modified by deletion to remove exempt material as provided for under section 22 of the FOI Act. The deletions required would be so extensive that the resulting document would be of no value to you whatsoever.

Other Documents

I have decided to grant you access in full to each of the other documents mentioned in the table above.

Summary of decision

In summary, in relation to the documents in the possession of the Court identified in the table above, I have decided:

- to grant you access in full to documents numbered 1, 2, 3, 5, 8, 10, 11, 12, 15 and 17
- to grant you access in part to documents numbered 4, 6 (excluding its attachment), 7,
 9, 13, 16, 18, 19, 20, 21 (excluding its attachment) and 22 with deletions under section
 22 of personal information which were found:
 - to be conditionally exempt under section 47F for reasons of personal privacy, and
 - access to that personal information would, on balance, be contrary to the public interest for the purposes of subsection 11A(5)
- to refuse you access to the attachments to documents 6 and 21 which were each found:
 - to be conditionally exempt under section 47C for reasons of them being deliberative material, and
 - access to that material would, on balance, be contrary to the public interest for the purposes of subsection 11A(5)
- to refuse you access to document numbered 14 which was found to be exempt under section 42 of legal professional privilege.

Material taken into account

I have taken the following material into account in making my decision:

- the content of the documents that fall within the scope of your request
- the FOI Act (specifically sections 4, 8A, 11A, 11B, 11C, 22, 27A, 42, 47C and 47F)
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act
- the views of third parties consulted by the Federal Court under section 27A of the FOI Act.

Release of documents

I have also decided that the documents which are to be released to you as above be provided electronically in PDF format. These accompany this advice.

Charges

As this decision was not made within the statutory time limit, no charge can be imposed in relation to the request or any access (see subregulation 5(2) of the Freedom of Information (Charges) Regulations 1982).

Disclosure log

I will consider separately the documents which, by virtue of section 11C of the FOI Act, are to be published in the disclosure log on the Court's website however, that publication will not take place until 10 working days after the date of this decision.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact me by phone or email as below.

Yours sincerely

John Mathieson Deputy Registrar

John.mathieson@fedcourt.gov.au

Phone: 02 9230 8336

From:
To: John Mathleson
Subject: RE: FOI Request

Date: Thursday, 5 November 2015 6:25:23 PM

Thank you Mr Mathieson and please withdraw my request.

Regards

From: John Mathieson [mailto:John.Mathieson@fedcourt.gov.au]

Sent: Thursday, 5 November 2015 18:20

To:

Subject: FOI Request

UNCLASSIFIED

Dear ,

Thank you for talking to me earlier today about your request below.

As mentioned, I look after all FOI matters in the Federal Court. The Federal Court and Federal Circuit Court (FCC) are separate "prescribed authorities" for the purposes of the FOI Act. Adele Byrne, Principal Registrar of the FCC, looks after FOI matters in the FCC and asked if I could talk to you on behalf of both courts.

As I also mentioned, a request covering "all documents relating to decided fee waivers" in both Courts would be very extensive. Even if this was restricted to one year in the Federal Court this would cover at least 1200 matters and in the FCC (if restricted to only its general federal law jurisdiction) it would cover at least another 1700 matters.

As promised, I attach a copy of the current information about fees provided to Federal Court staff. It was last updated in late June 2015 to coincide with the commencement on 1 July 2015 of amendments to the Federal Court and Federal Circuit Court Regulation 2012. None of those amendments affected fee exemptions. Federal Court Registrars and staff provide support not only for all Federal Court matters but for all general federal law matters in the FCC. Details about General Exemptions is on pages 13-14 of the "staff information" document and details on Financial Hardship Exemptions is on pages 14-15. The Court has not issued any guidelines to its Registrars or other staff who are "authorised officers" under the Regulation (generally the latter only deal with "General Exemption" applications and, even then, only those which clearly meet the required criteria and so should be approved and refer any others to a Registrar) about how to exercise their discretion about whether "payment of the fee would cause financial hardship to the individual". As you would know, Federal Court Registrars are all experienced lawyers and are required to make discretionary decisions constantly across the very broad spectrum of the

jurisdiction of the Federal Court and FCC that have been directed or delegated to them. As we discussed, there are a number of decisions of the AAT which give guidance on financial hardship in the context of payment of court or tribunal fees although these are not numerous.

Reasons for a decision need be given only for refusal of an application for exemption and the Court has developed a form which can be used for this purpose. It is the last page of the "form" of Application for Exemption for Paying Court Fees — Financial Hardship which can be downloaded from the Federal Court's website at http://www.fedcourt.gov.au/forms-and-fees/court-fees/exemptions/guide-to-form-financial-hardship. However, as mentioned, it essentially just provides a "free text" field for Registrars to complete.

If I can assist in any other way about the current policy adopted by the two Courts on fee exemptions please ring or email me. As I mentioned I do have an up-to-date list of AAT decisions on review from decisions about court and tribunal fees.

I understand from our discussions that, with the attachment and advice above, you do not wish to proceed further with your FOI request. I will therefore regard it as having been withdrawn from today. If you disagree please let me know.

Yours sincerely,

John Mathieson

Deputy Registrar

Principal Registry

Federal Court of Australia

john.mathieson@fedcourt.gov.au

Phone 02 9230 8336 www.fedcourt.gov.au

From:

Sent: Wednesday, 28 October 2015 6:11 PM

To: External FOI **Subject:** FOI request

Can you please provide me with all documents related to deciding Court (Federal and Federal Circuit) fee waivers including but not limited to all policy documents and administrative and instruction manuals related to Court fee waivers and determining financial hardship..

Regards



John Mathieson

From: John Mathieson

Sent: Wednesday, 9 December 2015 11:53 AM

To:
Subject: FOI Request - Referrals by Federal Court to AFP

UNCLASSIFIED

Dear

Thank you for talking to me this morning. Tacknowledge that, in the circumstances discussed, you withdraw your FOI request (below).

As discussed, any referrals that the Court is likely to make to the AFP for investigation of a possible criminal offence will result from proceedings in the Court and hence will not be subject to the FOI Act. This is not frequent in this Court. Where it occurs it could be as a result of an order or direction made or something said in a judgment. If it is by order or direction it would generally be referred to in a judgment.

By way of example, in Brun-Smits v Queensland [2015] FCA 363 at [53] Justice Flick said:

"One final matter concerns the evidence given by Ms Brun-Smits and her former husband. Witnesses in proceedings before superior Courts of record routinely either swear to the truth of the statements that are made or make an affirmation as to the truth of the evidence to be given. A conclusion that a witness has not told the truth is a serious matter. So, too, is a conclusion that a witness is prepared to give any evidence which will suit the claim being advanced for resolution – and to do so irrespective of the truth of that evidence. The giving of false evidence or the giving of evidence which is not the "whole truth" (Kuhl v Zurich Financial Services Australia Ltd [2011] HCA 11 at [62], (2011) 243 CLR 361 at 384 per Heydon, Crennan and Bell JJ) undermines the ability of a Court properly and justly to resolve a dispute according to law. The giving of false evidence, or evidence that is not the truth, fundamentally undermines the proper administration of justice. It is a matter which, it is respectfully considered, goes beyond the private interests of the parties to the proceeding in which the evidence is given. There is a much broader public interest involved. Given the gravity of the findings made in respect to the evidence in this case, it is proposed to bring these reasons for decision to the attention of the Registrar of this Court. It will remain a matter for him to take such further action as he sees fit."

and in Hua Wang Bank Berhad v Commissioner of Taxation [2014] FCA 1392 at [485] Justice Perram directed and observed:

"I direct the Registrar to forward a copy of these reasons to the Commonwealth Director of Public Prosecutions, the Australian Securities and Investments Commission and the Australian Federal Police. The facts I have found strongly suggest widespread money laundering, tax fraud of the most serious kind and, possibly in some instances, insider trading. The conduct revealed in this case is disgraceful."

I confirm that I made enquiries of all senior staff across the Court and searched all relevant files and electronic folders in regard to any possible referrals from the Court to the AFP that were not related to a proceeding and that the only instance identified during the period covered by your request was a 'scam notice' supposedly from the Court which a member of the public brought to the attention of one of the Court's registries (allegedly notifying that GBP 1,000,000 would be released if AUD 50,000 registration fee was paid). This was referred onto the AFP.

Regards.

John Mathieson

Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
Phone 02 9230 8336
www.fedcourt.gov.au

From:

Sent: Friday, 13 November 2015 4:49 PM

To: External FOI

Subject:

Dear sir/madam,

Under the FOI Act I request the following:

All referrals to the Australian Federal Police or to the attorney-general's department by the court or a court officer requesting an investigation be undertaken into a potential breach of a criminal law since 2008.

Kind regards,









Dear Thomas

Further to my communiques dated 23rd November 2017 at 2.03 pm and 2.48 pm below and attachments. In considering recusing any officer of the Crown and in particular officers of the Court I request you to consider the applicable law and restate my request for you /the Chief Justice to consider all of the evidence filed in all proceedings before that have been before the Court involving me including the most recent proceeding before Justice Charlesworth.

It is now clear to me that in essence all officers of the Crown and in particular those officers of the High Court of Australia, the Federal Court of Australia, the Federal Circuit Court of Australia, the Supreme Court of Victoria, the District Court of South Australia, the Supreme Court of Victoria and the Attorney Generals of South Australia, Victoria and the Commonwealth of Australia have made both judicial and administrative decisions that are offences under the Criminal Code and the Crimes Act and that effectively determine that I have no right to either a fair hearing or a rights of remedy. These are reviewable decisions under the Common Law Right to Judicial Review.

Please note below highlight in yellow correcting the Title of the proceeding which gave rise to Of particular note based on the submissions of the Commissioner of Taxation in Kenny

made findings in as follows;

17.12 Proposed ground 26 does not arise because this Court does not have jurisdiction under the Charter of Human Rights and Responsibilities Act 2006 (Vic). Further, the parts of Schedule 2 of the Australian Human Rights Commission Act 1986 (Cth) (previously the Human Rights and Equal Opportunity Commission Act 1986 (Cth)) on which Mr Garrett relies are articles of the International Covenant on Civil and Political Rights that have not been enacted as part of Australia's domestic law.

The Right to a fair hearing and the right to remedy have been put to the test in *Horvath v Australia* (copy attached) and found against the State Party.

Australian Treaty Series No 23 also known as the International Covenant of Civil and Political Rights clear sets out that this treaty came into force in Australia on the 20th November 1980, Kenny J even acknowledged the Covenant as Schedule 2 of *the Australian Human Rights Commission Act* 1986 (Cth).

Her Honour and the High Court of Australia (in re Wakim ex parte McNally) are patently incorrect in findings that the Federal Court does not have power under the Victoria Charter of Human Rights as both the Constitutions of the Commonwealth and the State of Victoria derive their power from the Common Law and consequently have power as courts of Common Law Jurisdiction to consider any law arising from that source of power.

I have made application to the Human Rights Commissioner dated 1st May 2015 (see attached) email chain which is in the possession and control of the Commissioner of Taxation along with the relevant decision made by the Delegate of the Commissioner dated 27th October 2015 (see attached communiques

Even the Commonwealth Attorney acknowledges the right to a fair hearing and the absence of bias of the decision maker.(see attached)

The position of the Crown and the Federal Court is untenable in administering any hearing as is the position of the Chief Justice in determining delegation.

On the 28th January 2015 Beach J wrote to the parties of acknowledging his instructions from the Chief Justice to hear proceedings related to me.....those instructions caused a number of unfair hearings including the failure of that Judge to make findings under Contractual rights of Indemnity and Undertakings as to damages given by National Australia Bank being .

I have not received any documents or things of an administrative character from the Federal Court of Australia

It is not a matter for this court to determine liability of the Crown in circumstances where the Crown has already admitted liability under various Notice to Admit issued under the Common Law and served on the Attorney Generals of the Commonwealth, the States and

the Territories and in particular that Notice to Admit dated 1st July 2016 annexing all Notices to Admit Filed and served in accordance with the law in forward a copy of that notice which was also served on the Court and the relevant Judicial Officer, Beach J who was the subject of my application for review under s75(V) of the Constitution).

This Court <u>MUST</u> make findings of judgment debt in the interest of justice as a liquidated liability against the Crown in accordance with the relevant law relating to Tax on Liquidated Damages (attached)......in a normal circumstance that debt must be taxed however in circumstances where the right of set off exceeds the amount of the Tax arising, the net result will be no tax payable consequently I have established a new entity; the Australian People

Future Fund on the 30th April 2017 and distributed 33% of the value and the rights creating that value to that fund and sought the Reserve Bank of Australia to monetise that value in accordance with Statute and the Common Law.

Given the decisions of the Court thus far have been a fraud of the court on the court by the court the decision to agree to my delegation request must be heard on the burden of proof being the Civil burden of the balance of probability.

I have said that s37AO is not enforceable in respect to any proceeding brought by me as those orders are in themselves offences under the Crimes Act and the Criminal Code in which regard s80 of the Constitution applies to the administrative decision to delegate and to file the proceedings subject of the three lodgements made thus far and any future lodgement to be made by me or persons instructed by me.

In the Divorce Judgments of Sharland v Gohill made in the Supreme Court of Justice in London it is clear that the Common Law holds that Fraud unravels allincluding all orders of vexatious litigant made against me and all Judicial decisions thus far including those made by Beach J that were the subject of my s75(v) application to the High Court.

It is inescapable that the decision of the High Court made in Attwells v Jackson Lalic Lawyers Pty Limited [2016] HCA 16 is also a criminal matter under the Criminal Code and the Crimes Act and is designed to perpetuate injustice in respect to matters involving lawyers.

The level of complaint against this court by other members of the populace must by now have reached deafening proportions.

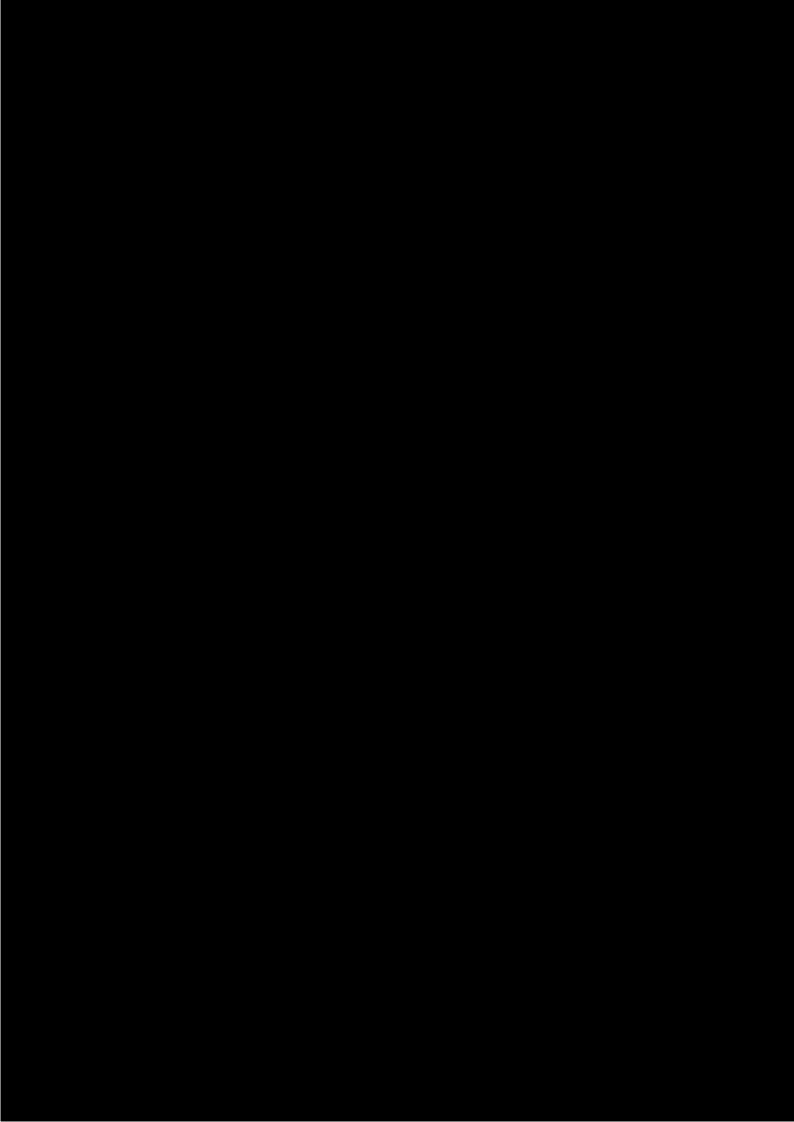
I ask you to consider this communique as an application to the Federal Court of Australia under the provisions of the Freedom of Information Act 1982 (Cth) for a copy of any document or thing of an administrative character;

- 1. related to me in the period 2005 until today's date, and
- 2. any document or thing of an administrative character relating to complaints against the Judiciary and or Administrative Arms of the Federal Court of Australia.

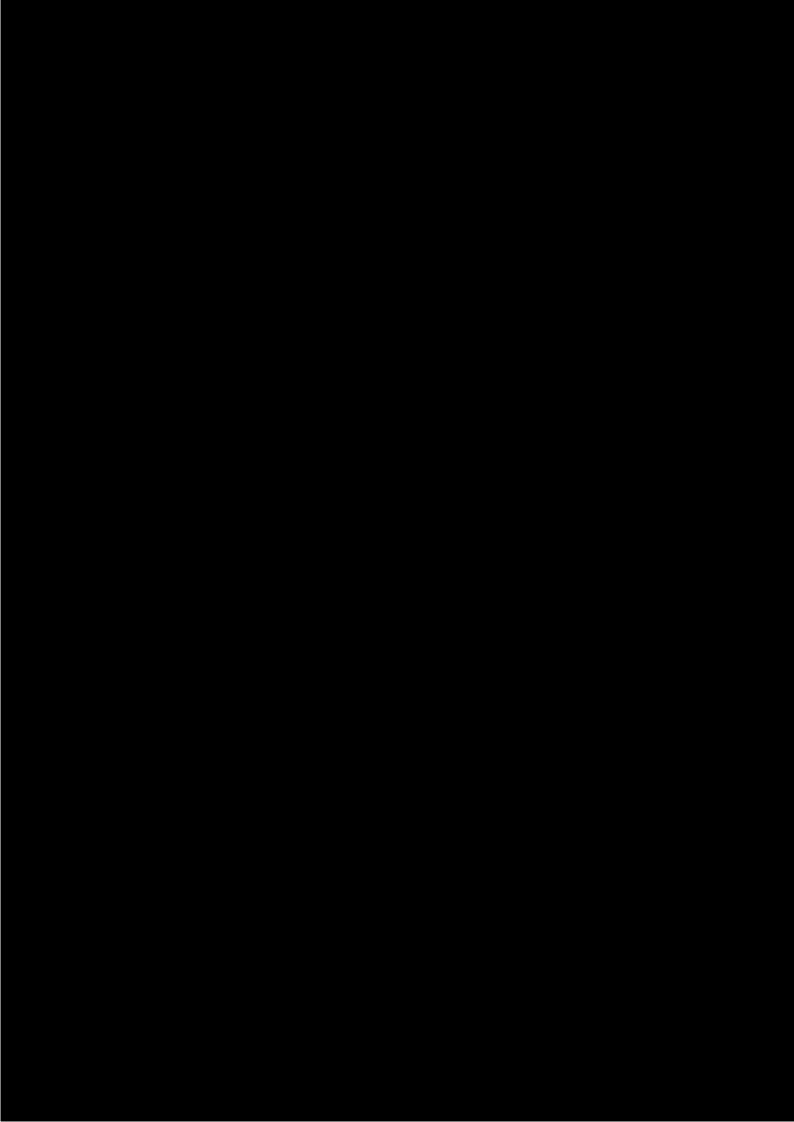
I confirm I make this application on the grounds that the s89K order in favour of the Court made by Timothy Pilgrim is a Fraud on the Court by the Court and consequently is Criminal being an offence under s42 & s43 of the Crimes Act and the Criminal Code. I look forward to the confirmation of my discussion with Justice Logan OR in the alternative immediate delegation to the Supreme Court of Hong (to be heard in Australia at the Tasmania Registry of the Federal Court of Australia) of the powers of the Chief Justice.





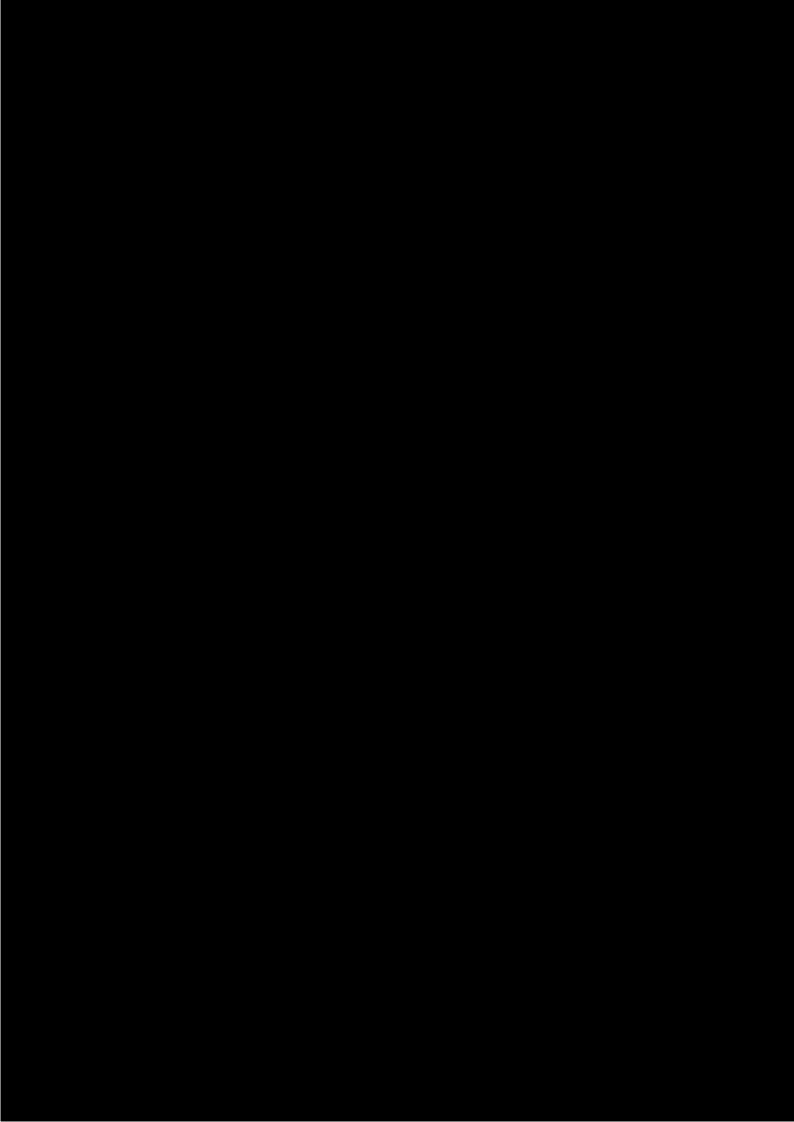












From:
To: External FOI
Subject: FOI Request

Date: Sunday, 14 February 2016 7:45:21 PM

14 February 2016

Deputy Registrar

Principal Registry

Federal Court of Australia

Level 16

Law Courts Building

Queens Square

Sydney NSW 2000

Dear Deputy Registrar

This is a request for documents under the Freedom of Information Act (the FOI Act) (1988) (Cth).

I am the Applicant in the matter and I hereby request access to documents as outlined below which are made on behalf of myself.

Under the FOI Act, I seek for you to provide me with all documents that relate or may relate to the conduct and capacity of Justice Robert John Buchanan in the period 8 September 2006 until 30 January 2016. Such documents may relate to complaints, grievances, criticism, objections or protestations in regards to the conduct and capacity of Justice Buchanan in the completion of his duties over the period at the Federal Court. Such documents may include letters including letters of complaint, emails, faxes or reports. Or other similar documents.

The documents may have been prepared by applicants/individuals, respondents or other Parties including proprietors, businesses, business groups and/or associations, trade unions, law firms or solicitors, lawyers, barristers or other likeminded persons or groups.

I request a waiver of all fees for this request.

Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations, integrity and transparency of the Federal Court, Australia's judicial system and Australian Government and is not primarily in my commercial interest.

If you have any questions regarding this request, please contact me at

I look forward to receiving your response within the statutory time period.

Please receipt my request.



From:
To: External FOI

Subject: FOI Request - Justice Flick

Date: Tuesday, 23 February 2016 9:01:03 PM

23 February 2016

Deputy Registrar
Principal Registry
Federal Court of Australia
Level 16
Law Courts Building
Queens Square
Sydney NSW 2000

Dear Deputy Registrar

This is a request for documents under the Freedom of Information Act (the FOI Act) (1988) (Cth).

I am the Applicant in the matter and I hereby request access to documents as outlined below which are made on behalf of myself.

Under the FOI Act, I seek for you to provide me with all documents that relate or may relate to the conduct and capacity of Justice Geoffrey Flick in the period 30 January 2006 until 30 January 2016. Such documents may relate to complaints, grievances, criticism, objections or protestations in regards to the conduct and capacity of Justice Flick in the completion of his duties over the period at the Federal Court.

Such documents may include letters including letters of complaint, emails, faxes or reports. Or other similar documents.

The documents may have been prepared by applicants/individuals, respondents or other Parties including proprietors, businesses, business groups and/or associations, trade unions, law firms or solicitors, lawyers, barristers or other likeminded persons or groups.

I request a waiver of all fees for this request.

Disclosure of the requested information to me is in the public interest because it is likely to contribute significantly to public understanding of the operations, integrity and transparency of the Federal Court, Australia's judicial system and Australian Government and is not primarily in my commercial interest.

If you have any questions regarding this request, please contact me at

I look forward to receiving your response within the statutory time period.

Please receipt my request.

Kind regards





Telephone: (02) 9230 8567 Facsimile: (02) 9230 8535

DX 613 SYDNEY

Internet: www.fedcourt.gov.au

A.B.N. 49 110 847 399

FEDERAL COURT OF AUSTRALIA NEW SOUTH WALES REGISTRY

LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

9 March 2016



Your requests under the Freedom of Information Act 1982

I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

On 14 February 2016 you sent an email to the Court requesting under the Freedom of Information Act 1982 (FOI Act) "all documents that relate or may relate to the conduct and capacity of Justice Robert Buchanan in the period 8 September 2006 until 30 January 2016. Such documents may relate to complaints, grievances, criticism, objections or protestations in regards to the conduct and capacity of Justice Buchanan in the completion of his duties over the period at the Federal Court. The documents may have been prepared by applicants/individuals, respondents or other Parties including proprietors, businesses, business groups and/or associations, trade unions, law firms or solicitors, lawyers, barristers and other likeminded persons or groups".

Furthermore, on 23 February 2016 you sent another email to the Court requesting under the FOI Act "all documents that relate or may relate to the conduct and capacity of Justice Geoffrey Flick in the period 30 January 2006 until 30 January 2016. Such documents may relate to complaints, grievances, criticism, objections or protestations in regards to the conduct and capacity of Justice Flick in the completion of his duties over the period at the Federal Court. The documents may have been prepared by applicants/individuals, respondents or other Parties including proprietors, businesses, business groups and/or associations, trade unions, law firms or solicitors, lawyers, barristers and other likeminded persons or groups".

In your emails you also requested a waiver of all fees for these requests explaining that the disclosure of the requested information to you is in the public interest because it is likely to contribute significantly to public understanding of the operations, integrity and

transparency of the Federal Court, Australia's judicial system and Australian Government and is not primarily in your commercial interest.

On 29 February 2016 I sent to you a letter by email acknowledging receipt of these requests from you and confirming that the Court will be in contact with you in relation to these requests.

The Federal Court (including its registries and staff) is a prescribed authority for the purposes of the FOI Act although its judicial officers are not (see subsection 5(1) FOI Act and paragraph 2.6 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)). The FOI Act, however, does <u>not</u> apply to any request for access to a document of the Court <u>unless the document relates to matters of an administrative nature</u> (see also subsection 5(1) FOI Act and paragraph 2.7 of the Guidelines).

In 2013 the High Court of Australia clarified that the phrase "matters of an administrative nature" refers only to documents that concern "the management and administration of registry and office resources" (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [47]) and not to documents relating to the exercise of substantive powers and functions of adjudication or tasks that are referrable to this (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [45]). (See also paragraphs 2.7 and 2.8 of the Guidelines.)

Also, since 12 April 2013, when statutory judicial complaint handling processes were introduced, documents of a court arising in the context of consideration and handling of a complaint about a judge was expressly excluded from the operation of the FOI Act (see subsection 5(1A) FOI Act and paragraph 2.6 of the Guidelines).

Any document in the possession of the Federal Court that relates or may relate to the conduct and capacity of Justice Buchanan or Justice Flick in the relevant periods set out in your FOI requests, are clearly documents that relate to the discharge of the Court's substantive powers and functions of adjudication or tasks that are referrable to the exercise of those powers and functions. As such they are not documents of an administrative nature within the meaning of the FOI Act. Furthermore, the documents you seek would clearly fall within the range of documents for which statutory judicial complaints handling processes of the Federal Court apply and are expressly excluded from the operation of the FOI Act.

As a result of the above considerations I conclude that the FOI Act does not apply to the documents you seek and no request under that Act can validly be made in relation to them (see paragraphs 2.6 to 2.8 of the Guidelines). Your FOI requests are therefore refused.

In light of this decision it is unnecessary for me to consider your request for waiver of all fees for these requests.

If you are dissatisfied with my decision, you may apply for an internal review or an Information Commissioner review.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines which I have referred to earlier in the reasons for my decision. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me by phone on the phone number shown on page 1 of this letter.

Yours sincerely

Tom Morgan

Deputy District Registrar

From:
To: NSWListin

Subject: Re: Your requests under the Freedom of Information Act

Date: Wednesday, 9 March 2016 1:46:57 PM

I seek an Internal Review of the Decision.

I look forward to your response.

Kind regards





Telephone: (07) 3248 1100

Facsimile:

(07) 3248 1260 (General)

(07) 3248 1240 (Approved for Document Filing)

Email:

qldreg@fedcourt.gov.au

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA **QUEENSLAND DISTRICT REGISTRY**

HARRY GIBBS COMMONWEALTH LAW COURTS 119 NORTH QUAY BRISBANE QLD 4000

> PO Box 13084 GEORGE STREET BRISBANE QLD 4003

30 March 2016



Dear

Re: Request for internal review under the Freedom of Information Act 1982

The purpose of this letter is to advise you of my decision following your request for internal review of the Federal Court's decision on 9 March 2016 refusing you access to documents requested under the Freedom of Information Act 1982 (Cth) (FOI Act).

Authority

I am authorized under subsection 23(1) of the FOI Act to make decisions on behalf of the Federal Court of Australia in relation to applications for internal review regarding any Freedom of Information (FOI) requests made to the Federal Court.

Background

In an email you sent to the Deputy Registrar on 14 February 2016 you said (in part):

"Under the FOI Act, I seek for you to provide me with all documents that relate or may relate to the conduct and capacity of Justice Robert John Buchanan in the period 8 September 2006 until 30 January 2016. Such documents may relate to complaints, grievances, criticism, objections or protestations in regards to the conduct and capacity of Justice Buchanan in the completion of his duties over the period at the Federal Court.

Such documents may include letters including letters of complaint, emails, faxes or reports. Or other similar documents.

The documents may have been prepared by applicants/individuals, respondents or other Parties including proprietors, businesses, business groups and/or associations, trade unions, law firms or solicitors, lawyers, barristers or other likeminded persons or groups."

Furthermore, on 23 February 2016 you sent another email to the Deputy Registrar requesting access to documents in the same terms in relation to Justice Geoffrey Flick for the period 30 January 2006 until 30 January 2016.

On 9 March 2016 Deputy District Registrar Morgan of the NSW Registry of the Federal Court, an officer authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to FOI requests, decided that the FOI Act does not apply to the documents sought by way of those requests and that, accordingly, no documents will be disclosed in response.

In an email you sent to the NSW Registry of the Federal Court on 9 March 2016 you requested an internal review of that decision.

In undertaking this internal review and reaching my decision I have had regard to the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines).

Decision and Reasons

In his letter to you dated 16 March 2015, Mr Morgan makes decisions in response to the following requests made by you under the FOI Act –

- 1) Request made on 14 February 2016; and
- 2) Request made on 23 February 2016.

Mr Morgan determined that you were not entitled under the FOI Act to have access to any documents that might fall within the ambit of the above requests.

Decision and Reasons:

For the reasons set out below, I have decided to affirm the decisions under review and to refuse to grant you access to the documents or information described in your requests.

The starting point in considering your requests is s 5(1) of the FOI Act. It determines the extent to which the FOI Act applies to the Federal Court. As noted in the Guidelines issued by the Australian Information Commissioner, the FOI Act has restricted application to the Federal Court under that provision.

Subsections 5(1) and (1A) of the FOI Act impose two important restrictions upon access. Specifically the FOI Act does not extend to the holder of a judicial office in his or her capacity as the holder of that office, or in respect of any complaint handling process. The judiciary is intentionally omitted from the application of the FOI Act irrespective of whether or not the particular judicial officer is exercising judicial or administrative functions in performing the duties of his or her office.

In my view requests 1) and 2) relate to judicial officers in their capacity as the holder of that office and in relation to the judicial complaints handling processes of the Federal Court. This clearly falls within paragraphs 5(1)(b) and 5(1A) of the FOI Act and paragraphs 2.6 to 2.8 of the Guidelines. Accordingly, I concur with the decision of Mr Morgan that these requests cannot validly be made under the FOI Act.

The second significant restriction in the application of the FOI Act to the Court is that a request for access may only be made in relation to information that relates to "matters of an administrative nature". In *Kline v Official Secretary to the Governor General & Anor* the High Court observed (at [41]) that this is limited to documents that concern the management and administration of office resources. Although some documents might be incidental to the exercise or performance of substantive powers or functions, "in the sense of providing logistical support (or infrastructure or physical necessities or resources or platform) for the exercise of performance of those substantive powers or functions to be able to occur", they nevertheless remain distinct from documents that concern the exercise or performance of substantive powers or functions of the Court (see Gageler J at [74]). It is also noted that documents do "not become 'administrative' merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function" (per Gageler J at [76]).

My decision to refuse you access to the information being sought in your requests is based on my view that the requests you have made cannot be validly pursued under the FOI Act. This view has been reached having regard to the nature of the information to which you are seeking access. It is for this reason that I have not sought to specifically identify whether or not there are any documents that might fall within the ambit of those requests.

Material taken into account:

In making my decision I have taken the following material into account:

- Requests 1) and 2) referred to above;
- Letter from Mr Morgan dated 9 March 2016;
- Your email dated 9 March 2016; and
- The Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about review by the Information Commissioner is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact me using the details below:

Phone: (07) 3248 1100

Email: qldreg@fedcourt.gov.au

Post: PO Box 13084, George Street Post Shop, Brisbane QLD 4003

Yours faithfully

H Baldwin District Registrar



Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906

DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

Your Ref: Our Ref:

Your email of 5 April 2016

Dear

was refused.

I refer to your email dated 5 April 2016, which contains a request for copies of documents. I am writing to you in my capacity as the Acting Deputy Registrar of the Federal Court of Australia.

As you would be aware, on 22 January 2016 the
, made the following declaration;
For a period of twelve (12) months commencing on the date of this declaration, the Federal Court of Australia and the Federal Circuit Court of Australia (the Courts) are not required to consider: • any request by under s 15 of the FOI Act for access to a document • any application by Mr Garrett under s 54B of the FOI Act for internal review of an access refusal decision. unless has applied in writing to the Information Commissioner to make the request or application and the Information Commissioner has granted written permission for the request or application to be made.
This declaration is recorded as [22]
January 2016). By way of your email dated 5 April 2016, you applied in writing to the
Information Commissioner for permission (or consent) to make the request. Your application

Pursuant to the declaration of 22 January 2016, and in the absence of the consent of the Australian Information Commissioner, the Court is not required to consider the request contained in your email dated 5 April 2016. Accordingly, it will not do so.

Yours faithfully,

Tim Luxton Acting Deputy Registrar



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref:

27 April 2016

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Dear

Freedom of Information Request

I am writing to advise you of my decision about your request under the *Freedom of Information Act 1982* (FOI Act) for access to documents which you sent to the Federal Court of Australia (Federal Court) on 18 April 2016.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request.

Scope of Request

You request access to documents of the Federal Court relating to the following:

- Current social media policy of the department, which covers departmental use and/or private use by employees in an individual capacity;
- 2. Any current guidance material which is available for employees to make informed decisions about their private social media use.

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6-2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act). Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act (Paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase "matters of an administrative nature" and held that it refers to documents that concern the "management and

administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

Search

A search of the Court's records was conducted and one document of an administrative nature that is within the scope of your request was identified, namely:

 Federal Court of Australia Human Resource Management Policy: Information Technology Policy for Court Employees issued February 2012.

Decision

I have decided to grant you access in full to this document. You have not specified the form of access required; however, as your request was made by email, I assume you would prefer access in the form of an electronic copy of the document being emailed to you. I have therefore decided that the Court's Information Technology Policy for Court Employees be released to you electronically in PDF format. This accompanies this advice.

I am satisfied that the availability of policy documents of this nature to members of the public interested in them is in the interest of the general public. I have therefore decided that no charge should be imposed for access to this document.

Disclosure Log

This material will also be published on the Federal Court's disclosure log, in accordance with the requirements of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact me by phone or email as below.

Yours sincerely

John Mathieson

Deputy Registrar

john.mathieson@fedcourt.gov.au

Phone: 02 9230 8336



Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

12 May 2016

12 May 2016
Dear Land
Request for further information
I refer to your letter dated 10 May 2016, which was sent to the Federal Court of Australia (the Court) attached to an email from the same day.
In your letter, you request that the Court provide you with information regarding the records of to assist in your assessment of whether poses a risk to the safety of children.
In particular, your request seeks any information in relation to an offence committed by The Court was created in 1977. The records which you are seeking to obtain relate to an offence that occurred prior to the establishment of the Federal Court of Australia. Therefore, we are unable to assist with your request.
However, in your letter the Court referred to where the offence was dealt with is the "Special Federal Court". For many years there existed the "St James Special Federal Court". This was simply a NSW Local Court (formerly known as the NSW Magistrates Court) that exclusively dealt with federal criminal offences. The Local Court of NSW is the successor court, in particular Central Local Court and the Downing Centre Local Court. I expect that they may have or control the records you seek to obtain.
Yours sincerely
John Mathieson
Deputy Registrar

Dear Sir or Madam,

Please accept this correspondence as an application in writing under the FOI Act (Cth) for a copy of any document or thing in the possession of the Court of an administrative nature in relation to and connection with the making of the Decision refered to in this communication and the attached correspondence.

I look forward to hearing from you.

Kind Regards



From:

Sent: Monday, 16 May 2016 11:06 AM **To:** Associate.MansfieldJ@fedcourt.gov.au

Subject: FW:

Dear Associate,

Thankyou for your letter of 5 May 2016 in relation to the above matter informing me of the Court's decision to allow inspection of documents (the "**Decision**").

It is disappointing that principles of "open justice" operate only one way and do not extend to the Court's disclosure of the identify of who made the request for inspection of these documents.

Pursuant to s13 of the *Administrative Decisions Judicial Review Act* 1975 (Cth) I respectfully request that I be provided with the Reasons for the Decision to allow inspection of the suite of documents set out in your letter of 5 May 2016 so I can consider whether or not I have reasonable grounds for applying for a Review of the Decision.

Please also accept this correspondence as an application in writing under the FOI Act (Cth) for a copy of any document or thing in the possession of the Court of an administrative nature in relation to and connection with the making of the Decision.

Thanking you in anticipation.

Kind Regards







Telephone: (08) 8219 1000 Facsimile: (08) 8219 1001 FEDERAL COURT OF AUSTRALIA SOUTH AUSTRALIA REGISTRY

A.B.N. 49 110 847 399

COMMONWEALTH LAW COURTS 3 ANGAS STREET ADELAIDE SA 5000

> GPO BOX 1350 ADELAIDE SA 5001

27 May 2016



Dear

Your request under the Freedom of Information Act 1982

The purpose of this letter is to advise you of my decision in relation to your Freedom of Information (FOI) request made by email on 20 May 2016.

Authority

I am authorised under section 23(1) of the *Freedom of Information Act 1982* (**FOI Act**) to make decisions on behalf of the Federal Court of Australia (**Federal Court**) in relation to FOI requests.

Background

In your email of 20 May 2016 you stated:

Please accept this correspondence as an application in writing under the FOI Act (Cth) for a copy of any document or thing in the possession of the Court of an administrative nature in relation to and connection with the making of the Decision refered to in this communication and the attached correspondence.

The "decision refered to in this communication" is a decision by Justice Mansfield to allow selected affidavits to be inspected by a non-party. The "attached correspondence" is:

- an email from the Associate to Justice Mansfield to you dated 5 May 2016 which attaches a letter from the Associate setting out Justice Mansfield's decision regarding a non-party request to inspect six affidavits;
- an email from you to the Associate to Justice Mansfield dated 16 May 2016; and
- a letter from Deputy District Registrar Parkyn to you dated 18 May 2016.

In undertaking my review of your FOI request and reaching my decision I have also had regard to the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**).

Decision and reasons

For the reasons set out below, I have decided to refuse to grant you access to the documents or information described in your request.

The starting point in considering your request is subsection 5(1) of the FOI Act. It determines the extent to which the FOI Act applies to the Federal Court. As noted in the Guidelines, the FOI Act has restricted application to the Federal Court under that provision.

Subsection 5(1) of the FOI Act imposes important restrictions upon access. Specifically, the FOI Act does not extend to the holder of a judicial office in his or her capacity as the holder of that office. The judiciary is intentionally omitted from the application of the FOI Act irrespective of whether or not the particular judicial officer is exercising judicial or administrative functions in performing the duties of his or her office.

In my view, the request in relation to the decision of Justice Mansfield relates to a judicial officer acting in his capacity as the holder of such office. This clearly falls within paragraph 5(1)(b) of the FOI Act and paragraphs 2.6 to 2.8 of the Guidelines. The FOI Act does not apply to the documents and information you seek in this regard. Accordingly, I consider that the request cannot validly be made under the FOI Act.

A further significant restriction in the application of the FOI Act to the Federal Court is that a request for access may only be made in relation to information and documents that relates to "matters of an administrative nature". In *Kline v Official Secretary to the Governor General & Anor*, the High Court observed (at [41]) that this is limited to documents that concern the management and administration of office resources. It is also noted that documents do "not become 'administrative' merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function" (per Gageler J at [76]).

None of the attached correspondence relates to matters of an administrative nature. As such, I conclude that the FOI Act does not apply to the documents and information you seek and again consider that the requests cannot validly be pursued under the FOI Act. I have therefore decided to refuse you access to the information and documents being sought in your requests.

I have reached this view having regard to the nature of the information to which you are seeking access. For this reason, I have not sought to specifically identify whether or not there are any documents that might fall within the ambit of your requests.

Material taken into account:

In making my decision I have taken the following material into account:

- Your email of 20 May 2016, the decision referred to in the communication and the attached correspondence.
- · The Guidelines.

Your review rights

If you are dissatisfied with my decision, you may apply for an internal review or an Information Commissioner review.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online:	https://forms.business.gov.au/aba/oaic/foi-review-/	
email:	enquiries@oaic.gov.au	
post:	GPO Box 2999, Canberra ACT 2601	
in person:	Level 3, 175 Pitt Street, Sydney NSW	

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines which I have referred to earlier in the reasons for my decision. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, you can contact me as follows:

Phone: (08) 8219 1000

Email: sareg@fedcourt.gov.au

Post: GPO Box 1350, Adelaide SA 5001

Yours sincerely

Nicola Colbran District Registrar (SA/NT) From: <u>External FOI</u>

To:

FOI Request - Transcript

Subject: Date:

Wednesday, 29 June 2016 1:02:14 PM

UNCLASSIFIED

Dear

I refer to your request below sent to the Court's Freedom of Information email address.

Firstly, the *Freedom of Information Act 1982* (FOI Act) does not apply at all in relation to documents filed or created in relation to proceeding in a federal court. The Federal Court, but not its judges, are subject to the FOI Act but only in relation to documents that relate to an administrative matter. The High Court of Australia has found that that this means documents that concern the management and administration of office resources, such as financial and human resources and information technology.

A transcript of a hearing in the Federal Court can only be purchased from the Court's court reporting provider, Austrialasia Pty Ltd (Auscript). Information about purchase is available on Auscript's website at http://www.auscript.com/.

You can however inspect any transcript that the Court may have obtained in the proceeding at the Court's Victoria District Registry on payment of a file production fee, currently \$50.00. You can find more information on inspection of court documents by a party to a proceeding on the Court's website at http://www.fedcourt.gov.au/case-management-services/access-to-files-and-transcripts/court-documents/party-access. You can also find on that website details of the location and business hours of that Registry at http://www.fedcourt.gov.au/contact/vic. Although a transcript may be inspected at a Court Registry, as it is available for purchase from Auscript, a copy cannot be obtained from the Registry.

I hope this information assists.

Your sincerely,

John Mathieson
Deputy Registrar
Principal Registry
Federal Court of Australia
john.mathieson@fedcourt.gov.au
www.fedcourt.gov.au

----Original Message-----

From:

Sent: Tuesday, 21 June 2016 1:38 AM

To: External FOI Subject: transcripts Hi,
I was wondering if someone could please give me some information about coming into the
Federal Court to gain access to some transcripts in my trial, Hearing number matter
number I was previously going to purchase these transcripts but just dont have the
funds at the moment and believe it beneficial if i could access these for certain points

Kind regards

Monday, 26 September 2016

Department of Attorney General

By Email: foi@ag.gov.au
Federal Court of Australia
By Email: foi@fedcourt.gov.au

Request for access to documents under the Freedom of Information Act 1982 (Cth)

Documents requested by the applicant:

The applicant requests access to the following documents:

Under the Freedom of Information Act 1982 we seek access to the following documents:

- 1. A copy of the KPMG Report prepared specifically for the Attorney-Generals Department led review of the Commonwealth Courts. It is our understanding that this report was finalised in early 2014.
- A copy of the Ernst and Young Report prepared specifically for the Attorney-Generals
 Department led review of the Commonwealth Courts, commissioned in 2015, following
 on from the KPMG Report.
- 3. Any report or document outlining details of current ongoing positions (headcount) currently employed across the Courts, broken down across the Federal, Family and Federal Circuit Courts, including any reports or documents referring to positions that have been, or may be identified as potentially excess through the Courts amalgamation process and transition period.
- 4. Any report or document outlining details of the number of contractors working for the Courts, including anticipated contractors throughout the 2016/17 financial year.
- Any report or document outlining the number of non ongoing and casual employees the Courts currently have employed, and anticipation of non ongoing and casual employees throughout the 2016/17 financial year.



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

11 November 2016

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



By email:

Freedom of Information Request

I am writing to advise you of my decision about your request under the *Freedom of Information Act 1982* (FOI Act) for access to documents which you sent to the Federal Court of Australia (Federal Court) on 26 September 2016.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request.

Australian Information Commissioner's Guidelines

The Australian Information Commissioner has issued written guidelines (FOI Guidelines) for the purposes of the FOI Act which are available on the Commissioner's website at https://www.oaic.gov.au/freedom-of-information/foi-guidelines/. As I am required to do by subsection 93A(2) of the FOI Act, in dealing with your request and making my decisions about it I have had regard to those guidelines. In this regard I make reference to some specific paragraphs of these guidelines below.

Scope of Request

You request access to the following documents of the Federal Court:

 A copy of the KPMG Report prepared specifically for the Attorney-General's Department led review of the Commonwealth Courts. You noted in your request that is your understanding that this report was finalised in early 2014.

- A copy of the Ernst and Young Report prepared specifically for the Attorney-General's Department led review of the Commonwealth Courts, commissioned in 2015, following on from the KPMG Report.
- 3. Any report or document outlining details of current ongoing positions (headcount) currently employed across the Courts, broken down across the Federal, Family and Federal Circuit Courts, including any reports or documents referring to positions that have been, or may be identified as potentially excess through the Courts amalgamation process and transition period.
- 4. Any report or document outlining details of the number of contractors working for the Courts, including anticipated contractors throughout the 2016/17 financial year.
- Any report or document outlining the number of non-ongoing and casual employees the Courts currently have employed, and anticipation of non-ongoing and casual employees throughout the 2016/17 financial year.

On 6 October 2016, in an email to on your behalf, I advised that the parts of your request seeking copies of the KPMG and Ernst and Young reports (items 1 and 2) has been transferred to the Attorney-General's Department.

I explained in that email that under subsections 16(1) and (3A) of the FOI Act, where an FOI request seeks access to several documents and one or more of those documents is or are more closely connected with the functions of another agency I can transfer to that agency, with its consent, that part of the request which relates to the latter document or documents. Both the KPMG and Ernst and Young reports referred to in items 1 and 2 of your request were commissioned by the Attorney-General's Department for the purposes of the performance of its functions as a Department of State and these reports were provided to and remain in the possession of that Department. On 3 October 2016, the Attorney-General's Department consented to the transfer of the parts of your request related to these two reports. As a result, that Department will deal with all aspects of your requests in relation to these reports.

My decision on your request therefore relates only to items 3-5.

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 - 2.8 of the FOI Guidelines). Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act (paragraph 5(1)(a), FOI Act) the only request that can validly be made to it under that Act is to access a "document of an administrative nature" (section 5, FOI Act).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase "matters of an administrative nature" and held that it refers to documents that concern the "management and administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

I am satisfied that items 3-5 of your request relate to documents of an administrative nature only and is therefore within the scope of the FOI Act as it applies to the Court.

Search

A search of the Court's records was conducted by Corporate Services staff of the Court and a total of 16 "documents" were identified as being within the scope of items 3 – 5 of your request. These documents were identified by relevant staff searching electronic folders and other relevant records for the period from mid-2015 up to and including 26 September 2016. Particular attention was given to the electronic folders and other records created by the short-term employees and contractors engaged for the management and coordination of the back-office merger of the Federal Court, Family Court and the Federal Circuit Court and emails sent or received by these individuals and emails sent to or received from specialist consultants involved in that project. The staff conducting these searches had each been involved in different aspects of the back-office merger project. Consequently, they were able to also rely on their own knowledge and recollections in the conduct of the searches and in the inquiries made.

Descriptions of each of the "documents" are set out in the attached schedule. Some documents are, in fact, multiples (for example groupings of organisation charts or diagrams) or a chain of emails. Some documents are duplicated or are different revisions of reports, plans or analysis. This is identified in the schedule. Where revision identifiers have been allocated, these have been included in the descriptions.

Decision

As shown on the schedule I have decided to grant you access in full to each of the documents with no redactions or deletions.

Some of the documents include the name of individual staff of the Federal Court, Family Court or Federal Circuit Court. I have given consideration to whether it was necessary for me to consult with these individuals about your request under section 27A of the FOI Act (documents affecting personal privacy) or whether these documents may be conditionally exempt under section 47F of that Act (personal privacy). Having had regard to the guidance provided at paragraphs 6.139 to 6.142 of the FOI Guidelines, I am satisfied that all such references are limited to the names of such individuals and, in some cases, titles or descriptions of positions held, relate only to the performance of their normal duties and responsibilities, in some cases (at least) are or were publically available and that there are no special circumstances (such as a danger to safety) which would make disclosure to you unreasonable.

Access Format

You have not included in your request any indication of the format in which you seek access. Your request was emailed to the Court with the request letter itself in PDF format. All of the documents are available electronically. Two of the documents (the diagrams mentioned at item 13 of the schedule) are in Microsoft Visio format which you will not be able to access unless you have that software installed on your desktop. A hardcopy had been printed and can easily be scanned into PDF format.

I have decided to grant you access to all documents in PDF format and (subject to payment of fees as below) to email these to you and Ms Henricks.

Charges

Under section 29 of the FOI Act, the Court may impose a charge for search and retrieval of documents, decision making and providing access which are assessed in accord with the Freedom of Information (Charges) Regulations 1982. Under these regulations, time reasonably spent in searching and retrieving documents may be charged at \$15 per hour and time reasonably spent in decision making may be charged at \$20 per hour but only for time after the first five hours.

To date, in searching and retrieval of documents and in decision making, court staff (including myself) have spent:

Search and retrieval of documents:

3 hours

Decision making:

13 hours

less first 5 hours

chargeable decision making time

8 hours

Providing access to you in PDF format as proposed above can be completed easily and at a negligible cost. It is not proposed to impose any charge for that access.

I have decided that you are liable to pay a charge in respect of processing your request of \$205 made up of:

	5
Search and retrieval of documents - 3 hours x \$15 per hour	45.00
Decision making - 8 hours x \$20 per hour	160.00
	205.00

Under the FOI Act, you have the right to contend that the charge:

- · has been wrongly assessed
- should be reduced
- should not be imposed.

In deciding whether a charge should be reduced or not imposed, consideration must be given to:

- whether payment of the charge, or part of it, would cause you financial hardship
 - whether giving access to the document is in the general public interest or in the interest of a substantial section of the public
 - any other relevant factor.

You have 30 days to respond in writing to this notice. By no later than Monday 12 December 2016 you must do one of the following:

pay \$205.00 to the Court (payment can be made by cheque drawn in favour of "Federal Court of Australia" or by electronic funds transfer to "Federal Court of Australia Department Account, Reserve Bank of Australia Account Number If payment is by electronic funds transfer could advice of the remittance be sent to accounts@fedcourt.gov.au so that the necessary receipt be issued promptly. In that event could you also notify me by email so I can ensure that action on your FOI request is also resumed immediately)

- contend that the charge has been wrongly assessed, or should be reduced or not imposed and explain your reasons
- · withdraw your request.

If you do not provide a written response by close of business on that day your request will be taken to have been withdrawn.

The period for processing your request is suspended from the day that you receive this notice and resumes on either the day you pay the charge or the day on which the Court makes a decision not to impose a charge.

If you have any questions about the decision to impose a charge or the charges as set out above, please contact me.

Disclosure Log

If access is granted, the material must also be published on the Federal Court's disclosure log, in accordance with the requirements of the FOI Act. As I have already noted, some of the documents contain what could be personal information. Before making a decision about that publication I will give further consideration to whether that publication may be unreasonable.

Your review rights

If you are dissatisfied with my decisions, you may apply for internal review or to the Information Commissioner for review of those decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact me by phone or email as below.

Yours sincerely

John Mathieson

Deputy Principal Registrar john.mathieson@fedcourt.gov.au

Phone: 02 9230 8336

245

From:
To: John Mathieson

Cc: meg.foreman@familycourt.gov.au

Subject: RE: P3M3 Assessments 2014-2016 & survey Date: Monday, 17 October 2016 4:36:19 PM

John,

Thank you for your reply. I would like to formally withdraw my FOI request.

Rgds,

Get Outlook for Android

On Mon, Oct 17, 2016 at 8:43 AM +1100, "John Mathieson" < <u>John.Mathieson@fedcourt.gov.au</u>> wrote:

UNCLASSIFIED

Dear ,

The Court's Chief Information Officer has advised me that, on 10 June 2014, advised the Information Technology areas of both the Federal Court and the Family Court/Federal Circuit Court that the APS Secretaries' ICT Governance Board had agreed to change the annual reporting of the Agency Capability Initiative (P3M3) to three yearly with immediate effect. As a result no P3M3 assessments were completed in either Court in 2014 and 2015. The next assessment is due to be done this month but the Court is yet to receive further details including the due date.

As a result the Court holds, both for itself and the Family Court/Federal Circuit Court, no documents that would be within scope of your FOI request.

Our CIO has arranged for staff from his section to complete your questionnaire in regard to both the former Federal Court and former Family Court/Federal Circuit Court experiences.

Please advise whether, in the circumstances, you are prepared to withdraw your FOI request or if would prefer me to formally refuse it?

Regards,

John Mathieson

John Mathieson | Deputy Principal Registrar



Subject: P3M3 Assessments 2014-2016 & survey

The FOI Officer,

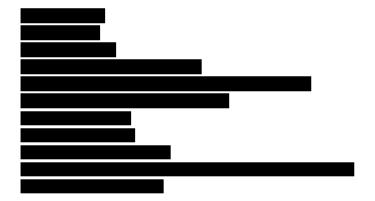
I am writing to continue my research on the impact of P3M3 in the Australian public sector. Federal Court has very kindly provided me through the FOI Act, your P3M3 assessments from 2012 - 2013.

I am writing with two objectives:

- 1. I would like to obtain copies of any P3M3 assessments conducted between 2014 2016. I am applying for this information under the FOI Act but I am more than happy to withdraw my FOI application if it is easier to provide me with this information directly.
- 2. I would like to invite Federal Court to participate in a very short survey to find out: whether any benefits have been gained from conducting P3M3 assessments in the past and whether Federal Court intends to continue to conduct P3M3 assessments in the future. Please can you forward the attached survey to the most relevant person.

Thank you for your continued support of my research. If I can repay the favour by giving a presentation on the results of my research, please do not he sitate to ask.

Yours sincerely



From:
To: External FOI

Subject: Freedom of Information request - FOI Delegations - 2016

Date: Wednesday, 2 November 2016 9:01:19 PM

Dear Federal Court of Australia,

Can I please have a copy of the current FOI Delegations, and any related directions issued in respect of FOI.

I believe this information could be considered "operational information" so I therefore request release under the IPS, or under Administrative Access.

Yours faithfully,



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

7 November 2016

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

By email:			_
Dear			

Freedom of Information Request

I am writing to advise you of my decision about your request under the *Freedom of Information Act 1982* (**FOI Act**) for access to documents which you sent to the Federal Court of Australia (Federal Court) on 2 November 2016.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request.

Scope of Request

You request access to documents of the Federal Court relating to 'current FOI Delegations and any related directions issued in respect of FOI'.

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 – 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act). Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act (Paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase "matters of an administrative nature" and held that it refers to documents that concern the "management and administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

Search

A search of the Court's records was conducted and four (4) documents of an administrative nature that is within the scope of your request was identified, namely:

- Federal Court of Australia, Freedom of Information Act 1982, Approval under sections 10A and 23 of that Act issued to those persons set out in Schedule 1 (1 July 2016)
- 2. Federal Court of Australia, Freedom of Information Act 1982, Approval under section 23 of that Act issued to (29 February 2016)
- 3. Federal Court of Australia, Freedom of Information Act 1982, Approval under section 23 of that Act issued to (29 May 2015)
- 4. Federal Court of Australia, Freedom of Information Act 1982, Approval under section 23 of that Act issued to (5 May 2009).

The Court has not issued any directions in regard to the handling of FOI requests. Decision makers have regard to the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Decision

I have decided to grant you access in full to these documents. You have not specified the form of access required; however, as your request was made by email, I assume you would prefer access in the form of an electronic copy of the document being emailed to you. I have therefore decided that the 4 approvals to exercise power under the FOI Act set out above be released to you electronically in PDF format. This accompanies this advice.

Charges

No charge will be imposed for access to these documents.

Disclosure Log

This material will also be published on the Federal Court's disclosure log, in accordance with the requirements of the FOI Act.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact me by phone or email as below.

Yours sincerely

John Mathieson

Deputy Principal Registrar
john.mathieson@fedcourt.gov.au

Phone: 02 9230 8336

From:

Vic Federal Court Registry E-mail; SA Registry

Cc: John Mathieson

Subject:

Date: Wednesday, 2 November 2016 1:52:34 PM

Attachments: image001.gif

image002.png image003.ipg image004.png

Importance: High

Dear Registry

As you are aware North J, Beach J and Middleton J heard the aforementioned proceedings. On the 20th April 2016 the parties were advised that Davies J would hear an application made by the Plaintiff in on the 19th April 2016, subsequently on the 21st that hearing was heard by North J without preliminary advice to the parties.

I request access to the audio recordings of the various hearings, I would be grateful if those recordings could be made available at the Adelaide Registry of the Federal Court for review at your earliest convenience.

I ask you to consider this communique as an application in writing in accordance with the provisions of *the Freedom of Information Act* 1982 (Cth) for a copy of any document or thing related to me of an Administrative Character in the possession and Control of the Federal Court of Australia and its related personnel between the 1st January 2016 and today's date.







Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

16 November 2016

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Dear

Freedom of Information (FOI) Request

I refer to your email which you sent on 2 November 2016 at 1.52 pm to me and others in which, amongst other things, you said:

"I ask you to consider this communique as an application in writing in accordance with the provisions of the Freedom of Information Act 1982 (Cth) for a copy of any document or thing related to me of an Administrative Character in the possession and Control of the Federal Court of Australia and its related personnel between the 1st January 2016 and today's date

As you are aware, as a result of the declaration made by the then Acting Australian Information Commissioner on 22 January 2016, this Court may only consider an FOI request from you if you have applied for and obtained the prior written permission of the Information Commissioner for that request. Pending receipt of a copy of the Information Commissioner's written permission, no action will be taken on your request.

Yours sincerely

John Mathieson Deputy Principal Registrar



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref: FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

> LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

29 November 2016



Dear

Freedom of Information (FOI) Request

I refer to your email dated 20 November 2016, which you sent to me and others and in which, amongst other things, you said:

"Finally, I reinstate my requests for access to all court files involving me in [the Chief Justice's] Possession and Control".

As has been explained to you on a number of occasions, most recently on 16 November 2016, as a result of the declaration made by the then Acting Australian Information Commissioner on 22 January 2016, this Court may only consider an FOI request from you if you have applied for and obtained the prior written permission of the Information Commissioner for that request. Pending receipt of a copy of the Information Commissioner's written permission, no action will be taken on your request.

Yours sincerely

John Mathieson Deputy Principal Registrar



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

5 December 2016

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Proposed Freedom of Information Request

I am writing to you in relation to your mooted request under the *Freedom of Information Act* 1982 (**FOI Act**) to the Federal Court and Defence Force Discipline Appeals Tribunal which you sent to the Federal Court's FOI email address on 29 November 2016.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request. The Defence Force Discipline Appeals Tribunal is administered by the Federal Court. Any FOI request made to it is likely to be referred to me with an authority to deal with it.

Scope of Potential Request

In your email you indicate that you are looking to identify cases from 2007-08 through to 2015-16 that were brought to the Federal Court of Australia and the Defence Force Discipline Appeals Tribunal regarding Commonwealth Credit Cards from the Department of Defence.

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 - 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act which are available on the Commissioner's website at https://www.oaic.gov.au/freedom-of-information/foi-guidelines/). Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act (Paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase "matters of an administrative nature" and held that it refers to documents that concern the "management and

administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

Judgments of the Court are part of the court proceeding in which they are made and could never be documents of an administrative nature. Accordingly, any FOI request made seeking access to any judgment of the Court would be refused as the FOI Act does not apply to them.

No similar exclusion operates in relation to the Defence Force Discipline Appeals Tribunal. However, all decisions of the Tribunal (other than those which the tribunal has ordered are confidential under subsection 18(2) of the *Defence Force Discipline Appeal Act 1955*) are published on the Federal Court's website. As these are therefore open for public access then, again, the FOI Act does not apply to them and any FOI request made in relation to them would be refused.

Outcome

The Court does not provide research of the type you are seeking under the FOI Act or otherwise. You will need to undertake this yourself.

The Court does, however, provide tools on its website at http://www.fedcourt.gov.au/publications/judgments/search which could assist you with this research if you wish to use it. This tool enables you to search judgments delivered by the Court and decisions given by the Tribunal according to various user-set parameters including, as relevant to your enquiry, by Court/Tribunal, keywords/phrase, date range and legislation.

Questions about this letter

If you wish to discuss any of the matters above, please contact me by phone or email as below.

Yours sincerely,

John Mathieson

Deputy Principal Registrar

Email: john.mathieson@fedcourt.gov.au

From:
To:
Subject:

Request for FOI

Date: Tuesday, 14 March 2017 10:07:54 AM

Dear FOI officer,

I request access to administrative documents under the FOI Act:

1.	All documents (e.g. application forms, emails) requesting access to court documents for matter , that were received by, or forwarded to Chambers of Justice Tracey. Please note that I do not require personal information of any individuals' name, address, phone number or payment details, which may be redacted.
2.	In relation to matter number , all documents relating to docket Judge/s case allocation decisions upon filing of an application to the Federal Court Victorian Registry.

Please note that disclosed.

, however request my personal details are not

Kind regards,

From: <u>John Mathieson</u>

To:

Subject: Freedom of Information Request

Date: Tuesday, 28 March 2017 3:24:30 PM

Attachments: Re Access to an affidavit for VID714 2016.pdf

UNCLASSIFIED

I am authorised under section 23(1) of the *Freedom of Information Act 1982* (FOI Act) to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to Freedom of Information (FOI) requests.

Your FOI Request

On 14 March 2017 you sent an email to the Federal Court requesting access under the FOI Act to, firstly, documents relating to any request seeking access to the court file for proceeding that was received by or forwarded to the Chambers of Justice Tracey and, second, documents relating to the allocation of that proceeding to the docket of Justice Tracey after filing of the initiating application in the Victorian District Registry of the Federal Court. Receipt of that request was acknowledged by email on 16 March 2017.

I will deal with each part of your request separately.

Requests for Access to Court File

I have searched the electronic court file for proceeding and have had court staff in the Federal Court's Victorian District Registry search all other electronic and paper records maintained locally in which information about requests for access to court files might be separately recorded. With one possible exception, no record can be found of the Federal Court having received any request for access to court file from any person. Even though I don't think that this is within scope of this part of your request, the possible exception I refer to is that on 7 November 2016 you sent an email to the generic email address for the Federal Court's Victorian District Registry noting that you had attended the Registry on 4 November 2016 to seek access to a confidential affidavit and were advised it would be available to you to inspect through the Commonwealth Courts Portal but it was not and you queried whether you needed to return to the Registry for personal inspection. From the following email chain on that same day, it appears that court staff could find no record of the affidavit having been filed and you indicated that you would ask Justice Tracey's chambers if it was still with those staff. I attach a copy of that email chain for your information.

As (subject to the exception mentioned) no documents within scope of your request have been able to be located no access to any document under this part of your request is possible.

Docket Allocation

The Federal Court (including its registries and staff) is a prescribed authority for the purposes of the FOI Act, although its judicial officers are not (see subsection 5(1) FOI Act and paragraph 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (Guidelines)). The FOI Act, however, does <u>not</u> apply to any request for access to a

document of the Court <u>unless the document relates to matters of an administrative nature</u> (see also subsection 5(1) FOI Act and paragraph 2.9 of the Guidelines). For completeness, although not relevant to your request, since 12 April 2013, the FOI Act also does not apply to the handling of judicial complaints within the Court (see subsection 5(1A) FOI Act and paragraph 2.8 of the Guidelines).

The High Court of Australia has recently clarified that the phrase "matters of an administrative nature" refers only to documents that concern "the management and administration of registry and office resources" (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [47]) and not to documents relating to the exercise of substantive powers and functions of adjudication or tasks that are referable to this (see Kline v Official Secretary to the Governor General [2013] HCA 52 at [45]). (See also paragraphs 2.9 and 2.10 of the Guidelines.)

Any documents prepared within the Federal Court and any communications, including emails or memoranda, as well as file notes or other record of discussions or decisions, in the possession of the Federal Court relating to the allocation of proceeding to the docket of Justice Tracey clearly relate to a proceeding which was before the Federal Court and cannot be documents of an administrative nature within the meaning of the FOI Act. As such, the FOI Act does not apply to them and no request under that Act can validly be made in relation to them (see paragraphs 2.8 to 2.10 of the Guidelines).

I note that on 11 July 2016 you sent an email to Justice Tracey's Associate in which, noting that Justice Tracey was also the President of the Defence Force Discipline Appeals Tribunal and that you were a former civilian in the Defence public service, you queried whether the allocation to Justice Tracey was random or because of his specialty in fair work or defence matters. In response, the Associate referred you to the information on the Federal Court's website about the organisation of matters under the National Court Framework. As explained in that information, in the Federal Court cases, are organised according to the area of law that each involves. Your application filed in proceeding was brought under the Fair Work Act 2009 and alleges that you were dismissed in contravention of a general protection under the Fair Work Act. Such applications are dealt with in the Federal Court's Employment and Industrial Relations National Practice Area. Allocations of cases in this practice area are usually made in rotation to judges in the registry in which the relevant application is filed with experience in employment and industrial relations law, subject only to availability, workload and commitments. In limited and rare circumstances, an allocation may be made in a different way if the character of the particular matter requires this. You can find further information about this in the Federal Court's Central Practice Note (see particularly paragraphs 4.2 and 4.3) which is available on the Court's website. Justice Tracey is a judge in the Federal Court's Employment and Industrial Relations National Practice Area.

The Federal Court does not provide details of the reasoning behind decisions made about docket allocation in individual matters. In reflection of the appropriateness of this approach, decisions of this type are exempt from any request for reasons under section 13 of the *Administrative Decisions (Judicial Review) Act 1977* (see item (f) of Schedule 2 of that Act) and, as I have decided above, access to documents relating to the making of such decisions is not available under the FOI Act.

It is, however, the experience of a judge in the law of individual practice areas that is relevant to them being a judge in each practice area and not any other roles they may have.

Right of Review of My Decisions

If you are dissatisfied with my decisions, you may apply for an internal review or an Information Commissioner review.

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter

Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by another officer within 30 days of receipt of any request for review.

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: <u>enquiries@oaic.gov.au</u>

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. You can also find there the current Guidelines which I have referred to earlier in the reasons for my decision. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss these decisions, you can contact me by phone on the phone number shown below.

Yours sincerely,

John Mathieson

Deputy Principal Registrar

Principal Registry | Federal Court of Australia Law Courts Building, Queens Square, Sydney NSW p. 02 9230 8336 | e. john.mathieson@fedcourt.gov.au www.fedcourt.gov.au



Tuesday 20 Marsh 2047

Tuesday, 28 March 2017

Federal Court of Australia
By email: foi@fedcourt.gov.au

Request for access to documents under the Freedom of Information Act 1982 (Cth)

Documents requested by the applicant:

The applicant requests access to the following documents:

Under the Freedom of Information Act 1982 we seek accessed to the following documents relevant to the financial years 2016/17, 2015/16 and 2014/15:

- 1. Any report or document outlining details of allowances provided and expenses claimed by members of the Judiciary from the Federal, Family and Federal Circuit Courts, including, but not limited to:
 - a. Private running vehicle costs or commonwealth car with driver service;
 - b. Travel costs, including spousal travel;
 - c. Attendance and travel to Conferences, conventions, seminars and other such meetings both nationally and internationally.
- 2. Any report or document detailing the total costs of judicial expenses and claimed entitlements to the respective Courts.
- 3. Any report or document outlining the amount of discretionary additional leave taken by members of the Judiciary from the Federal, Family and Federal Circuit Courts. That is, leave in addition to annual leave accrual, personal leave accrual, long service leave accrual, or compassionate leave.





Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

27 April 2017



Dear

Freedom of Information Request

I refer to:

- your letter to the Federal Court of Australia (Federal Court) dated 28 March 2017 which set out a request under the Freedom of Information Act 1982 (FOI Act) for access to documents (Request);
- my letter to you dated 5 April 2017 acknowledging receipt of the Request and advising of the transfer of parts of it to the Family Court of Australia (FCoA) and the Federal Circuit Court of Australia (FCC);
- my telephone discussion with
 of 11 April 2017; and
- email to me dated 11 April 2017.

Authority

I am authorised under s 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a FOI request.

Please note that this letter concerns the Federal Court's response to the Request. I expect that the FCoA and the FCC will write to you separately to set out their respective responses.

Categories 1 and 2

By way of the Request, you sought access to documents falling within the following categories in respect of the financial years ending 30 June 2015, 2016 and 2017:

- Any report or document outlining details of allowances provided and expenses claimed by members of the Judiciary from the Federal, Family and Federal Circuit Courts, including, but not limited to:
 - (a) Private running vehicle costs or commonwealth car with driver service;
 - (b) Travel costs, including spousal travel;
 - (c) Attendance and travel to Conferences, conventions, seminars and other such meetings both nationally and internationally.
- Any report or document detailing the total costs of judicial expenses and claimed entitlements to the respective Courts.
- Any report or document outlining the amount of discretionary additional leave taken by members of the Judiciary from the Federal, Family and Federal Circuit Courts. That is, leave in addition to annual leave accrual, personal leave accrual, long service leave accrual, or compassionate leave.

On 11 April 20	017, I called	to discuss the	Request.	She expla	ined that	you did
not seek details	s of expenses and allowanc	es in respect o	f individu	al judges,	but rathe	r sought
a breakdown.						
which stated:					•	Í

Thank you for your call earlier regarding the CPSU FOI request (attached). As discussed, the intention of this request is not to obtain details of expenditure for individual members of the Judiciary, rather information pertaining to the overall expenditure for the mentioned costs to each Court.

I have taken this to mean that you do not seek individual vouchers or ledgers, but rather seek a document which sets out the overall expenditure for each cost for each court. To this end, the Federal Court has prepared a table which sets out the overall expenditure for the costs in categories 1 and 2 in respect of each financial year (see Annexure A).

I note that pursuant to the FOI Act, the recipient of a request is not required to create a document for the purpose of answering the request. However, given the helpful clarification provided by it is apparent that this is in substance what you seek. In that spirit, the Federal Court has created Annexure A voluntarily, and provides it to you on that basis.

The table includes a number of notes to assist in your understanding of the various items. In addition, I note that the amounts recorded at categories 1(c) and 1(d) include travel both for hearings and for conferences.

Category 3

The position in relation to Category 3 of the Request (as modified) is slightly different. By way of background, so long as a judge holds a commission pursuant to Chapter 3 of the *Constitution*, he or she will receive such remuneration as may be fixed by Parliament, which remuneration shall not be diminished (see s 72 of the *Constitution*). The leave entitlements of Federal Court judges are limited to an annual 4 weeks variable vacation and to long leave

(pursuant to the Judges (Long Leave Payments) Act 1979). They do not have any other leave entitlements.

Of course, from time to time a judge may fall ill or require a medical procedure. This may affect his or her ability to sit. In these circumstances, the affected judge would notify the Chief Justice and, in the exercise of his responsibility under s 15(1) of the Federal Court of Australia Act 1976 (FCA Act), the Chief Justice would organise the business of the Federal Court accordingly. Other than as may be necessary to accommodate a judge's annual 4 weeks variable vacation, any change in the arrangement of the business of the Federal Court pursuant to s 15(1) of the FCA Act would not (and, pursuant to s 72 of the Constitution, could not) affect the leave entitlements of a judge.

The Federal Court does not record accruals, or items of expenditure, in respect of leave entitlements for judges other than for the annual 4 weeks variable vacation and for long leave. Accordingly, it has no documents which would respond to Category 3 of the Request, as modified.

In addition to the matters set out above, I note that the FOI Act does not apply to Category 3 of the Request. The reason for this is that Category 3 does not concern documents which relate to "matters of an administrative nature" within the meaning of s 5(1) of the FOI Act. In Kline v Official Secretary to the Governor General (2013) 249 CLR 265, the majority (French CJ, Crennan, Kiefel and Bell JJ) commented at [41] that:

[T]he exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above (77). This is a common enough connotation of the epithet "administrative" (78).

Further, the majority held at [47] that:

[T]he only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.

For the reasons set out earlier, Category 3 does not relate to the "management and administration of registry and office resources", but rather to the management of the business of the Federal Court by the Chief Justice pursuant to s 15(1) of the FCA Act. That is not a matter of an administrative nature. The responsibility of the Chief Justice pursuant to s 15(1) should be contrasted with his separate responsibility to manage the administrative affairs of the Federal Court pursuant to s 18A(1) of the FCA Act.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of the decision. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under s 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons which set out why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Australian Information Commissioner Review

Under s 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online:

https://forms.business.gov.au/aba/oaic/foi-review-/

email:

enquiries@oaic.gov.au

post: in person: GPO Box 2999, Canberra ACT 2601 Level 3, 175 Pitt Street, Sydney NSW

More information about the Australian Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact me by phone (03 8600 3508) or email (tim.luxton@fedcourt.gov.au).

Yours faithfully,

Tim Luxton

Acting Deputy Principal Registrar

Deputy Principal Registrar Principal Registry Federal Court of Australia Level 16 Law Courts Building Queens Square Sydney NSW 2000

Email: foi@fedcourt.gov.au

Dear Deputy Principal Registrar,

Request for Surveillance Footage

This request is an application for the purposes of the Freedom of Information Act 1982 (Cth) ("the Act").

We request copies of, or alternatively, access to inspect:-

- 1. Surveillance footage of the ground floor entrance to the Harry Gibbs Commonwealth Law Courts Building at 119 North Quay, Brisbane Qld 4000 between 9.45am and 11.00am on 28 February 2017; and
- 2. Surveillance footage of Court No. 3, or the entrance to Court No. 3 on Level 7, Harry Gibbs Commonwealth Law Courts Building at 119 North Quay, Brisbane Qld 4000 between 9.45am and 11.00am on 28 February 2017.

Notices under the Act may be sent electronically to the applicant at

If you wish to discuss any aspect of this application, please contact the writer on



Telephone: (03) 8600 3333 Facsimile: (03) 8600 3351 DX 435 MELBOURNE

A.B.N. 49 110 847 399

FEDERAL COURT OF AUSTRALIA VICTORIA DISTRICT REGISTRY

305 WILLIAM STREET MELBOURNE VIC 3000

4 May 2017



Dear

Freedom of Information Request

I refer to your letter to the Federal Court of Australia (Federal Court) dated 5 April 2017 which set out a request under the *Freedom of Information Act 1982* (FOI Act) for access to documents (Request), and to my letter to you dated 10 April 2017 acknowledging receipt of the Request.

Authority

I am authorised under s 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a FOI request.

Request

Pursuant to the Request, you seek access to the following categories of documents:

- surveillance footage of the ground floor entrance to the Harry Gibbs Commonwealth Law Courts Building at 119 North Quay, Brisbane, Queensland 4000 (Court Building) between 9:45 a.m. and 11:00 a.m. on 28 February 2017; and
- surveillance footage of Court 3, or the entrance to Court 3, on level 7 of the Court Building between 9:45 a.m. and 11:00 a.m. on 28 February 2017.

Background

For the provision of security, closed circuit television cameras are installed at fixed locations throughout the Court Building. The recordings made by these cameras are indiscriminate and depict the appearance and behaviour of all persons within view. Such persons include lawyers, witnesses, litigants and their children. They may also include school groups, university students, journalists and other members of the public. Those persons may have attended the Court Building for the purposes of participating in or observing proceedings in the Federal Court, the Family Court of Australia or the Federal Circuit Court of Australia.

To the extent that the recordings include images of persons, they contain personal information. They may also provide significant insight into the public safety and security methodology which operates in the Court Building. The provision of security enables persons (in whatever capacity) to attend and participate in hearings without interference and without risk of physical harm. Of course, such interference may comprise a contempt of court.

Application of FOI Act

The Request seeks, in effect, documents which contain a visual record of the persons who had access to the Court Building, and to Court 3 in particular, during the period between 9:45 a.m. and 11:00 a.m. on 28 February 2017. Further, the Request seeks documents which contain a visual record of what occurred in Court 3 during that period (albeit on an alternative basis).

In my opinion, the FOI Act does not apply to the documents the subject of the Request, as such documents do not relate to "matters of an administrative nature" within the meaning of s 5(1) of the FOI Act. In *Kline v Official Secretary to the Governor General* (2013) 249 CLR 265, the majority (French CJ, Crennan, Kiefel and Bell JJ) commented at [41] that:

[T]he exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above (77). This is a common enough connotation of the epithet "administrative" (78).

Further, the majority held at [47] that:

[T]he only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.

This does not extend to documents recording which persons attended at the Court Building for the purpose of participating in (either as party, lawyer or witness), assisting in the conduct of, or observing, proceedings in the Federal Court. As explained above, the provision of security (which is the reason for the creation of such documents), enables these very things to occur. It ensures that events which could otherwise comprise a contempt of court (e.g. interfering with or otherwise inhibiting a witness from attending a hearing) do not occur within the precincts of the Federal Court. This is integral to the conduct of proceedings of the Federal Court, and thus extends beyond "the management and administration of registry and office resources".

To the extent that the Request seeks documents recording events occurring inside a courtroom (see paragraph [2] of the Request), it is plain that such documents would not relate

to "the management and administration of registry and office resources". Rather, they would relate to the conduct of proceedings before the Federal Court.

Conditional Exemption

Given that I have come to the conclusion that the FOI Act does not apply to the Request, it is unnecessary for me to consider the Request further. Nevertheless, I have proceeded to consider whether, if the FOI Act *did* apply to the Request, any conditional exemptions would apply to the subject documents and, if so, whether it would, on balance, be in the public interest to grant access to them.

Section 47F of the FOI Act provides as follows:

General rule

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known:
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources:
 - (d) any other matters that the agency or Minister considers relevant.

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

In my opinion, the documents contain personal information, because they record identifiable images of persons (Affected Persons). Also, the documents record the conduct and behaviour of those persons.

In my opinion, and for the following reasons, I am of the view that the disclosure of any documents the subject of the Request would involve the unreasonable disclosure of personal information:

- 1. the information is not well known;
- 2. the persons to whom the information relates are associated with the matters dealt with in the document (the recordings), as they are the subject of the recordings;
- 3. the information is not available from publicly accessible sources;
- 4. the information is recent:
- 5. the release of the information has the potential to cause stress to Affected Persons, as it would involve disclosure of their attendance at the Court Building for whatever reason:
- 6. it is not practically possible for the Federal Court to contact the Affected Persons and enquire as to their attitude towards disclosure;

- 7. it is possible that disclosure of the information (noting that the FOI Act does not control or restrict any subsequent use or dissemination of information released under the Act) could affect the safety of Affected Persons; and
- 8. it is not apparent that any public purpose would be served through the release of the documents (other than to the extent that they may in some way provide a forensic advantage in litigation).

On the basis that the documents were subject to a conditional exemption, it would then be necessary to consider whether access to them would be contrary to the public interest. Section 11A(5) of the FOI Act provides as follows:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

In turn, s 11B of the FOI Act provides that:

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure:
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government:
 - (b) access to the document could result in any person misinterpreting or misunderstanding the document;
 - (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
 - (d) access to the document could result in confusion or unnecessary debate.

Guidelines

(5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A. In considering whether access to the document would, on balance, be contrary to the public interest, I have had regard to s 11B and to the Australian Information Commissioner's FOI Guidelines issued pursuant to s 93A of the FOI Act (**Guidelines**).

It is not apparent that any of the factors favouring access set out in s 11B(3) of the FOI Act arise in the present circumstances, save for the general object under s 3(1) of "providing for a right of access to documents". Similarly, it is not apparent that any of the factors favouring access set out at paragraph [6.19] of the Guidelines arise, save that:

- it is possible that disclosure of security protocols may tend to "inform the community
 of the Government's operations" (although this is likely to be undesirable for other
 reasons); and
- (b) given that correspondence preceding the Request refers to a proceeding in the Federal Court (VID322/2016), for reasons unarticulated the applicant may be of the view disclosure may tend to "contribute to the administration of justice for a person".

I have not taken into account any of the irrelevant factors set out in s 11B(4) of the FOI Act.

There are a number of factors which weigh against disclosure. Most significantly, the fact that a visual record of a person's attendance at the Court Building (including the attendance of a child) could be made publicly available without restriction pursuant to the FOI Act may tend to deter persons (including litigants and witnesses) from attending the Court Building. This outcome could seriously undermine access to justice and may also comprise a contempt of court. In my view, this factor would of itself be sufficient, on balance, to make disclosure contrary to the public interest. The other matters set out above may also tend to make disclosure contrary to the public interest.

Decision

The FOI Act does not apply to the Request. Accordingly, the Request should be refused.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of the decision. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under s 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons which set out why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Australian Information Commissioner Review

Under s 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online:

https://forms.business.gov.au/aba/oaic/foi-review-/

email:

in person:

enquiries@oaic.gov.au

post:

GPO Box 2999, Canberra ACT 2601 Level 3, 175 Pitt Street, Sydney NSW

More information about the Australian Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, please contact me by phone (03 8600 3508) or email (tim.luxton@fedcourt.gov.au).

Yours faithfully,

Tim Luxton Deputy District Registrar From: External FOI

Cc: parramattasheriff@justice.nsw.gov.au; ClientFeedback; local-court-parramatta@justice.nsw.gov.au

Subject: RE: Court record needed in related to DWI, case dated back Oct7 2009

Date: Wednesday, 12 April 2017 11:19:28 AM

UNCLASSIFIED

Dear

I refer to your email below.

You have contacted the Federal Court of Australia. The information/records you are seeking may be held or controlled by the Parramatta Local Court. Therefore, the Federal Court is unable to assist you with your inquiry.

However, you can contact Parramatta Local Court on:

Email - local-court-parramatta@justice.nsw.gov.au

Phone - 8688 9602 (Criminal); 8688 9603 (Civil)

In person – 12 George Street, Parramatta

Yours sincerely

FOI Officer

Federal Court of Australia

From:

Sent: Wednesday, 12 April 2017 2:29 AM

To: ClientFeedback; External FOI

Cc: parramattasheriff@justice.nsw.gov.au

Subject: Court record needed in related to DWI, case dated back Oct7 2009

To Whom It May Concern

Respected Sir/Madam,

Seeking copy of judgement for traffic ticket, the court date was Oct 7, 2009 so that I can have actual court records for the previous issue with the DWI. It is for immigration purposes, in the context of the disposition has been completed. I have enclosed, Australian **National**

Police certificate, which I had requested and was generated on Dec 2, 2016 with vide

, by the respected department. While the police clearance is important, I must also be able to show the government that I have complied with / completed and conditions associated with the charges. Please find attachments. Previously, had submitted request with local-court-paramatta@justice.nsw.gov.au but no success.

My particulars are-

Any help will be highly appreciable.

(Note:: Please note that I had only Indian driving licence during traffic ticket as Indian driving licence was valid to drive in Australia)

Regards

Sent from Outlook

From:
To: External FOI

Subject: Access to court records

Date: Friday, 9 June 2017 10:51:10 PM

To whom it may concern

I require court records for . The records are from 29/10/1981 and the charges were discharged however I am travelling to USA in December and require a Visa and have been informed by the American Consulate that I require court details.

Regards

Sent from my iPhone



Telephone: (02) 9230 8341 FEDERAL COURT OF AUSTRALIA Facsimile: (02) 9223 1906 PRINCIPAL REGISTRY DX 613 SYDNEY Your Ref: LEVEL 16 Our Ref: LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000 15 June 2017 By email: Dear Your Correspondence I refer to your email sent to the Court's FOI email address on 9 June 2017. In your email, you request that the Court provide you with information from 29 October 1981 about a charge against you which was dismissed. You advise you full name is and that the information has been requested by the American that you were born on Consulate for the purpose of obtaining a visa for travel to the USA. The Federal Court is primarily a commercial court although since 2009 it has had jurisdiction in indictable criminal cartel offences. In 1981 its only criminal jurisdiction would have been in relation to a small number of summary federal offences. It is most unlikely that any charge would have been brought against you in the Federal Court. If such a charge was brought in NSW, it is likely that this would have been in the Magistrates Court (now Local Court), District Court or Supreme Court. Nevertheless I have searched the Federal Court's records and can confirm that there are no proceedings in the Federal Court where was a party. Please note that the Freedom of Information Act 1982 does not apply to court records of any federal court however any that exist can be searched under the rules of each relevant court. You would need to make enquiries with each of the NSW courts mentioned for information about any records that they may retain. Yours sincerely

John Mathieson

Deputy Principal Registrar

From: External FOI

Cc: NSW Inspections

Subject: RE: Request for pleadings in cases already heard before the Federal Court

Date: Wednesday, 21 June 2017 2:22:24 PM

UNCLASSIFIED

Dear

I refer to your email below.

Copies of pleadings cannot be obtained by way of a Freedom of Information application. I have forwarded your email to NSWInspections@fedcourt.gov.au (also CC'd) who may be able to assist you in obtaining copies of the pleadings you seek.

Information on how to inspect Court documents is available on the Federal Court's website at http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents/non-party-access.

However, I can provide you with the proceeding numbers (noting that some have more than one) for each of the matters outlined in your email:

Kind regards FOI Officer

Federal Court of Australia

From: Sent: Wednesday, 21 June 2017 10:05 AM

To: External FOI

Subject: Request for pleadings in cases already heard before the Federal Court

To Whom It May Concern,

I would like to get a copy of the pleadings in a number of cases heard already before the Federal Court.

These include:

1. 2. 3.

I am not sure of the Federal Court case numbers but am essentially wanting to see the Statement of Claims and any amendments made.

Please let me know if you require any further information.

Kind Regards

The Registrar, Federal Circuit Court of Australia at Brisbane PO Box 13084 George Street Post Shop QLD 4003

Re: request for information

22 June 2017

Dear Registrar,

Under section 15 of the Freedom of information (FOI) Act 1982 (Cth) version registered on 22 March 2017 (the Act) I request access to information of an administrative nature that I believe is in the possession of the FCC.

Grounds for my making this request to the FCC

My right of access to government information is provided in section 11 of the Act and applies to "a document of an agency, other than an exempt document."

For the purposes of the Act "agency" is defined by section 4 to mean a "Department" or a "prescribed authority...". Under paragraph 5 (1) (a) "a court ...shall be deemed to be a prescribed authority". Excepting the judiciary (s5 (1) (b)), "a registry or other office of a court... and the staff of such a registry or office... shall be taken to be part of the court" (s5 (1) (c)). Section 5 provides an outline of what information may be accessed from a court.

FOI Guidelines issued by the Australian Information Commissioner under section 93A of the Act, for example paragraphs 2.6 to 2.9, summarise the case law interpretations of FOI requests to courts.

I seek access to eight documents of an administrative nature.

Requested documents numbered 1 to 6 are statistical records, if those requested exist, that relate only to the General Federal Law Division of the Federal Magistrates Court (FMC) renamed the Federal Circuit Court (FCC) of Australia.

Documents numbered 7 and 8 are procedural guidelines, if those requested exist, that relate to all divisions of the Federal Court and FCC of Australia.

For the purposes of this request I prefer to be anonymous.

The section 15 requirements for an access request do not include the identity of the applicant.

Form of access

Under subsection 20 (2) of the Act I request that any documents found to which access is granted are released as **printed paper copies** sent by post mail to my address given below.

My address for replies



DOCUMENTS SOUGHT

Document records of statistics

Requested documents numbered 1 to 6 relate only to the General Federal Law Division of the FMC and FCC.

Records of statistics from June 2000 to present

- 1 A document that shows the total number of applications made.
- 2 A document that shows the number of applications for which no decision or judgement was made.
- 3 A document that lists the formal complaints made by parties about the handling of their matter by a judge, and that includes the Court's recorded subject of each complaint.

Note: my requested document 3 does not relate to any "complaint handler" in the meaning of section 5 of the Act.

Records of statistics from January 2012 to present

- 4 A document that shows the average duration and range from briefest to longest, from the date of filing to the date of judgement of all matters filed in the General Federal Law Division of the FMC and FCC.
- 5 A document that shows the same statistics as document 4 but only for the Human Rights area of the General Federal Law Division of the FMC and FCC.
- 6 A document that shows the following details of proceedings for which his Honour Judge Michael Jarrett was responsible:
 - (a) date matter was filed;
 - (b) File number;
 - (c) date of judgement.

Procedural documents

Requested documents numbered 7 and 8 are procedural guidelines that relate to all divisions of the Federal Court and FCC of Australia.

- 7 A document or set of documents that shows the Courts' policy or procedure for when an applicant in a proceeding complains to the relevant Court that the decision of the Judge has taken an unreasonably long time.
- 8 A document or set of documents that explains the application to current Court procedures, the natural justice principle derived from the words in the Magna Carta as placed on the first statute roll of Great Britain by King Edward I on 12.10.1297 clause 29:
 - "... we will not deny or defer to any man either justice or right."

Thank you for your cooperation. If you wish to discuss my request please phone me.







Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

12 July 2017

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Dear Sir or Madam,

Freedom of Information Request

I refer to your request under the *Freedom of Information Act 1982* (FOI Act) originally sent to the Federal Circuit Court of Australia in Brisbane on 22 June 2017. I understand you were advised by the Federal Circuit Court by letter posted to you yesterday that the part of your request seeking access to some procedural documents in the possession of the Federal Court has, with this Court's consent, been transferred to it.

As I understand your original request, these procedural documents are, first, any documents which show the Federal Court's policy or procedure in regard to an applicant in a proceeding complaining about any unreasonable delay in delivery of a reserved judgment and, secondly, any documents that explain the application to current Court procedures, of the natural justice principle derived from the words in the Magna Carta on the first stature roll of Great Britain by King Edward I on 12 October 1297, clause 29, namely:

"... we will not deny or defer to any man either justice or right."

The decisions which I have made relate only to that part of your request that was transferred to the Federal Court.

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to Freedom of Information (FOI) requests.

Access under the FOI Act may only be sought to documents which are not otherwise publicly available (see definition of "document" in section 4 of the FOI Act and, particularly, exclusion (d)). As I will explain, this is important to the decisions I have made on your requests.

First Request

In explaining my decision on the first of your requests, it is necessary to provide some context. The Federal Court has for many years had a time goal that reserved judgments will be delivered within 3 months.

The Court has published only two current documents which relate to its policy and procedures regarding delay in delivery of reserved judgments and a party to a proceedings complaining about such a delay.

"Central Practice Note: National Court Framework and Case Management" (CPN-1) was issued by the Chief Justice on 25 October 2016 and is publicly available on the Court's website at http://www.fedcourt.gov.au/law-and-practice/practice-documents/practice-notes/cpn-1. Paragraphs 16, dealing with "Judgment", says:

"16.1 The Court aims to deliver judgment as soon as is reasonably practicable. In the ordinary course (and subject to the size and complexity of the matter) the Court will endeavour to deliver judgment resolving the substantive dispute within 3 months of the receipt of the final submissions. If a judgment is not forthcoming within 6 months, the Court will inform the parties of the anticipated time for delivery of judgment.

16.2 If a party wishes to make an enquiry about a reserved judgment, all parties should be told of the wish to make the enquiry. The enquiry is best directed through the Law Society or Bar Association in the relevant registry or to the Chief Justice directly. It is not appropriate for parties or their lawyers to contact a judge's chambers directly about such an enquiry."

On 3 May 2013 the Court issued a guide on "Judicial Complaints Procedures" and it is also publicly available on the Court's website at http://www.fedcourt.gov.au/feedback-and-complaints/ Under the heading "Complaints about delay", it says:

"A party may express concerns or complaints about delay in the delivery of a judgment. In such a case a party can send a letter to the president of the bar association or the law society in the State or Territory in which the case was heard and request that the president take up the matter with the Chief Justice. The president will then convey the concern or complaint to the Chief Justice without identifying which party complained. The Chief Justice will look into the matter and, if appropriate, take it up with the judge concerned. Complaints of this nature can also be made directly by letter addressed to the Chief Justice."

As both this Practice Note and guide are publicly available, neither is a "document" that is accessible under the FOI Act and, accordingly, your request for access under that Act to each of those documents is refused. Of course both of these documents can be downloaded from the Court's website.

Second Request

The Magna Carta has been and remains influential in the development of the common law and the phrase you refer to from clause 29 has been important for the now well established modern concepts of the rule of law and the proper administration of justice.

There is a huge volume of material published about the Magda Carta, including a number of recent books and articles, particularly in 2015 when the 800th Anniversary of the Magna Carta was celebrated in Britain and in other Commonwealth countries including Australia. The later included papers by Judges of the Federal Court which were subsequently published and are available on the Court's website (e.g. "Why Magna Carta Still Matters", Justice

Rares, 2015 and "The Influence of the Magna Carta on Papua New Guinea Law", Justice Collier, 2015). The Chief Justice and other Judges have also presented papers at earlier times about the Magda Carta and these too are published and available on the Court's website (e.g. "Judicial Case Management and the Problem of Costs", Chief Justice Allsop, 2014).

The Federal Court holds in its libraries for its reference purposes books, journals and other material on the Magda Carta all of which is publicly available in libraries (particularly law libraries) across Australia.

I have undertaken or had other Court staff undertake electronic searches across the Court's electronic servers and folders on which relevant documents are stored using terms, such as "Magda Carta", "clause 29" and/or "not deny or defer to any man either justice or right", separately and in combination and no documents or material other than the published papers and the library holdings referred to above was found.

After taking reasonable steps to locate documents in the possession of the Court that are within the scope of your second request, the only documents which have been found are, as explained above, publicly available. As such, for the reasons already explained, those papers and library material are not "documents" that are accessible under the FOI Act and your request for access under that Act to them is also refused. Of course the papers mentioned can be downloaded from the Court's website and the books, journals and other material may be available to you through public libraries.

YOUR REVIEW RIGHTS

If you are dissatisfied with my decisions, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

<u>Information Commissioner review</u>

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss these decisions, please contact me by phone as above or email as below.

Yours faithfully

John Mathieson **Deputy Principal Registrar**

Email: john.mathieson@fedcourt.gov.au

From:
To: External FOI

Subject: Freedom of Information request - Group Certificates/PAYG payment summaries of the Federal Court's SES

staff - FY2013/14, FY2014/15 and FY2015/16

Date: Friday, 30 June 2017 8:04:59 PM

Dear Federal Court of Australia,

The following is an application for the purposes of the FOI Act.

I am conducting research, across a range of Government agencies, into the Government's enterprise bargaining framework for the Commonwealth Public Service. Specifically, in the interests of equity and transparency, whether the Government's policy to reduce the living standards of rank and file public servants (that is, public servants who are not considered senior executive service staff ('SES')) also extends to SES public servants.

Accordingly, I request documents which detail the precise monies paid to each of the Federal Court's SES officers in the following financial years - FY2013/14, FY 2014/15 and FY2015/16. The group certificates/end-of-year PAYG payments summaries issued by the Federal Court to each of its SES staff in those years can be quickly and easily identified and retrieved, and will efficiently and accurately provide the information the subject of my request.

I am willing to agree to the decision maker redacting information relating to the tax file numbers, the home addresses and information relating to the amount of tax withheld for each of the relevant SES officers that may be contained in the relevant documents. I am willing to further narrow the scope of my request by limiting it to officers employed by the Federal Court who, at the time of my application, were categorised as SES officers, meaning that:

- Federal Court staff who were once SES officers at the Federal Court, but weren't categorised as such at the time of this application; and
- the documents the subject of my request that pertain to SES officers who are no longer employed by the Federal Court;

are discounted from the scope of my application.

I make the following submissions in support of my application.

The precise remuneration paid to public servants for performing public duties is a matter of wide and countervailing public interest. That is established by authority including that set out in Re Ricketson and Royal Women's Hospital (1989) 4 VAR 10; Re Forbes and Department of Premier & Cabinet (1993) 6 VAR 53; Re Stewart and Department of Transport (1993) 1 QAR 227; Re Thwaites and Metropolitan Ambulance Service (unreported, 13 June 1997); Re Milthorpe and Mt. Alexander Shire Council (1997) 12 VAR 105; Re National Tertiary Education Industry Union (Murdoch Branch) and Murdoch University; Ors [2001] WAICmr 1 and Asher and Department of State and Regional Development [2002] VCAT 609.

In Re Forbes, Deputy President Ball said (at page 60):

"Mr Baxter is a senior public servant performing very significant public functions and being paid wholly from money provided by the public. The public is entitled to know precisely how much of its money is received in salary and entitlements by senior public servants for performing functions on behalf of the public."

In Re Stewart, at pp.257-258, the Information Commissioner observed:

"It has been held [...] that there is a general public interest in seeing how the taxpayers' money is spent which is sufficient to justify the disclosure of the gross income payable from the public purse to the holder of a public office. [...] see [Re Ricketson and Royal Women's Hospital (1989) 4 VAR 10, and Re Forbes and Department of the Premier and Cabinet (1993) 6 VAR 53]."

In Re National Tertiary Education Industry Union, the Commissioner observed (at [68]):

"I recognise that there is a public interest in the public receiving value for its money spent on public education, especially in the present climate of financial restrictions. I agree with the Tribunal in Re Ricketson and Re Forbes that the public is entitled to know how much of its money is received in salary and entitlements by senior public officers for performing functions on behalf of the public and that such information is the subject of legitimate public interest and discussion."

In Asher, Deputy President McNamara stated:

"The total remuneration paid to senior public officers has been, and continues to be, a matter of public concern and public debate. The authorities referred to above indicate the fact that the taxpayers ultimately meet the remuneration gives them a legitimate interest in this matter, even although it is one that it is clearly a matter relative to the personal affairs to the officers themselves. As Mr Edwards notes, his actions as Secretary must ultimately be regulated by the law which must take precedence over any government policy, or one might say any private assurance that he might give to a particular officer. The existence of authorities such as Forbes and Milthorpe indicates that conformably with the Freedom of Information Act no officer, certainly no senior officer, could legally obtain an absolute guarantee of confidentiality of his or her total remuneration package figure without some special enabling legislation."

An additional wide public interest aspect that relates to my application is that employment relations (including the regulation of pay and conditions) in the public sector are widely considered to serve as a role model for industrial relations in the private sector (see, for example, Creighton B and Forsyth R [Eds.] Rediscovering Collective Bargaining, 2012 at pp.184-185). That is, the way in which a government treats its staff (public servants) can be considered emblematic of the way in which a government considers employees across the broader workforce should be treated by their employers. The current Commonwealth Government has an employment relations policy in place (known as the 'Australian Public Service Bargaining Framework') which necessarily involves reducing the living standards of rank and file (non-SES) public servants. Senior management at the Federal Court has decided, at its discretion, to adopt and enforce, against its rank and file staff, the Government's employment relations policy. Part of the purpose of my application is to determine whether the Government's policy to reduce the living standards of rank and file public servants also extends to SES public servants. The documents the subject of my request will shed some light on that issue.

It is immutably in the public interest of APS rank and file employees and their families, but also Australian taxpayers and working Australians more generally, to know whether it is the current Government's view that rank and file employees who are not categorised as senior executives (or equivalent) are generally overpaid, and should therefore have their living standards reduced by their employers, while senior executives (or their equivalents) are generally underpaid and should have their living standards increased. Such an insight will augment the public's knowledge of the Government's existing policies concerning the distribution of wealth among Australian society including the Government's policy to reduce the level of penalty rates paid to some of the lowest paid members of the Australian workforce while simultaneously reducing company taxation rates.

Thank you.





Telephone: (07) 3248 1100

Facsimile: (07) 3248 1260 (General)

(07) 3248 1240 (Approved for Document Filing)

Email: qldreg@fedcourt.gov.au

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA QUEENSLAND DISTRICT REGISTRY

HARRY GIBBS COMMONWEALTH LAW COURTS 119 NORTH QUAY BRISBANE OLD 4000

> PO BOX 13084 GEORGE STREET BRISBANE QLD 4003

24 August 2017

By email:

Dear Sir/Madam

Freedom of Information Act 1982 - Request for Access

I refer to your email of 30 June 2017 to the Federal Court of Australia in which you have sought access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

Accordingly, I request documents which detail the precise monies paid to each of the Federal Court's SES officers in the following financial years - FY2013/14, FY 2014/15 and FY2015/16. The group certificates/end-of-year PAYG payments summaries issued by the Federal Court to each of its SES staff in those years can be quickly and easily identified and retrieved, and will efficiently and accurately provide the information the subject of my request.

I am willing to agree to the decision maker redacting information relating to the tax file numbers, the home addresses and information relating to the amount of tax withheld for each of the relevant SES officers that may be contained in the relevant documents. I am willing to further narrow the scope of my request by limiting it to officers employed by the Federal Court who, at the time of my application, were categorised as SES officers, meaning that:

- Federal Court staff who were once SES officers at the Federal Court, but weren't categorised as such at the time of this application; and
- the documents the subject of my request that pertain to SES officers who are no longer employed by the Federal Court; are discounted from the scope of my application.

On 13 July 2017 the Federal Court acknowledged receipt of your request and advised that as your request covered documents which contained another individual's personal information, the Federal Court was required to consult with those individuals (under section 27A of the FOI Act) before making a decision on the release of the documents. The period for processing your request was accordingly extended by 30 days to 29 August 2017.

Authorised decision-maker

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to the documents falling within the scope of your request for access.

In making my decision I have had regard to:

- a. the terms of your request;
- b. your submissions of 30 June 2017;
- c. the usual content of the documents within the scope of your request;
- d. the relevant provisions of the FOI Act and case law considering those provisions;
- e. the FOI Guidelines issued by the Office of the Australian Information Commissioner;
- f. the Annual Reports of the Federal Court of Australia;
- g. the Remuneration Tables published on the Federal Court of Australia website; and
- h. the submissions of the SES employees whose payment summaries are within the scope of your request.

Reasons for Decision

Conditionally exempt under paragraph 47E(c)

I consider that the documents within the scope of your request contain information that is conditionally exempt under paragraph 47E(c) of the FOI Act which relevantly prescribes that:

"A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to... have a substantial adverse effect on the management ... of personnel by the Commonwealth or by an agency".

The payment summaries of Senior Executive Service (SES) employees of the Federal Court contain specific details of the terms and conditions of employment of those individual employees which have been negotiated directly, and on an individual basis, between those SES employees and the Chief Executive Officer/Principal Registrar (CEO) of the Federal Court. The release of the precise details of the remuneration of SES employees of the Court would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by the Court by:

- destroying the trust in the confidentiality of negotiations between SES employees and the CEO of the Court on the terms and conditions of employment for those employees, and potential employees, making future negotiations more difficult, prolonged and adversarial;
- permitting remuneration comparisons which create tensions between individual SES employees as well as between SES employees and non-SES employees; and
- undermining the morale of SES employees and leading to potential reductions in productivity.

Conditionally exempt under s 47F(1)

I consider that the documents within the scope of your request contain information that is conditionally exempt under subsection 47F(1) of the FOI Act which prescribes that:

"A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person)."

The term "personal information" is defined in section 4 of the FOI Act to have the same meaning as in the *Privacy Act 1988* (Cth), that is:

- "...information or an opinion about an identified individual, or an individual who is reasonably identifiable:
 - (a) whether the information or opinion is true or not; and
 - (b) whether the information or opinion is recorded in material form or not."

The documents requested identify individual SES employees and contain information about the income each has received from the Court as their employer in each relevant period along with details such as their home address, Tax File Number, tax withheld and reportable superannuation contributions.

Although you have expressed a willingness to agree to the removal of some identifying information, such as Tax File Numbers, home addresses and information relating to the amount of tax withheld, they would still contain the personal information of identified individuals as defined in section 4 of the FOI Act.

In considering whether the information is conditionally exempt under subsection 47F(1) I am required to consider whether the disclosure of personal information would be unreasonable. In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 stated that:

"...whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance...it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party..."

Further, subsection 47F(2) of the FOI Act prescribes that:

- "(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant."

In considering the provisions of subsection 47F(2), the personal information contained within the payment summaries of SES employees of the Court is not well known and would, in ordinary circumstances, be limited to those entitled by law to receive it or entrusted with it at the discretion and with the consent of the individual SES employee.

This information is not available from publicly accessible sources. The Federal Court's Annual Report provides salary ranges by classification and provides details of the total remuneration for senior management, but does not provide details on an individual basis. Further details of the remuneration of senior executives and other highly paid officials are published on the Federal Court's website at: http://www.fedcourt.gov.au/about/corporate-information/executive-remuneration. This information includes the total remuneration for executives between specific income levels, average reportable salary, average contributed superannuation and average total remuneration.

In considering any other matters that might be relevant pursuant to paragraph 47F(2)(d) and a consideration of all the circumstances as guided by *Re Chandra and Minister for Immigration and Ethnic Affairs*, I note firstly that the personal information provided within the payment summaries relate to the personal affairs of each SES employee as an individual and taxpayer. I am not satisfied that there exists or should exist any presumption that such documents should be released merely because each SES employee is an employee of the Federal Court and a public servant. The personal information is not information about the performance of the usual duties or responsibilities of the individual SES employees of the Court.

The disclosure of the personal information contained within the payment summaries may also have an adverse effect on the individual SES employees. These effects would, or could reasonably be expected, to include those discussed in respect of section 47E above such as destroying the trust in the confidentiality of negotiations, creating tensions between individual SES employees as well as between SES employees and non-SES employees and undermining the morale of SES employees. Other employees may also lose trust and confidence in the ability of the Court to maintain confidentiality over their personal information.

In addition, some SES employees exercise judge delegated functions. The release of personal information of SES employees who exercise these functions would, or could reasonably be expected, to increase security risks associated with the performance of those functions and potentially make it more difficult to exercise those functions in an independent and impartial manner, and without fear of personal retribution. It is noted that this would be mitigated to some degree by the redaction of certain information for which you have expressed a willingness to agree.

Each of the relevant SES employees has objected to the release of their personal information subject to the request for access.

Even before undertaking the public interest test required by subsection 11A(5), I note there is a public interest recognised by the Act in the disclosure of information, however in the circumstances identified above and where disclosure would be inconsistent with the Federal Court's obligations under the Privacy Act, I have concluded that the information requested contains information that is conditionally exempt under subsection 47(F)(1) of the FOI Act.

Public Interest Test

Subsection 11A(5) of the FOI Act provides:

"The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest."

In considering that "public interest test", a number of factors set out in subsection 11B(3) of the FOI Act must be taken into account. These are that disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

Disclosure would broadly promote the objects of the FOI Act by providing to the Australian community access to information held by the Government, increasing knowledge about Government activities and enhancing the scrutiny of Government decision-making. Disclosure may also promote oversight of public expenditure in revealing the remuneration paid to SES public servants. Such public expenditure, particularly in the context of the ongoing enterprise bargaining within the Australian Public Service, is a matter of some public importance and its disclosure may inform public debate.

However, there is a range of material that is already publicly available in relation to SES remuneration, including that within the Court's Annual Reports, and on its website, and also within the Australian Public Service Commission's Remuneration Reports (available at http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys). Disclosure of the documents requested is unlikely to serve the public interest any more than this publicly available information.

Whilst significant weight is therefore given to the promotion of the objects of the FOI Act, little weight is given to the ability of this information, should it be released, to inform debate on a matter of public importance and promote effective oversight of public expenditure to any significant degree above that information that is already publicly available.

As this is not an instance where the applicant is seeking access to their own personal information, this is not a relevant factor to be considered.

The public interest factors weighing against a finding that it would be in the public interest to disclose the information within the scope of the request for access are a development of those issues identified previously.

The release of the precise details of the remuneration of SES employees of the Court would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by the Court by:

 destroying the trust in the confidentiality of negotiations between SES employees and the CEO of the Court on the terms and conditions of employment for those employees, and potential employees, making future negotiations more difficult, prolonged and adversarial;

- permitting remuneration comparisons which create tensions between individual SES employees as well as between SES employees and non-SES employees; and
- undermining the morale of SES employees and leading to potential reductions in productivity.

The personal information provided within the payment summaries relate to the personal affairs of each SES employee as an individual and taxpayer. I am not satisfied that there exists or should exist any presumption that such documents should be released merely because each SES employee is an employee of the Federal Court and a public servant. The personal information is not information about the performance of the usual duties or responsibilities of the individual SES employees of the Court.

The disclosure of the personal information contained within the payment summaries may also have an adverse effect on the individual SES employees and prejudice the rights of those individuals to privacy. These effects would, or could reasonably be expected, to include those discussed in respect of section 47E above such as destroying the trust in the confidentiality of negotiations, creating tensions between individual SES employees as well as between SES employees and non-SES employees and undermining the morale of SES employees. Other employees may also lose trust and confidence in the ability of the Court to maintain confidentiality over their personal information.

The impact upon the Court and the Court's employees from the release of information within the scope of the request is significant and within the public interest.

These are factors for which I give significant weight.

Some SES employees exercise judge delegated functions. The release of personal information of SES employees who exercise these functions would, or could reasonably be expected, to increase security risks associated with the performance of those functions and potentially make it more difficult to exercise those functions in an independent and impartial manner, and without fear of personal retribution. It is noted that this would be mitigated to some degree by the redaction of certain information for which you have expressed a willingness to agree.

After considering the mitigating impact of any potential redaction this is a factor to which I give some weight.

After considering each of these factors and the weight given to each, and where disclosure would otherwise be inconsistent with the Federal Court's obligations under the Privacy Act, I am not satisfied that disclosure of the information within the scope of the request for access would be in the public interest.

Redaction not appropriate

Where access to the requested documents is refused, section 22 of the FOI Act provides that an edited copy of the documents may be provided if it is possible to redact exempt information. Under that section, irrelevant information may also be redacted.

You have indicated a willingness to agree to the redaction of information relating to tax file numbers, the home addresses and information relating to the amount of tax withheld for each of the relevant SES employees.

In light of my findings above, a redaction of all exempt information would render the document meaningless for the purposes of your request. Consequently, I have decided that this would not be an appropriate response to your request for access.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Scott Tredwell

Deputy District Registrar

From:
To: External FOI

Subject: Freedom of Information request - Group Certificates/PAYG payment summaries of the Federal Court's SES

staff - FY2013/14, FY2014/15 and FY2015/16

Date: Friday, 30 June 2017 8:04:59 PM

Dear Federal Court of Australia,

The following is an application for the purposes of the FOI Act.

I am conducting research, across a range of Government agencies, into the Government's enterprise bargaining framework for the Commonwealth Public Service. Specifically, in the interests of equity and transparency, whether the Government's policy to reduce the living standards of rank and file public servants (that is, public servants who are not considered senior executive service staff ('SES')) also extends to SES public servants.

Accordingly, I request documents which detail the precise monies paid to each of the Federal Court's SES officers in the following financial years - FY2013/14, FY 2014/15 and FY2015/16. The group certificates/end-of-year PAYG payments summaries issued by the Federal Court to each of its SES staff in those years can be quickly and easily identified and retrieved, and will efficiently and accurately provide the information the subject of my request.

I am willing to agree to the decision maker redacting information relating to the tax file numbers, the home addresses and information relating to the amount of tax withheld for each of the relevant SES officers that may be contained in the relevant documents. I am willing to further narrow the scope of my request by limiting it to officers employed by the Federal Court who, at the time of my application, were categorised as SES officers, meaning that:

- Federal Court staff who were once SES officers at the Federal Court, but weren't categorised as such at the time of this application; and
- the documents the subject of my request that pertain to SES officers who are no longer employed by the Federal Court;

are discounted from the scope of my application.

I make the following submissions in support of my application.

The precise remuneration paid to public servants for performing public duties is a matter of wide and countervailing public interest. That is established by authority including that set out in Re Ricketson and Royal Women's Hospital (1989) 4 VAR 10; Re Forbes and Department of Premier & Cabinet (1993) 6 VAR 53; Re Stewart and Department of Transport (1993) 1 QAR 227; Re Thwaites and Metropolitan Ambulance Service (unreported, 13 June 1997); Re Milthorpe and Mt. Alexander Shire Council (1997) 12 VAR 105; Re National Tertiary Education Industry Union (Murdoch Branch) and Murdoch University; Ors [2001] WAICmr 1 and Asher and Department of State and Regional Development [2002] VCAT 609.

In Re Forbes, Deputy President Ball said (at page 60):

"Mr Baxter is a senior public servant performing very significant public functions and being paid wholly from money provided by the public. The public is entitled to know precisely how much of its money is received in salary and entitlements by senior public servants for performing functions on behalf of the public."

In Re Stewart, at pp.257-258, the Information Commissioner observed:

"It has been held [...] that there is a general public interest in seeing how the taxpayers' money is spent which is sufficient to justify the disclosure of the gross income payable from the public purse to the holder of a public office. [...] see [Re Ricketson and Royal Women's Hospital (1989) 4 VAR 10, and Re Forbes and Department of the Premier and Cabinet (1993) 6 VAR 53]."

In Re National Tertiary Education Industry Union, the Commissioner observed (at [68]):

"I recognise that there is a public interest in the public receiving value for its money spent on public education, especially in the present climate of financial restrictions. I agree with the Tribunal in Re Ricketson and Re Forbes that the public is entitled to know how much of its money is received in salary and entitlements by senior public officers for performing functions on behalf of the public and that such information is the subject of legitimate public interest and discussion."

In Asher, Deputy President McNamara stated:

"The total remuneration paid to senior public officers has been, and continues to be, a matter of public concern and public debate. The authorities referred to above indicate the fact that the taxpayers ultimately meet the remuneration gives them a legitimate interest in this matter, even although it is one that it is clearly a matter relative to the personal affairs to the officers themselves. As Mr Edwards notes, his actions as Secretary must ultimately be regulated by the law which must take precedence over any government policy, or one might say any private assurance that he might give to a particular officer. The existence of authorities such as Forbes and Milthorpe indicates that conformably with the Freedom of Information Act no officer, certainly no senior officer, could legally obtain an absolute guarantee of confidentiality of his or her total remuneration package figure without some special enabling legislation."

An additional wide public interest aspect that relates to my application is that employment relations (including the regulation of pay and conditions) in the public sector are widely considered to serve as a role model for industrial relations in the private sector (see, for example, Creighton B and Forsyth R [Eds.] Rediscovering Collective Bargaining, 2012 at pp.184-185). That is, the way in which a government treats its staff (public servants) can be considered emblematic of the way in which a government considers employees across the broader workforce should be treated by their employers. The current Commonwealth Government has an employment relations policy in place (known as the 'Australian Public Service Bargaining Framework') which necessarily involves reducing the living standards of rank and file (non-SES) public servants. Senior management at the Federal Court has decided, at its discretion, to adopt and enforce, against its rank and file staff, the Government's employment relations policy. Part of the purpose of my application is to determine whether the Government's policy to reduce the living standards of rank and file public servants also extends to SES public servants. The documents the subject of my request will shed some light on that issue.

It is immutably in the public interest of APS rank and file employees and their families, but also Australian taxpayers and working Australians more generally, to know whether it is the current Government's view that rank and file employees who are not categorised as senior executives (or equivalent) are generally overpaid, and should therefore have their living standards reduced by their employers, while senior executives (or their equivalents) are generally underpaid and should have their living standards increased. Such an insight will augment the public's knowledge of the Government's existing policies concerning the distribution of wealth among Australian society including the Government's policy to reduce the level of penalty rates paid to some of the lowest paid members of the Australian workforce while simultaneously reducing company taxation rates.

Thank you.





Telephone: (07) 3248 1100

Facsimile: (07) 3248 1260 (General)

(07) 3248 1240 (Approved for Document Filing)

Email: qldreg@fedcourt.gov.au

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA OUEENSLAND DISTRICT REGISTRY

HARRY GIBBS COMMONWEALTH LAW COURTS

119 NORTH QUAY BRISBANE QLD 4000

PO BOX 13084 GEORGE STREET BRISBANE QLD 4003

24 August 2017

By email:

Dear Sir/Madam

Freedom of Information Act 1982 - Request for Access

I refer to your email of 30 June 2017 to the Federal Court of Australia in which you have sought access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

Accordingly, I request documents which detail the precise monies paid to each of the Federal Court's SES officers in the following financial years - FY2013/14, FY 2014/15 and FY2015/16. The group certificates/end-of-year PAYG payments summaries issued by the Federal Court to each of its SES staff in those years can be quickly and easily identified and retrieved, and will efficiently and accurately provide the information the subject of my request.

I am willing to agree to the decision maker redacting information relating to the tax file numbers, the home addresses and information relating to the amount of tax withheld for each of the relevant SES officers that may be contained in the relevant documents. I am willing to further narrow the scope of my request by limiting it to officers employed by the Federal Court who, at the time of my application, were categorised as SES officers, meaning that:

- Federal Court staff who were once SES officers at the Federal Court, but weren't categorised as such at the time of this application; and
- the documents the subject of my request that pertain to SES officers who are no longer employed by the Federal Court; are discounted from the scope of my application.

On 13 July 2017 the Federal Court acknowledged receipt of your request and advised that as your request covered documents which contained another individual's personal information, the Federal Court was required to consult with those individuals (under section 27A of the FOI Act) before making a decision on the release of the documents. The period for processing your request was accordingly extended by 30 days to 29 August 2017.

Authorised decision-maker

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to the documents falling within the scope of your request for access.

In making my decision I have had regard to:

- a. the terms of your request;
- b. your submissions of 30 June 2017;
- c. the usual content of the documents within the scope of your request;
- d. the relevant provisions of the FOI Act and case law considering those provisions;
- e. the FOI Guidelines issued by the Office of the Australian Information Commissioner;
- f. the Annual Reports of the Federal Court of Australia;
- g. the Remuneration Tables published on the Federal Court of Australia website; and
- h. the submissions of the SES employees whose payment summaries are within the scope of your request.

Reasons for Decision

Conditionally exempt under paragraph 47E(c)

I consider that the documents within the scope of your request contain information that is conditionally exempt under paragraph 47E(c) of the FOI Act which relevantly prescribes that:

"A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to... have a substantial adverse effect on the management ... of personnel by the Commonwealth or by an agency".

The payment summaries of Senior Executive Service (SES) employees of the Federal Court contain specific details of the terms and conditions of employment of those individual employees which have been negotiated directly, and on an individual basis, between those SES employees and the Chief Executive Officer/Principal Registrar (CEO) of the Federal Court. The release of the precise details of the remuneration of SES employees of the Court would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by the Court by:

- destroying the trust in the confidentiality of negotiations between SES employees and the CEO of the Court on the terms and conditions of employment for those employees, and potential employees, making future negotiations more difficult, prolonged and adversarial;
- permitting remuneration comparisons which create tensions between individual SES employees as well as between SES employees and non-SES employees; and
- undermining the morale of SES employees and leading to potential reductions in productivity.

Conditionally exempt under s 47F(1)

I consider that the documents within the scope of your request contain information that is conditionally exempt under subsection 47F(1) of the FOI Act which prescribes that:

"A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person)."

The term "personal information" is defined in section 4 of the FOI Act to have the same meaning as in the *Privacy Act 1988* (Cth), that is:

- "...information or an opinion about an identified individual, or an individual who is reasonably identifiable:
 - (a) whether the information or opinion is true or not; and
 - (b) whether the information or opinion is recorded in material form or not."

The documents requested identify individual SES employees and contain information about the income each has received from the Court as their employer in each relevant period along with details such as their home address, Tax File Number, tax withheld and reportable superannuation contributions.

Although you have expressed a willingness to agree to the removal of some identifying information, such as Tax File Numbers, home addresses and information relating to the amount of tax withheld, they would still contain the personal information of identified individuals as defined in section 4 of the FOI Act.

In considering whether the information is conditionally exempt under subsection 47F(1) I am required to consider whether the disclosure of personal information would be unreasonable. In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 stated that:

"...whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance...it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party..."

Further, subsection 47F(2) of the FOI Act prescribes that:

- "(2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;

(d) any other matters that the agency or Minister considers relevant."

In considering the provisions of subsection 47F(2), the personal information contained within the payment summaries of SES employees of the Court is not well known and would, in ordinary circumstances, be limited to those entitled by law to receive it or entrusted with it at the discretion and with the consent of the individual SES employee.

This information is not available from publicly accessible sources. The Federal Court's Annual Report provides salary ranges by classification and provides details of the total remuneration for senior management, but does not provide details on an individual basis. Further details of the remuneration of senior executives and other highly paid officials are published on the Federal Court's website at: http://www.fedcourt.gov.au/about/corporate-information/executive-remuneration. This information includes the total remuneration for executives between specific income levels, average reportable salary, average contributed superannuation and average total remuneration.

In considering any other matters that might be relevant pursuant to paragraph 47F(2)(d) and a consideration of all the circumstances as guided by *Re Chandra and Minister for Immigration and Ethnic Affairs*, I note firstly that the personal information provided within the payment summaries relate to the personal affairs of each SES employee as an individual and taxpayer. I am not satisfied that there exists or should exist any presumption that such documents should be released merely because each SES employee is an employee of the Federal Court and a public servant. The personal information is not information about the performance of the usual duties or responsibilities of the individual SES employees of the Court.

The disclosure of the personal information contained within the payment summaries may also have an adverse effect on the individual SES employees. These effects would, or could reasonably be expected, to include those discussed in respect of section 47E above such as destroying the trust in the confidentiality of negotiations, creating tensions between individual SES employees as well as between SES employees and non-SES employees and undermining the morale of SES employees. Other employees may also lose trust and confidence in the ability of the Court to maintain confidentiality over their personal information.

In addition, some SES employees exercise judge delegated functions. The release of personal information of SES employees who exercise these functions would, or could reasonably be expected, to increase security risks associated with the performance of those functions and potentially make it more difficult to exercise those functions in an independent and impartial manner, and without fear of personal retribution. It is noted that this would be mitigated to some degree by the redaction of certain information for which you have expressed a willingness to agree.

Each of the relevant SES employees has objected to the release of their personal information subject to the request for access.

Even before undertaking the public interest test required by subsection 11A(5), I note there is a public interest recognised by the Act in the disclosure of information, however in the circumstances identified above and where disclosure would be inconsistent with the Federal Court's obligations under the Privacy Act, I have concluded that the information requested contains information that is conditionally exempt under subsection 47(F)(1) of the FOI Act.

Public Interest Test

Subsection 11A(5) of the FOI Act provides:

"The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest."

In considering that "public interest test", a number of factors set out in subsection 11B(3) of the FOI Act must be taken into account. These are that disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

Disclosure would broadly promote the objects of the FOI Act by providing to the Australian community access to information held by the Government, increasing knowledge about Government activities and enhancing the scrutiny of Government decision-making. Disclosure may also promote oversight of public expenditure in revealing the remuneration paid to SES public servants. Such public expenditure, particularly in the context of the ongoing enterprise bargaining within the Australian Public Service, is a matter of some public importance and its disclosure may inform public debate.

However, there is a range of material that is already publicly available in relation to SES remuneration, including that within the Court's Annual Reports, and on its website, and also within the Australian Public Service Commission's Remuneration Reports (available at http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys). Disclosure of the documents requested is unlikely to serve the public interest any more than this publicly available information.

Whilst significant weight is therefore given to the promotion of the objects of the FOI Act, little weight is given to the ability of this information, should it be released, to inform debate on a matter of public importance and promote effective oversight of public expenditure to any significant degree above that information that is already publicly available.

As this is not an instance where the applicant is seeking access to their own personal information, this is not a relevant factor to be considered.

The public interest factors weighing against a finding that it would be in the public interest to disclose the information within the scope of the request for access are a development of those issues identified previously.

The release of the precise details of the remuneration of SES employees of the Court would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by the Court by:

• destroying the trust in the confidentiality of negotiations between SES employees and the CEO of the Court on the terms and conditions of employment for those employees, and potential employees, making future negotiations more difficult, prolonged and adversarial;

- permitting remuneration comparisons which create tensions between individual SES employees as well as between SES employees and non-SES employees; and
- undermining the morale of SES employees and leading to potential reductions in productivity.

The personal information provided within the payment summaries relate to the personal affairs of each SES employee as an individual and taxpayer. I am not satisfied that there exists or should exist any presumption that such documents should be released merely because each SES employee is an employee of the Federal Court and a public servant. The personal information is not information about the performance of the usual duties or responsibilities of the individual SES employees of the Court.

The disclosure of the personal information contained within the payment summaries may also have an adverse effect on the individual SES employees and prejudice the rights of those individuals to privacy. These effects would, or could reasonably be expected, to include those discussed in respect of section 47E above such as destroying the trust in the confidentiality of negotiations, creating tensions between individual SES employees as well as between SES employees and non-SES employees and undermining the morale of SES employees. Other employees may also lose trust and confidence in the ability of the Court to maintain confidentiality over their personal information.

The impact upon the Court and the Court's employees from the release of information within the scope of the request is significant and within the public interest.

These are factors for which I give significant weight.

Some SES employees exercise judge delegated functions. The release of personal information of SES employees who exercise these functions would, or could reasonably be expected, to increase security risks associated with the performance of those functions and potentially make it more difficult to exercise those functions in an independent and impartial manner, and without fear of personal retribution. It is noted that this would be mitigated to some degree by the redaction of certain information for which you have expressed a willingness to agree.

After considering the mitigating impact of any potential redaction this is a factor to which I give some weight.

After considering each of these factors and the weight given to each, and where disclosure would otherwise be inconsistent with the Federal Court's obligations under the Privacy Act, I am not satisfied that disclosure of the information within the scope of the request for access would be in the public interest.

Redaction not appropriate

Where access to the requested documents is refused, section 22 of the FOI Act provides that an edited copy of the documents may be provided if it is possible to redact exempt information. Under that section, irrelevant information may also be redacted.

You have indicated a willingness to agree to the redaction of information relating to tax file numbers, the home addresses and information relating to the amount of tax withheld for each of the relevant SES employees.

In light of my findings above, a redaction of all exempt information would render the document meaningless for the purposes of your request. Consequently, I have decided that this would not be an appropriate response to your request for access.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

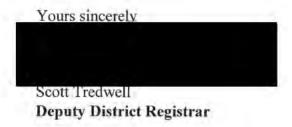
Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.





wrote:

Dear Sir or Madam,

I request the following information for the purpose of submitting an appeal to the Federal Court of Australia: -

The request is for a copy of the diary notes, case notes, log or any other records activities on this file, in this case, including dates.

It is unnecessary to provide affidavits or any other document because these are on hand.

Simultaneously, I request that there be no cost associated with this request on the basis that I am a pensioner, received \$300.00 (three hundred dollars) in the 2017 tax year from Centrelink being my

income apart from 'pocket money' of say \$50.00 per month. I am an adult dependent being unable to work in any capacity for over 5 years and I am admitted to the Oncology Department of Wangaratta Hospital, Vic. every 14 days for essential treatment.

Thank-you in anticipation for your co-operation in this matter.

Please note: I am seeking legal assistance however, with the defunding of legal aid as well as the fact that the matter appealed is in South Australia whereas I reside in Victoria there is a demarcation issue in the form of a catch-22 being: I am not a resident of South Australia therefore do not qualify for assistance in that state; the matter is in South Australia so legal aid in Victoria will not assist.

Therefore, there is no alternative but to represent myself.

Best wishes,



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

10 August 2017

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

Dear

Freedom of Information Request

I refer to your request under the *Freedom of Information Act 1982* (FOI Act) sent via email to the Federal Court of Australia on 5 August 2017.

I am authorised under section 23 of the FOI Act to make decisions in relation to FOI requests on behalf of the Federal Court.

The documents you seek relate to proceedings in the Federal Circuit Court

and the judgment of

Judge Heffernan delivered on 11 April 2016 in that matter

Under section 16(1) of the FOI Act, where an FOI request seeks access to documents which are not in my possession, or the possession of the Federal Court, but to my knowledge would be in the possession of another agency, the request may be transferred to the other agency with its consent.

On 9 August 2017, the Federal Circuit Court consented to the transfer of your FOI request in its entirety. As a result, I have forwarded your request by email to the Federal Circuit Court, who will continue to process your request.

As the Federal Court received your request on 5 August 2017, the 30 day statutory period for processing your request commenced from the day after that date. The Federal Circuit Court will treat your request as though it received it on 5 August 2017.

You should direct all further inquiries to customer.service@federalcircuitcourt.gov.au.

Yours sincerely,

John Mathieson

Deputy Principal Registrar

From:
To: External FOI

Subject: Freedom of Information request - Private use of social media advice provided to employees

Date: Tuesday, 8 August 2017 7:22:04 PM

Dear Federal Court of Australia,

This is a request under the Freedom of Information Act.

I request documents related to the ten most recent instances where an employee has sought information, advice, guidance, or opinion on their social media use in a private capacity.

I limit the scope of documents to:

- the original request from the employee
- the agency/department's response
- any follow-up questions and response
- only those sent to a relevant HR / conduct / social media (or similar) team (rather than managers across all areas of the organisation)
- where the original request was created in the last 2 years

Should you have any questions please do not hesitate to contact me.

Yours faithfully,





Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

25 August 2017

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Freedom of Information Request

I refer to your requests under the *Freedom of Information Act 1982* (FOI Act) sent by e-mail to the Federal Court of Australia and the Federal Circuit Court of Australia on 8 August 2017 in which you have sought access to the following:

"I request documents related to the ten most recent instances where an employee has sought information, advice, guidance, or opinion on their social media use in a private capacity.

I limit the scope of documents to:

- · the original request from the employee
- the agency/department's response
- · any follow-up questions and response
- only those sent to a relevant HR / conduct / social media (or similar) team (rather than managers across all areas of the organisation)
- where the original request was created in the last 2 years."

I understand that you were advised by the Federal Circuit Court by letter dated 10 August 2017 that your request to that Court has, with this Court's consent, been transferred to the Federal Court under subsection 16(1) of the FOI Act.

I am authorised under subsection 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to Freedom of Information (FOI) requests.

The Federal Court and Federal Circuit Court share corporate services, including those relating to human resources. In responding to your FOI request a comprehensive search was undertaken of the records of Human Resources including their electronic storage systems and email accounts. The results of that search revealed that there were no instances where an employee of the Federal Court or the Federal Circuit Court has sought information, advice, guidance or opinion on their social media use in a private capacity.

Consequently, I must refuse access on the basis that no documents exist within the scope of your request.

Whilst, it is outside the scope of your request, the Federal Courts Information Technology Policy provides guidance and direction for the use of information technology, including social networking and online collaboration, in a private capacity. A copy of that internal policy was provided to you in response to a request under the FOI Act which was received by the Federal Court on 18 April 2016 and is available on the Court's Disclosure Log at http://www.fedcourt.gov.au/_data/assets/pdf_file/0004/31279/PA2925.pdf.

The standard of behaviour expected of employees of the Federal Court and Federal Circuit Court are otherwise set out in the APS Values and Code of Conduct. The Australian Public Service Commission (APSC) publication Values and Code of Conduct in Practice includes commentary on making public comment, including online for all Australian Public Service employees: Section 6.2. This publication can http://www.apsc.gov.au/publications-and-media/current-publications/values-and-conduct. More recently and specifically, the APSC has published Making public comment on social media: guide for employees which can downloaded http://www.apsc.gov.au/publications-and-media/current-publications/making-publiccomment.

YOUR REVIEW RIGHTS

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. In that event, I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss these decisions, please contact me by phone as above.

Yours faithfully

ohn Mathieson

Deputy Principal Registrar

1 September 2017



Dear ,

Freedom of Information Request

I refer to your requests under the *Freedom of Information Act 1982* (FOI Act) sent by e-mail to the Australian Competition Tribunal, the Defence Force Discipline Appeal Tribunal and the National Native Title Tribunal on 11 August 2017 in which you have sought access to the following:

- 1. Any document requesting that the Attorney General (AG) and or his department allow your department/agency access to metadata information within the past 5 years;
- 2. Any documents from the AG and or his department to allow your department/agency access to metadata information within the past 5 years;
- 3. Any briefings or internal documents in relation to the intended use of metadata information within your department or agency;
- 4. Any training documents (classified unrestricted or lower) or material used to train staff on procedures and guidelines when requesting metadata information;
- 5. The number of requests that have been made by your department/agency to telecommunications agency's (or the like) on behalf of your department/agency detailed per year;
- 6. Generic Responses and or Frequently Asked Questions (FAQ) documents that are provide to clients (Persons services are provided to) in relation to metadata access; and
- 7. Any further documents that will be provide the reader of the above documents with a better understanding of the documents provided.

To remove any shadow of a doubt the term "metadata" should be taken to the definitions provided in the Telecommunications (interception and access) Act 1979 and the associated documents.

I understand that you were advised by the National Native Title Tribunal by letter posted to you on 30 August 2017 and by the Australian Competition Tribunal and the Defence Force Discipline Appeal Tribunal by letter posted to you on 31 August 2017 that your requests have, with this Court's consent, been transferred to the Federal Court under subsection 16(1) of the FOI Act.

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to Freedom of Information (FOI) requests.

I note the Attorney-General's Department has policy responsibility for the *Telecommunications (Interception and Access) Act 1979* (TIA Act). The TIA Act sets out that only the Australian Security Intelligence Organisation and 'enforcement agencies' (defined under section 176A) can authorise the disclosure of telecommunications data under the TIA Act. None of these Tribunals are an enforcement agency under the TIA Act.

Similarly, none of these Tribunals are included in the defined list of law enforcement or national security agencies that may access data of this type under the TIA Act.

Consequently, I must refuse access on the basis that no documents exist within the scope of your request.

YOUR REVIEW RIGHTS

If you are dissatisfied with my decisions, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss these decisions, please contact me by phone as above or email as below.

Yours faithfully



John Mathieson Deputy Principal Registrar

Email: john.mathieson@fedcourt.gov.au

From:
To: External FOI

Subject: Freedom of Information request - Year on year percentage pay increases for the Federal Court"s SES for

2014/15 to 2015/16 and 2015/16 to 2016/17

Date: Friday, 25 August 2017 7:01:31 AM

Dear Federal Court of Australia,

I'd like to make an FOI request.

I request a document or documents (likely prepared under s.17 of the FOI Act) that details the year on year increase in remuneration (as a percentage, rounded to the nearest decimal point) paid to each of the Federal Court's SES staff for the financial years: 2014/15 to 2015/16 and 2015/2016 to 2016/2017 as determined from the group certificates/PAYG summaries issued to those SES staff (pro-rated, to reflect full year amounts, if necessary). I'm not interested in the names of the SES officers and so I'm happy for you to de-identify those. An example to illustrate the type of document(s) I'm seeking acesss to is set out below.

The Federal Court publishes its enterprise agreement which sets out the precise percentage salary increases that can be given to non-SES APSC staff. It follows therefore that there should be no problem for the Federal Court in disclosing the percentage increase in the remuneration levels of its SES staff. Obviously there would be considerable public interest if it were the case that the Federal Court is attacking the real wages, living standards and working conditions of its non-SES public servants, while at the same time granting its SES staff wage increases above that allowable under the enterprise bargaining policy that it enforces against its non-SES public servants. Such information would also be an invaluable insight into the current Commonwealth Government's views on its preferred distribution of wealth in Australian society for bosses vs workers and would further establish the prevailing view of the current Government that non-SES public servants constitute a lesser form of employee/human being.

Example PAYG Payment Summary Information

SES officer name: John Citizen.

Total remuneration for 2014/15 (taken from relevant PAYG payment summary): \$100,000 Total remuneration for 2015/16 (taken from relevant PAYG payment summary): \$101,000 Total remuneration for 2016/17 (taken from relevant PAYG payment summary): \$103,000

SES officer name: Deborah Smith.

Total remuneration for 2014/15 (taken from relevant PAYG payment summary): \$250,000 Total remuneration for 2015/16 (taken from relevant PAYG payment summary): \$260,000 Total remuneration for 2016/17 (taken from relevant PAYG payment summary): \$280,000

SES officer name: Joseph Pavelic

Total remuneration for 2014/15 (taken from relevant PAYG payment summary): \$50,000 (nb. only commenced employment at the Federal Court on 1/1/2015)

Total remuneration for 2015/16 (taken from relevant PAYG payment summary): \$107,000 Total remuneration for 2016/17 (taken from relevant PAYG payment summary): \$110,000

Example document produced for purposes of my FOI request using data gleaned from relevant PAYG payment summaries (respectively, per the example data set out above above)

SES Officer identifier: 'SES officer #1'

Year on year pay increase as a percentage (rounded to nearest decimal point):

2014/15 - 2015/16 = 1%2015/16 - 2016/2017 = 2%

SES Officer identifier: 'SES officer #2'

Year on year pay increase as a percentage (rounded to nearest decimal point):

2014/15 - 2015/16 = 4%2015/16 - 2016/2017 = 7.7% SES Officer identifier: 'SES officer #3'

Year on year pay increase as a percentage (rounded to nearest decimal point):

2014/15 - 2015/16 = 7% (note: the officer only commenced employment on 1/1/15, therefore the officer's total

remuneration for 2013/14 has been pro-rated to reflect a yearly amount)

2015/16 - 2016/2017 = 2.8%

Thanks.



Telephone: (07) 3248 1100

Facsimile:

(07) 3248 1260 (General)

(07) 3248 1240 (Approved for Document Filing) gldreg@fedcourt.gov.au

Email:

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA QUEENSLAND DISTRICT REGISTRY

HARRY GIBBS COMMONWEALTH LAW COURTS 119 NORTH OUAY

BRISBANE QLD 4000

PO BOX 13084 GEORGE STREET BRISBANE OLD 4003

21 September 2017

Dear Sir/Madam

Freedom of Information Act 1982 - Request for Access

I refer to your email of 25 August 2017 to the Federal Court of Australia in which you have sought access to the following documents under the Freedom of Information Act 1982 (Cth) (FOI Act):

I request a document or documents (likely prepared under s.17 of the FOI Act) that details the year on year increase in remuneration (as a percentage, rounded to the nearest decimal point) paid to each of the Federal Court's SES staff for the financial years: 2014/15 to 2015/16 and 2015/2016 to 2016/2017 as determined from the group certificates/PAYG summaries issued to those SES staff (pro-rated, to reflect full year amounts, if necessary). I'm not interested in the names of the SES officers and so I'm happy for you to de-identify those. An example to illustrate the type of document(s) I'm seeking access to is set out below.

The Federal Court publishes its enterprise agreement which sets out the precise percentage salary increases that can be given to non-SES APSC staff. It follows therefore that there should be no problem for the Federal Court in disclosing the percentage increase in the remuneration levels of its SES staff. Obviously there would be considerable public interest if it were the case that the Federal Court is attacking the real wages, living standards and working conditions of its non-SES public servants, while at the same time granting its SES staff wage increases above that allowable under the enterprise bargaining policy that it enforces against its non-SES public servants. Such information would also be an invaluable insight into the current Commonwealth Government's views on its preferred distribution of wealth in Australian society for bosses vs workers and would further establish the prevailing view of the current Government that non-SES public servants constitute a lesser form of employee/human being.

On 13 September 2017 you sent a follow up email enquiring as to why the Court was yet to acknowledge receipt of your FOI request. In respect of that email I extend an apology on behalf of the Court. We were endeavouring to respond to your request as quickly and efficiently as possible, but despite those efforts were not able to respond to your request prior to the expiry of the acknowledgment deadline.

Authorised decision-maker

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to section 24A(1)(b)(ii) of the FOI Act, to refuse your request for access to documents on the basis that the document or documents you have request do not exist.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the information held by the Court in respect of Senior Executive Service (SES) employee remuneration;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Document does not exist under paragraph 24A(1)(b)(ii)

I consider that the document or documents you have requested do not exist.

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevant provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

In seeking to respond to your request I am satisfied that all reasonable steps were taken to try to identify a document or documents falling within the scope of your request. Extensive consultation was undertaken with officers and staff within the Court's Corporate Services

Group who are responsible for human resources and national finance, including payroll. Thorough searches were also undertaken of the Courts records management and payroll systems. No document or documents were identified that fell within the scope of your request.

Section 17 of the FOI not applicable

I am not satisfied that there is a requirement on the Court, pursuant to section 17 of the FOI Act, to produce a document that meets the terms of your request.

Your FOI request indicates that the documents requested would likely be prepared under section 17 of the FOI Act. Section 17 provides:

(1) Where:

- (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
- (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
- (ba)it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer program or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency; the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

The FOI Guidelines issued by the Office of the Australian Information Commissioner provide:

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in a discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

The Guidelines provide further:

- 3.182 Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if the applicant does not wish to be provided with a computer tape or disk. Examples include a transcript of a sound recording or a written compilation of information held across various agency databases. The obligation to produce a written document arises if:
- The agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or

- collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- Producing a written document would not substantially or unreasonably divert the resources of the agency from its other operations (s 17(2)).

If those conditions are met the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession.

The Court does not maintain a digital record of the yearly increases of the remuneration of its SES employees as a percentage. Further, the development of a document of the type requested, using figures extracted from the payment summaries of the Court's SES employees is not something that could be achieved merely by the use of a computer or other equipment that is ordinarily available to the Court for retrieving or collating stored information. Such a document could only be produced by a Court employee physically assessing the individual circumstances behind each figure in each payment summary, considering variables such as salary sacrificing, commencement dates, promotion and entitlements and calculating a standardised percentage increase in remuneration following that assessment.

The production of the requested document is therefore outside the requirements of section 17 of the FOI Act and has not been produced for the purposes of your FOI request.

Publically available information on SES remuneration

There is a range of material that is already publicly available in relation to SES remuneration, including the Court's Annual Reports and the Australian Public Service Commission's Remuneration Reports (available at http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys). In addition, there are the Remuneration Tables published on the Federal Court of Australia website.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post; GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Deputy District Registrar

From: External FOI

To: Asbed Aboulian

Subject: FW: Freedom of Information request - Federal Court action against Commonwealth (formerly Secretary,

Dept of Defence)

Date: Tuesday, 24 October 2017 5:50:24 PM

UNCLASSIFIED

----Original Message----

From:

Sent: Tuesday, 17 October 2017 2:22 PM

To: External FOI < External. FOI @fedcourt.gov.au>

Subject: Freedom of Information request - Federal Court action against Commonwealth (formerly Secretary,

Dept of Defence)

Dear Federal Court of Australia,

I refer to the Freedom of Information Act 1982 (Cth) (the Act). I request, pursuant to section 15 of the Act, that you provide me with the following information:

Any record, whether created by electronic or manual means, of the date and time of entry of orders made on 5 August 2016, 7 October 2016, 4 November 2016, 2 December 2016 and 3 February 2017, in the matter

Copies of the published orders are not required.

Personal information of court officials is not required, unless authorised for disclosure.

Yours faithfully,





Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906 DX 613 SYDNEY

Your Ref: Our Ref

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

SYDNEY NSW 2000
24 October 2017
Dear
Freedom of Information Act 1982 – Request for Access
I refer to your email of 17 October 2017 to the Federal Court in which you seek information under the <i>Freedom of Information Act 1982</i> (Cth) (FOI Act) relating to matter I am authorised under section 23 of the FOI Act
to make decisions in relation to FOI requests.
Specifically, you requested:
Any record, whether created by electronic or manual means, of the date and time of entry of orders made on 5 August 2016, 7 October 2016, 4 November 2016, 2 December 2016 and 3 February 2017, in the matter
Copies of the published orders are not required.
Personal information of court officials is not required, unless authorised for disclosure.
A request for access to documents under the FOI Act can be made to the Federal Court only in relation to documents which relate to the management and administration of the Court's registry and office resources (see s 5(1), FOI Act). Access to documents relating to proceedings in the Court are governed, not by the FOI Act, but the Federal Court of Australia Act 1976 and the Federal Court Rules. In addition, the FOI Act permits access to documents and not access to information such as you have sought, regardless of whether that may relate to the management and administration of the Court's registry and office resources or otherwise.
As a result I have decided your request to access documents relating to proceedings in the Court is outside the scope of and cannot be dealt with under the FOI Act.
Nevertheless, I have decided to provide you with information within the scope of your request regarding the date and time of entry of orders in on a voluntary basis outside the requirements of the FOI Act. This information is provided in Attachment A to this correspondence.

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

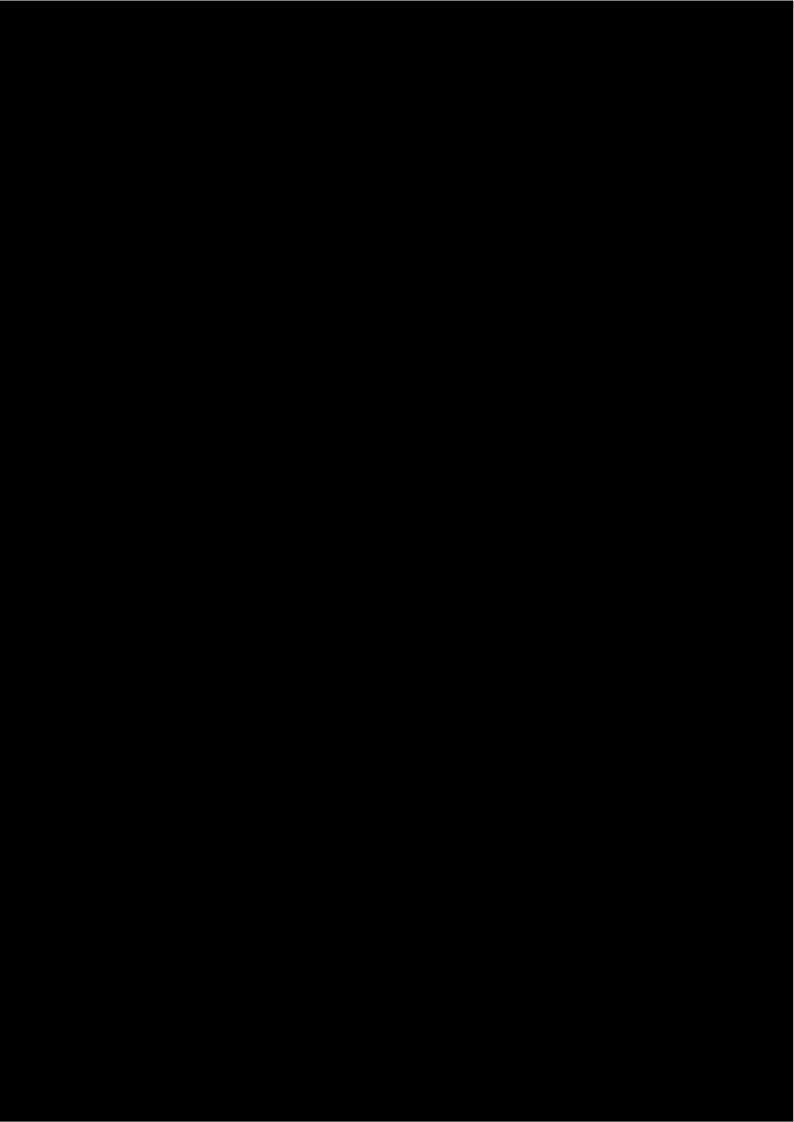
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

John Mathieson

Deputy Principal Registrar



Date: 27-10-2017



Good day,

I am in financial hardship and wont be able to pay for any costs/fees resulting from my request. I have attached sufficient evidence of financial hardship as well as Freedom of Information request according to following separate Acts:

Archives Act 1983 Public Services Act 1999 Public Services Act 2012 Public Services Act 2013

Freedom of Information Act 1982: Section 10, 18(2), 20, 20(1)(C), 20(1)(D), 21(2), 22.

I kindly ask responsible agency to release any documents kept about me according with all/any Acts listed above.

Indicate whether you would like to inspect the document and/or obtain a copy of the documents.

I want a copy of documents: Yes I want to inspect document: Yes

I like to gain access to:

Documents stored by your department, or documents of which your department would have knowledge of their location and/or accessibility, only in relation to myself.



Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906 DX 613 SYDNEY

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

14 December 2017



Dear

Freedom of Information Act 1982 – Request for Access

Notice of access refusal decision

I refer to your email of 27 October 2017 to the Federal Court in which you seek information under the *Freedom of Information Act 1982* (Cth) (FOI Act) and to my letters to you of 21 and 27 November 2017.

As I advised in my letter of 21 November 2017, I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to FOI requests.

Your Request

In an attachment to your email, you request:

... any documents kept about [you] according with [the Archives Act 1983, the Public Services Act 1999, the Public Services Act 2012 and the Public Services Act 2013].

As I noted in my letter of 21 November 2017, I assume you are referring to the *Archives Act* 1983 (Cth) and the *Public Service Act* 1999 (Cth). There is no Commonwealth "Public Services Act 2012". There is a *Public Service Amendment Act* 2013 (Cth) which amended the Public Service Act as it then existed but the amendments made are now incorporated into the Public Service Act as now in force.

A request for access to documents under the FOI Act can be made to the Federal Court only in relation to documents which relate to the management and administration of the Court's registry and office resources. I will explain this in more detail shortly.

As I also noted in my letter of 21 November 2017, access to documents relating to proceedings in the Court are governed, not by the FOI Act, but the *Federal Court of Australia Act 1976*, the Federal Court Rules 2011 and (in specialised jurisdictional areas) other rules of court made by the Judges.

Even though (as above) these would be available only under the Federal Court Rules and not the FOI Act, as I advised in my letter of 21 November 2017, I conducted an electronic search of all past and current proceedings in the Federal Court nationally and have been unable to identify any matter in which a person with a given name of with with or without any other given names, and the family name of was a party.

In my letters of 21 and 27 November 2017 I asked if you could provide further information about the nature of your dealings with the Court that is relevant to its management and administration to assist with searching for documents that are relevant to your request. I pointed out in those letters that, searching all records that the Court holds in each of its Registries over an indefinite period based on only your name, date of birth and current residential address would be a very large exercise which would be very resource intensive. Unfortunately, I received no response from you to either of my letters. You did not provide in your email request or in any of the attachments to it any phone number which would enable me to make phone contact with you.

Purpose of This Letter

The purpose of this letter is to give you a decision about access to documents that you requested under the FOI Act.

Summary of My Decision

In summary, after taking reasonable steps, I have been unable to locate any documents relevant to your request. As a result, it is not possible to give you access to any documents and your request must be refused.

Detailed Decision and Reasons

In making my decision, I have taken into account not only the FOI Act but the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (AIC's Guidelines) which are available on the Commissioner's website at https://www.oaic.gov.au/freedom-of-information/foi-guidelines/.

As already mentioned, the FOI Act has only a limited application to the Federal Court. This is explained in the AIC's Guidelines at paragraphs 2.8 to 2.10 as follows:

- 2.8 The FOI Act has a restricted application to courts, court registries and the Official Secretary to the Governor-General. Specifically, the Act does not apply to a request for access to a document of a court or registry or the Official Secretary to the Governor General 'unless the document relates to matters of an administrative nature' (ss 5, 6A). The Act does not apply to the holder of a judicial office (s 5(1)(b)), nor to the Governor-General. A further exclusion is for documents relating to the handling of complaints about judicial officers (ss 5(1A)–(1C)).
- 2.9 The phrase, 'matters of an administrative nature', is not defined in the FOI Act. In Kline v Official Secretary to the Governor General, the High Court held that the phrase refers to documents that concern 'the management and administration of office resources, such as financial and human resources and information technology'.5 By contrast, the phrase does not apply to documents that relate to the discharge of a court's or the Governor-General's 'substantive powers and functions'.6 The Court approved a similar distinction drawn by the Full Federal Court in the decision under appeal7 between the

substantive functions or powers of a court or the Governor-General, and the office 'apparatus' supporting the exercise or performance of those substantive powers and functions.

2.10 Applying that distinction, the Court held in *Kline* that the FOI Act did not apply to a request to the Official Secretary for access to documents relating to the administration of the Order of Australia, including decisions on the award of Australian honours. As to courts, the Court observed that the Act applies only to documents relating to the management and administration of registry and office resources, and not to documents relating to the discharge of the substantive powers and functions of adjudication or tasks that are referable to the exercise of judicial, rather than administrative, powers and functions.8

4 Section 6 (supplemented by Schedule 1) provides that the Australian Industrial Relations Commission, Australian Fair Pay Commission and Industrial Registrar and Deputy Industrial Registrars are deemed to be prescribed authorities to which the FOI Act applies in respect of requests for documents relating to matters of an administrative nature. However, both Commissions and the Registrars ceased operations in 2009. Some of the functions have been assumed by the Fair Work Commission (previously Fair Work Australia), which is subject to the FOI Act.

⁵ [2013] HCA ⁵² [13], [41] (joint judgment of French CJ, Crennan, Kiefel & Bell JJ). Gageler J, in a separate judgment at [74], drew a similar distinction between the exercise or performance of substantive powers and functions, and 'providing logistical support (or infrastructure or physical necessities or resources or platform) for the exercise or performance of those substantive powers or functions to be able to occur'.

⁶ [2013] HCA ⁵² [41].

⁷ Kline v Official Secretary to the Governor-General [2012] FCAFC 184 [21], on appeal from Kline and Official Secretary to the Governor-General [2012] AATA 247, which was an appeal from 'B' and Office of the Official Secretary to the Governor-General [2011] AICmr 6. 8 [2013] HCA 52 [45], [47].

You attached to your email request, among other things, a copy of your Victorian driver's licence. It shows your name as that you were born on and that your address was the contact address on your request letter also attached to that email).

As only documents that relate to the management and administration of the Court's registry and office resources can be requested under the FOI Act, I had electronic searches undertaken in the computer systems used for the purposes of human resource management (including payroll) and financial management as well as contractor recruitment. No record could be found of any entry or transaction involving a person with a given name of with or without any other given names, and the family name of or any other name similar to Had any entry or transaction in such names been located, the birth date and/or address which you provided may have enabled it to be confirmed whether or not that entry or transaction related to you or to some other person with a similar name.

I note that I have not received any responses to the letters dated 21 and 23 November 2017 that I sent you. With that in mind, I am satisfied that, with the information you provided, the searches undertaken to locate documents in the possession or control of the Court relating to the management and administration of the Court's registry and office resources, and relevant to your request, were reasonable.

I am also satisfied that as no dealing or transaction involving you and the Court can be identified then it is not possible to find any document that relates to the management and administration of the Court's registry and office resources that is relevant to your request.

As reasonable steps have been taken to find documents which may be accessed under the FOI Act and are relevant to your request but no such documents can be found, I have decided to refuse your request under section 24A of the FOI Act.

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

External Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: www.oaic.gov.au

post: GPO Box 5218, Sydney NSW 2001

fax: +61 2 9284 9666 email: enquiries@oaic.gov.au

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Yours sincerely

John Mathieson

Deputy Principal Registrar

From: Name withheld

To: External FOI

Subject: Freedom of Information request - Precise salaries paid to the Federal Court's SES officers for FY14/15,

FY15/16 and FY16/17

Date: Wednesday, 1 November 2017 6:20:22 AM

Dear Federal Court

The following is an application for the purposes of the FOI Act.

I am conducting research, across a range of Government agencies, into the Government's enterprise bargaining framework for the Commonwealth Public Service. Specifically, in the interests of equity and transparency, whether the Government's policy to reduce the living standards of rank and file public servants (that is, public servants who are not considered senior executive service staff ('SES')) also extends to SES public servants.

I refer the Federal Court to my FOI request made of the Office of the Australian Information Commissioner here (the 'OAIC request'):

By this application I make the same request of the Federal Court albeit such that every reference to 'OAIC' in the OAIC request should be read as a reference to the 'Federal Court' for the purposes of this request. I rely on all my submissions contained in the OAIC request, in support of this request made of the Federal Court under s.15 of the FOI Act.

Thanks.





Telephone: (07) 3248 1100

Facsimile: (07) 3248 1260 (General)

(07) 3248 1240 (Approved for Document Filing)

Email: qldreg@fedcourt.gov.au

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA QUEENSLAND DISTRICT REGISTRY

HARRY GIBBS COMMONWEALTH LAW COURTS 119 NORTH QUAY BRISBANE OLD 4000

> PO BOX 13084 GEORGE STREET BRISBANE QLD 4003

2 January 2018

By email:

Dear Sir/Madam

Freedom of Information Act 1982 - Request for Access

I refer to your email of 1 November 2017 to the Federal Court of Australia in which you have sought access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

I refer the Federal Court to my FOI request made of the Office of the Australian Information Commissioner here (the 'OAIC request'):

By this application I make the same request of the Federal Court albeit such that every reference to 'OAIC' in the OAIC request should read as a reference to the 'Federal Court' for the purposes of this request. I rely on all my submissions contained in the OAIC request, in support of this request made of the Federal Court under s.15 of the FOI Act.

The request made to the Office of the Australian Information Commissioner (OAIC) on 2 August 2017 was as follows:

Accordingly, I request documents which detail the precise monies paid to each of the Office of the Australian Information Commissioner's (OAIC's) SES officers in the following financial years - FY2014/15, FY 2015/16 and FY2016/17. That information might be included in the group certificates/end of year PAYG payments summaries issued by the OAIC to its SES officers, or common law contracts relating to the employment of the relevant SES officers or, any relevant determinations made under subsection 24(1) or 24(3) of the Public Service Act 1999 in respect of those relevant SES officers or, perhaps a document prepared pursuant to s. 17 of the FOI Act. Such documents can be quickly and easily identified and retrieved, and will efficiently and accurately provide the information the subject of my request.

I am willing to agree to the decision maker redacting all information contained in any relevant document with the exception of the following:

- information that discloses the relevant SES officer's name;
- information that discloses that officers precise salary for the relevant financial year; and

- information that identifies what the document is (eg. a group certificate/payment summary, an employment contract or a s. 23(1) Determination) and the period that it covers.

I am further willing to narrow the scope of my request by limiting it to officers employed by the OAIC who, at the time of my application, were categorised as SES officers, meaning that:

- OAIC staff who were once SES officers at the OAIC, but weren't categorised as such at the time of this application; and
- the documents the subject of my request that pertain to SES officers who are no longer employed by the OAIC;

are discounted from the scope of my application.

On 10 November 2017 the Federal Court acknowledged receipt of your request and advised that as your request covered documents that contained another individual's personal information, the Federal Court was required to consult with those individuals (under section 27A of the FOI Act) before making a decision on the release of the documents. The period for processing your request was accordingly extended by 30 days to 2 January 2018.

Authorised decision-maker

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to the documents falling within the scope of your request for access.

In making my decision I have had regard to:

- a. the terms of your request;
- b. your submissions contained in the FOI request to OAIC of 2 August 2017;
- c. the usual content of the documents within the scope of your request;
- d. the relevant provisions of the FOI Act and case law considering those provisions;
- e. the FOI Guidelines issued by the Office of the Australian Information Commissioner;
- f. the Annual Reports of the Federal Court of Australia;
- g. the Remuneration Tables published on the Federal Court of Australia website; and
- h. the submissions of the SES employees whose personal information is within the scope of your request.

Reasons for Decision

Conditionally exempt under paragraph 47E(c)

I consider that the documents within the scope of your request contain information that is conditionally exempt under paragraph 47E(c) of the FOI Act which relevantly prescribes that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to... have a substantial adverse effect on the management ... of personnel by the Commonwealth or by an agency.

The Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (the Guidelines) provide:

For this exemption to apply, the documents must relate to either:

- the management of personnel including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety;
- the assessment of personnel including the broader performance management policies and activities concerning the competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.¹

The documents requested are clearly related to the management of personnel, and are, at the very minimum, specifically related to the compensation and recruitment of SES employees of the Court.

Further, the documents requested contain specific details of the terms and conditions of employment of those individual employees which have been negotiated directly, and on an individual basis, between those SES employees and the Chief Executive Officer/Principal Registrar (CEO) of the Federal Court. The release of the documents requested would disclose the detail of remuneration and entitlements negotiated on an individual basis by individual SES employees and the CEO.

The release of the precise details of the remuneration of SES employees of the Court would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by the Court by:

- destroying the trust in the confidentiality of negotiations between SES employees and the CEO of the Court on the terms and conditions of employment for those employees, and potential employees, making future negotiations more difficult, prolonged and adversarial;
- making it far more difficult for the agency to negotiate the terms and conditions of employment on an individual basis, with the bargaining positions of SES employees strengthened by knowing the terms and conditions of employment of their colleagues, manifesting in upward pressure on Commonwealth expenditure;
- permitting remuneration comparisons which create tensions between individual SES employees as well as between SES employees and non-SES employees; and

-

¹ FOI Guidelines [6.114]

• undermining the morale of SES employees and leading to potential reductions in productivity.

The substantial adverse affects on the trust and morale of SES employees of the Federal Court stem from the fact that those employees would have every expectation that details of their employment negotiations and the precise details of their remuneration would be confidential. Any disclosure of the documents requested or the specific details of an SES employee's remuneration, outside of a disclosure authorised by a specific legislative or regulatory regime, would clearly breach the Court's obligations in respect of privacy and confidentiality of employee records. In addition, there is no legislative or regulatory regime that requires the disclosure of the documents requested.²

The substantial adverse impacts of remuneration disclosure on executive remuneration negotiations have long been recognised, including by the Australian Government Productivity Commission.³

Conditionally exempt under s 47F(1)

I consider that the documents within the scope of your request contain information that is conditionally exempt under subsection 47F(1) of the FOI Act which prescribes that:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The term "personal information" is defined in section 4 of the FOI Act to have the same meaning as in the *Privacy Act 1988* (Cth), that is:

...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in material form or not.

The documents requested identify individual SES employees and contain information about the income each has received from the Court as their employer in each relevant period. The payment summaries requested also include details such as their home address, Tax File Number, tax withheld and reportable superannuation contributions. The remainder of the documents requested would also contain the terms and conditions of employment for each relevant SES employee of the Court.

Although you have expressed a willingness to agree to the removal of some information, they would still contain the personal information of identified individuals as defined in section 4 of the FOI Act. This decision is consistent with the decision of the Information Commissioner in 'NM' and Department of Human Services (Freedom of Information) [2017]

² Noting the remuneration details published in the Court's Annual Report and on the Court's website

³ Australian Government Productivity Commission, Executive Remuneration in Australia, Productivity Commission Inquiry Report No 49, 19 December 2009 at page 241.

AICmr 134 where it was found that information, including from an employer payment summary, was personal information for the purposes of s 47F.⁴

In considering whether the information is conditionally exempt under subsection 47F(1) I am required to consider whether the disclosure of personal information would be unreasonable.

Section 47(2) of the FOI Act prescribes that:

- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publically accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.

In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 stated that:

...whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance...it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...

The FOI Guidelines also provide:

Documents held by agencies or ministers often include personal information about public servants. For example, a document may include a public servant's name, work email address, position or title, contact details, decisions or opinions.

Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties. Such information may often also be publicly available, such as on an agency website.⁵

The personal information included within the requested documents is however not information included in a document because of the usual duties or responsibilities of these public servants. These are documents that relate to the personal affairs of the Court's SES employees as individuals and taxpayers. I am not satisfied that there exists or should exist any presumption that such documents should be released merely because each SES employee is an employee of the Federal Court and a public servant.

FOI Guidelines at [6.152] and [6.153]

⁴ 'NM' and Department of Human Services (Freedom of Information) [2017] AICmr 134 at [35] and [36].

In considering the provisions of subsection 47F(2), the personal information contained within the payment summaries of SES employees of the Court is not well known and would, in ordinary circumstances, be limited to those entitled by law to receive it or entrusted with it at the discretion and with the consent of the individual SES employee.

This information is not available from publicly accessible sources. The Federal Court's Annual Report provides salary ranges by classification and provides details of the total remuneration for senior management, but does not provide details on an individual basis. Further details of the remuneration of senior executives and other highly paid officials are published on the Federal Court's website at: http://www.fedcourt.gov.au/about/corporate-information/executive-remuneration. This information includes the total remuneration for executives between specific income levels, average reportable salary, average contributed superannuation and average total remuneration.

In considering any other matters that might be relevant pursuant to paragraph 47F(2)(d) and a consideration of all the circumstances as guided by *Re Chandra and Minister for Immigration and Ethnic Affairs*, I note firstly that the disclosure of the personal information contained within the payment summaries may also have an adverse effect on the individual SES employees. These effects would, or could reasonably be expected, to include those discussed in respect of section 47E above such as destroying the trust in the confidentiality of negotiations, creating tensions between individual SES employees as well as between SES employees and non-SES employees and undermining the morale of SES employees. Other employees may also lose trust and confidence in the ability of the Court to maintain confidentiality over their personal information.

The Court has significant obligations with respect to the confidentiality of employee records, including those relating to remuneration. None of the documents requested are disclosed to anyone other than authorised staff, the Australian Taxation Office (ATO) where required by law, or to the relevant employee.

In addition, some SES employees exercise judge delegated functions. The release of personal information of SES employees who exercise these functions would, or could reasonably be expected, to increase security risks associated with the performance of those functions and potentially make it more difficult to exercise those functions in an independent and impartial manner, and without fear of personal retribution. It is noted that this would be mitigated to some degree by the redaction of certain information for which you have expressed a willingness to agree.

In circumstances where the ATO is restricted from disclosing a document under the secrecy provisions of the taxation legislation, at least in respect of payment summaries, and where each of the relevant SES employees has objected to the release of their personal information, I have concluded that the information requested contains information that is conditionally exempt under subsection 47(F)(1) of the FOI Act.

Public Interest Test

Subsection 11A(5) of the FOI Act provides:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

In considering that "public interest test", a number of factors set out in subsection 11B(3) of the FOI Act must be taken into account. These are that disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

Disclosure would broadly promote the objects of the FOI Act by providing to the Australian community access to information held by the Government, increasing knowledge about Government activities and enhancing the scrutiny of Government decision-making. Disclosure may also promote oversight of public expenditure in revealing the remuneration paid to SES public servants. Such public expenditure, particularly in the context of the ongoing enterprise bargaining within the Australian Public Service, is a matter of some public importance and its disclosure may inform public debate.

However, there is a range of material that is already publicly available in relation to SES remuneration, including that within the Court's Annual Reports, and on its website, and also within the Australian Public Service Commission's Remuneration Reports (available at http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys). Disclosure of the documents requested is unlikely to serve the public interest any more than this publicly available information.

Whilst significant weight is therefore given to the promotion of the objects of the FOI Act, little weight is given to the ability of this information, should it be released, to inform debate on a matter of public importance and promote effective oversight of public expenditure to any significant degree above that information that is already publicly available.

This is not an instance where the applicant is seeking access to their own personal information.

The public interest factors weighing against a finding that it would be in the public interest to disclose the information within the scope of the request for access are a development of those issues identified previously.

The release of the precise details of the remuneration of SES employees of the Court would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by the Court by:

 destroying the trust in the confidentiality of negotiations between SES employees and the CEO of the Court on the terms and conditions of employment for those employees, and potential employees, making future negotiations more difficult, prolonged and adversarial;

- making it more difficult for the agency to negotiate the terms and conditions of employment on an individual basis, with the bargaining positions of SES employees strengthened by knowing the terms and conditions of employment of their colleagues, manifesting in upward pressure on Commonwealth expenditure.
- permitting remuneration comparisons which create tensions between individual SES employees as well as between SES employees and non-SES employees; and
- undermining the morale of SES employees and leading to potential reductions in productivity.

The personal information provided within the documents requested relate to the personal affairs of each SES employee as an individual, and in the case of payment summaries, as a taxpayer. I am not satisfied that there exists or should exist any presumption that such documents should be released merely because each SES employee is an employee of the Federal Court and a public servant. The personal information is not information about the performance of the usual duties or responsibilities of the individual SES employees of the Court.

The disclosure of the personal information contained within the requested documents may also have an adverse effect on the individual SES employees and prejudice the rights of those individuals to privacy. These effects would, or could reasonably be expected, to include those discussed in respect of section 47E above such as destroying the trust in the confidentiality of negotiations, creating tensions between individual SES employees as well as between SES employees and non-SES employees and undermining the morale of SES employees. Other employees may also lose trust and confidence in the ability of the Court to maintain confidentiality over their personal information.

The impact upon the Court and the Court's employees from the release of information within the scope of the request is significant and within the public interest.

These are factors for which I give significant weight.

Some SES employees exercise judge delegated functions. The release of personal information of SES employees who exercise these functions would, or could reasonably be expected, to increase security risks associated with the performance of those functions and potentially make it more difficult to exercise those functions in an independent and impartial manner, and without fear of personal retribution. It is noted that this would be mitigated to some degree by the redaction of certain information for which you have expressed a willingness to agree.

After considering the mitigating impact of any potential redaction this is a factor to which I give some weight.

After considering each of these factors and the weight given to each, and where disclosure would otherwise be inconsistent with the Federal Court's obligations under the Privacy Act, I am not satisfied that disclosure of the information within the scope of the request for access would be in the public interest.

Redaction not appropriate

Where access to the requested documents is refused, section 22 of the FOI Act provides that an edited copy of the documents may be provided if it is possible to redact exempt information. Under that section, irrelevant information may also be redacted.

You have indicated a willingness to agree to the redaction of all information contained in any relevant document with the exception of the following:

- information that discloses the relevant SES officer's name;
- information that discloses that officer's precise salary for the relevant financial year; and
- information that identifies what the document is (eg. A group certificate/payment summary, an employment contract or a s. 23(1) Determination) and the period that it covers.

In light of my findings above, a redaction of all exempt information would render the document meaningless for the purposes of your request. Consequently, I have decided that this would not be an appropriate response to your request for access.

Section 17 of the FOI Act not applicable

Section 17 of the FOI Act provides:

- (1) Where:
 - (a) A request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirement of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
 - (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency; the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

The FOI request as made is a request for discrete documents, namely documents which detail the precise salary paid to each of the Federal Court's SES officers over a number of financial years. The request went further to detail the documents where such information might be included, namely:

- group certificates/end-of-year PAYG payments summaries issues by the Court to its SES officers;
- common law contracts relating to the employment of relevant SES officers; or
- any relevant determinations made under s 24(1) or 24(3) of the Public Service Act 1999 in respect of those relevant SES officers.

As the Court holds these documents in a discrete form the request is outside the scope of section 17 pursuant to paragraph 17(1)(b) of the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Deputy District Registrar

From: Name withheld To: External FOI

Subject: Freedom of Information request - Precise salaries paid to the Federal Court's SES officers for FY14/15,

FY15/16 and FY16/17

Date: Wednesday, 1 November 2017 6:20:22 AM

Dear Federal Court

The following is an application for the purposes of the FOI Act.

I am conducting research, across a range of Government agencies, into the Government's enterprise bargaining framework for the Commonwealth Public Service. Specifically, in the interests of equity and transparency, whether the Government's policy to reduce the living standards of rank and file public servants (that is, public servants who are not considered senior executive service staff ('SES')) also extends to SES public servants.

I refer the Federal Court to my FOI request made of the Office of the Australian Information Commissioner here (the 'OAIC request'):

By this application I make the same request of the Federal Court albeit such that every reference to 'OAIC' in the OAIC request should be read as a reference to the 'Federal Court' for the purposes of this request. I rely on all my submissions contained in the OAIC request, in support of this request made of the Federal Court under s.15 of the FOI Act.

Thanks.





Telephone: (07) 3248 1100

Facsimile: (07) 3248 1260 (General)

(07) 3248 1240 (Approved for Document Filing)

Email: qldreg@fedcourt.gov.au

Your Ref:

FEDERAL COURT OF AUSTRALIA QUEENSLAND DISTRICT REGISTRY

HARRY GIBBS COMMONWEALTH LAW COURTS 119 NORTH QUAY

BRISBANE QLD 4000

PO BOX 13084 GEORGE STREET BRISBANE OLD 4003

2 January 2018

By email:

Dear Sir/Madam

Freedom of Information Act 1982 - Request for Access

I refer to your email of 1 November 2017 to the Federal Court of Australia in which you have sought access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

I refer the Federal Court to my FOI request made of the Office of the Australian Information Commissioner here (the 'OAIC request'):

By this application I make the same request of the Federal Court albeit such that every reference to 'OAIC' in the OAIC request should read as a reference to the 'Federal Court' for the purposes of this request. I rely on all my submissions contained in the OAIC request, in support of this request made of the Federal Court under s.15 of the FOI Act.

The request made to the Office of the Australian Information Commissioner (OAIC) on 2 August 2017 was as follows:

Accordingly, I request documents which detail the precise monies paid to each of the Office of the Australian Information Commissioner's (OAIC's) SES officers in the following financial years - FY2014/15, FY 2015/16 and FY2016/17. That information might be included in the group certificates/end of year PAYG payments summaries issued by the OAIC to its SES officers, or common law contracts relating to the employment of the relevant SES officers or, any relevant determinations made under subsection 24(1) or 24(3) of the Public Service Act 1999 in respect of those relevant SES officers or, perhaps a document prepared pursuant to s. 17 of the FOI Act. Such documents can be quickly and easily identified and retrieved, and will efficiently and accurately provide the information the subject of my request.

I am willing to agree to the decision maker redacting all information contained in any relevant document with the exception of the following:

- information that discloses the relevant SES officer's name;
- information that discloses that officers precise salary for the relevant financial year; and

- information that identifies what the document is (eg. a group certificate/payment summary, an employment contract or a s. 23(1) Determination) and the period that it covers.

I am further willing to narrow the scope of my request by limiting it to officers employed by the OAIC who, at the time of my application, were categorised as SES officers, meaning that:

- OAIC staff who were once SES officers at the OAIC, but weren't categorised as such at the time of this application; and
- the documents the subject of my request that pertain to SES officers who are no longer employed by the OAIC;

are discounted from the scope of my application.

On 10 November 2017 the Federal Court acknowledged receipt of your request and advised that as your request covered documents that contained another individual's personal information, the Federal Court was required to consult with those individuals (under section 27A of the FOI Act) before making a decision on the release of the documents. The period for processing your request was accordingly extended by 30 days to 2 January 2018.

Authorised decision-maker

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to the documents falling within the scope of your request for access.

In making my decision I have had regard to:

- a. the terms of your request;
- b. your submissions contained in the FOI request to OAIC of 2 August 2017;
- c. the usual content of the documents within the scope of your request;
- d. the relevant provisions of the FOI Act and case law considering those provisions;
- e. the FOI Guidelines issued by the Office of the Australian Information Commissioner;
- f. the Annual Reports of the Federal Court of Australia;
- g. the Remuneration Tables published on the Federal Court of Australia website; and
- h. the submissions of the SES employees whose personal information is within the scope of your request.

Reasons for Decision

Conditionally exempt under paragraph 47E(c)

I consider that the documents within the scope of your request contain information that is conditionally exempt under paragraph 47E(c) of the FOI Act which relevantly prescribes that:

A document is conditionally exempt if its disclosure under this Act would, or could reasonably be expected to... have a substantial adverse effect on the management ... of personnel by the Commonwealth or by an agency.

The Guidelines issued by the Australian Information Commissioner under s 93A of the Freedom of Information Act 1982 (the Guidelines) provide:

For this exemption to apply, the documents must relate to either:

- the management of personnel including the broader human resources policies and activities, recruitment, promotion, compensation, discipline, harassment and occupational health and safety;
- the assessment of personnel including the broader performance management policies and activities concerning the competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

 In the assessment of personnel including the broader performance management policies and activities concerning the competency, in-house training requirements, appraisals and underperformance, counselling, feedback, assessment for bonus or eligibility for progression.

The documents requested are clearly related to the management of personnel, and are, at the very minimum, specifically related to the compensation and recruitment of SES employees of the Court.

Further, the documents requested contain specific details of the terms and conditions of employment of those individual employees which have been negotiated directly, and on an individual basis, between those SES employees and the Chief Executive Officer/Principal Registrar (CEO) of the Federal Court. The release of the documents requested would disclose the detail of remuneration and entitlements negotiated on an individual basis by individual SES employees and the CEO.

The release of the precise details of the remuneration of SES employees of the Court would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by the Court by:

- destroying the trust in the confidentiality of negotiations between SES employees and the CEO of the Court on the terms and conditions of employment for those employees, and potential employees, making future negotiations more difficult, prolonged and adversarial;
- making it far more difficult for the agency to negotiate the terms and conditions of employment on an individual basis, with the bargaining positions of SES employees strengthened by knowing the terms and conditions of employment of their colleagues, manifesting in upward pressure on Commonwealth expenditure;
- permitting remuneration comparisons which create tensions between individual SES employees as well as between SES employees and non-SES employees; and

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¹ FOI Guidelines [6.114]

• undermining the morale of SES employees and leading to potential reductions in productivity.

The substantial adverse affects on the trust and morale of SES employees of the Federal Court stem from the fact that those employees would have every expectation that details of their employment negotiations and the precise details of their remuneration would be confidential. Any disclosure of the documents requested or the specific details of an SES employee's remuneration, outside of a disclosure authorised by a specific legislative or regulatory regime, would clearly breach the Court's obligations in respect of privacy and confidentiality of employee records. In addition, there is no legislative or regulatory regime that requires the disclosure of the documents requested.²

The substantial adverse impacts of remuneration disclosure on executive remuneration negotiations have long been recognised, including by the Australian Government Productivity Commission.³

Conditionally exempt under s 47F(1)

I consider that the documents within the scope of your request contain information that is conditionally exempt under subsection 47F(1) of the FOI Act which prescribes that:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The term "personal information" is defined in section 4 of the FOI Act to have the same meaning as in the *Privacy Act 1988* (Cth), that is:

...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in material form or not.

The documents requested identify individual SES employees and contain information about the income each has received from the Court as their employer in each relevant period. The payment summaries requested also include details such as their home address, Tax File Number, tax withheld and reportable superannuation contributions. The remainder of the documents requested would also contain the terms and conditions of employment for each relevant SES employee of the Court.

Although you have expressed a willingness to agree to the removal of some information, they would still contain the personal information of identified individuals as defined in section 4 This decision is consistent with the decision of the Information Commissioner in 'NM' and Department of Human Services (Freedom of Information) [2017]

website

² Noting the remuneration details published in the Court's Annual Report and on the Court's

³ Australian Government Productivity Commission, Executive Remuneration in Australia, Productivity Commission Inquiry Report No 49, 19 December 2009 at page 241.

AICmr 134 where it was found that information, including from an employer payment summary, was personal information for the purposes of s 47F.⁴

In considering whether the information is conditionally exempt under subsection 47F(1) I am required to consider whether the disclosure of personal information would be unreasonable.

Section 47(2) of the FOI Act prescribes that:

- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publically accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.

In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 stated that:

...whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance...it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...

The FOI Guidelines also provide:

Documents held by agencies or ministers often include personal information about public servants. For example, a document may include a public servant's name, work email address, position or title, contact details, decisions or opinions.

Where public servants' personal information is included in a document because of their usual duties or responsibilities, it would not be unreasonable to disclose unless special circumstances existed. This is because the information would reveal only that the public servant was performing their public duties. Such information may often also be publicly available, such as on an agency website.⁵

The personal information included within the requested documents is however not information included in a document because of the usual duties or responsibilities of these public servants. These are documents that relate to the personal affairs of the Court's SES employees as individuals and taxpayers. I am not satisfied that there exists or should exist any presumption that such documents should be released merely because each SES employee is an employee of the Federal Court and a public servant.

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⁴ 'NM' and Department of Human Services (Freedom of Information) [2017] AICmr 134 at [35] and [36].

⁵ FOI Guidelines at [6.152] and [6.153]

In considering the provisions of subsection 47F(2), the personal information contained within the payment summaries of SES employees of the Court is not well known and would, in ordinary circumstances, be limited to those entitled by law to receive it or entrusted with it at the discretion and with the consent of the individual SES employee.

This information is not available from publicly accessible sources. The Federal Court's Annual Report provides salary ranges by classification and provides details of the total remuneration for senior management, but does not provide details on an individual basis. Further details of the remuneration of senior executives and other highly paid officials are published on the Federal Court's website at: http://www.fedcourt.gov.au/about/corporate-information/executive-remuneration. This information includes the total remuneration for executives between specific income levels, average reportable salary, average contributed superannuation and average total remuneration.

In considering any other matters that might be relevant pursuant to paragraph 47F(2)(d) and a consideration of all the circumstances as guided by *Re Chandra and Minister for Immigration and Ethnic Affairs*, I note firstly that the disclosure of the personal information contained within the payment summaries may also have an adverse effect on the individual SES employees. These effects would, or could reasonably be expected, to include those discussed in respect of section 47E above such as destroying the trust in the confidentiality of negotiations, creating tensions between individual SES employees as well as between SES employees and non-SES employees and undermining the morale of SES employees. Other employees may also lose trust and confidence in the ability of the Court to maintain confidentiality over their personal information.

The Court has significant obligations with respect to the confidentiality of employee records, including those relating to remuneration. None of the documents requested are disclosed to anyone other than authorised staff, the Australian Taxation Office (ATO) where required by law, or to the relevant employee.

In addition, some SES employees exercise judge delegated functions. The release of personal information of SES employees who exercise these functions would, or could reasonably be expected, to increase security risks associated with the performance of those functions and potentially make it more difficult to exercise those functions in an independent and impartial manner, and without fear of personal retribution. It is noted that this would be mitigated to some degree by the redaction of certain information for which you have expressed a willingness to agree.

In circumstances where the ATO is restricted from disclosing a document under the secrecy provisions of the taxation legislation, at least in respect of payment summaries, and where each of the relevant SES employees has objected to the release of their personal information, I have concluded that the information requested contains information that is conditionally exempt under subsection 47(F)(1) of the FOI Act.

Public Interest Test

Subsection 11A(5) of the FOI Act provides:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

In considering that "public interest test", a number of factors set out in subsection 11B(3) of the FOI Act must be taken into account. These are that disclosure would:

- promote the objects of the FOI Act;
- inform debate on a matter of public importance;
- promote effective oversight of public expenditure; and
- allow a person to access his or her personal information.

Disclosure would broadly promote the objects of the FOI Act by providing to the Australian community access to information held by the Government, increasing knowledge about Government activities and enhancing the scrutiny of Government decision-making. Disclosure may also promote oversight of public expenditure in revealing the remuneration paid to SES public servants. Such public expenditure, particularly in the context of the ongoing enterprise bargaining within the Australian Public Service, is a matter of some public importance and its disclosure may inform public debate.

However, there is a range of material that is already publicly available in relation to SES remuneration, including that within the Court's Annual Reports, and on its website, and also within the Australian Public Service Commission's Remuneration Reports (available at http://www.apsc.gov.au/publications-and-media/current-publications/remuneration-surveys). Disclosure of the documents requested is unlikely to serve the public interest any more than this publicly available information.

Whilst significant weight is therefore given to the promotion of the objects of the FOI Act, little weight is given to the ability of this information, should it be released, to inform debate on a matter of public importance and promote effective oversight of public expenditure to any significant degree above that information that is already publicly available.

This is not an instance where the applicant is seeking access to their own personal information.

The public interest factors weighing against a finding that it would be in the public interest to disclose the information within the scope of the request for access are a development of those issues identified previously.

The release of the precise details of the remuneration of SES employees of the Court would, or could, reasonably be expected to have a substantial adverse effect on the management of personnel by the Court by:

 destroying the trust in the confidentiality of negotiations between SES employees and the CEO of the Court on the terms and conditions of employment for those employees, and potential employees, making future negotiations more difficult, prolonged and adversarial;

- making it more difficult for the agency to negotiate the terms and conditions of employment on an individual basis, with the bargaining positions of SES employees strengthened by knowing the terms and conditions of employment of their colleagues, manifesting in upward pressure on Commonwealth expenditure.
- permitting remuneration comparisons which create tensions between individual SES employees as well as between SES employees and non-SES employees; and
- undermining the morale of SES employees and leading to potential reductions in productivity.

The personal information provided within the documents requested relate to the personal affairs of each SES employee as an individual, and in the case of payment summaries, as a taxpayer. I am not satisfied that there exists or should exist any presumption that such documents should be released merely because each SES employee is an employee of the Federal Court and a public servant. The personal information is not information about the performance of the usual duties or responsibilities of the individual SES employees of the Court.

The disclosure of the personal information contained within the requested documents may also have an adverse effect on the individual SES employees and prejudice the rights of those individuals to privacy. These effects would, or could reasonably be expected, to include those discussed in respect of section 47E above such as destroying the trust in the confidentiality of negotiations, creating tensions between individual SES employees as well as between SES employees and non-SES employees and undermining the morale of SES employees. Other employees may also lose trust and confidence in the ability of the Court to maintain confidentiality over their personal information.

The impact upon the Court and the Court's employees from the release of information within the scope of the request is significant and within the public interest.

These are factors for which I give significant weight.

Some SES employees exercise judge delegated functions. The release of personal information of SES employees who exercise these functions would, or could reasonably be expected, to increase security risks associated with the performance of those functions and potentially make it more difficult to exercise those functions in an independent and impartial manner, and without fear of personal retribution. It is noted that this would be mitigated to some degree by the redaction of certain information for which you have expressed a willingness to agree.

After considering the mitigating impact of any potential redaction this is a factor to which I give some weight.

After considering each of these factors and the weight given to each, and where disclosure would otherwise be inconsistent with the Federal Court's obligations under the Privacy Act, I am not satisfied that disclosure of the information within the scope of the request for access would be in the public interest.

Redaction not appropriate

Where access to the requested documents is refused, section 22 of the FOI Act provides that an edited copy of the documents may be provided if it is possible to redact exempt information. Under that section, irrelevant information may also be redacted.

You have indicated a willingness to agree to the redaction of all information contained in any relevant document with the exception of the following:

- information that discloses the relevant SES officer's name:
- information that discloses that officer's precise salary for the relevant financial year; and
- information that identifies what the document is (eg. A group certificate/payment summary, an employment contract or a s. 23(1) Determination) and the period that it covers.

In light of my findings above, a redaction of all exempt information would render the document meaningless for the purposes of your request. Consequently, I have decided that this would not be an appropriate response to your request for access.

Section 17 of the FOI Act not applicable

Section 17 of the FOI Act provides:

- (1) Where:
 - (a) A request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirement of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
 - (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency; the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

The FOI request as made is a request for discrete documents, namely documents which detail the precise salary paid to each of the Federal Court's SES officers over a number of financial years. The request went further to detail the documents where such information might be included, namely:

- group certificates/end-of-year PAYG payments summaries issues by the Court to its SES officers;
- common law contracts relating to the employment of relevant SES officers; or
- any relevant determinations made under s 24(1) or 24(3) of the Public Service Act 1999 in respect of those relevant SES officers.

As the Court holds these documents in a discrete form the request is outside the scope of section 17 pursuant to paragraph 17(1)(b) of the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999. Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Deputy District Registrar

From:
To: External FOI
Subject: FOI application

Date: Monday, 20 November 2017 3:48:02 PM

Dear Federal Court FOI team,

I make this freedom of information application under the Freedom of Information Act 1982.

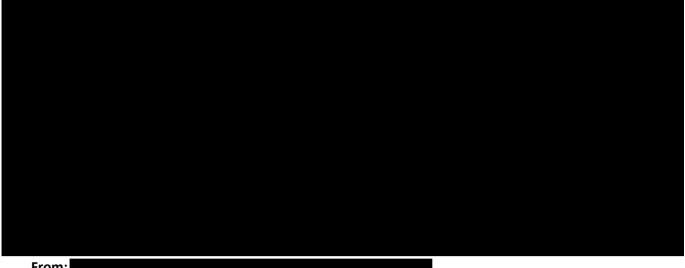
Please could you respond to this email address, i.e.

I seek documents created or held by the Federal Court with information about the following points. The identities of the complainants, and those of the subjects of the complaints, need not be disclosed:

- 1. The number of complaints lodged by Federal Court staff about bullying and/or harassment since May 2016.
- 2. The alleged incidents of bullying and/or harassment that staff complained about in this period, including but not limited to the time, date and location of the incidents, and the actions allegedly carried out by the subjects of the complaints during the incidents.
- 3. The role and/or APS classification level of staff who lodged the complaints.
- 4. The outcome of the complaints, including but not limited to any disciplinary action or mediation.
- 5. The role and/or classification level of the subjects of the complaints about bullying and/or harassment.

I am happy to receive the information in the easiest format possible for the Federal Court.





From:

Sent: Thursday, 7 December 2017 8:25 AM

To: John Mathieson < John. Mathieson@fedcourt.gov.au>

Subject: Re: FOI application

Dear John.

Thanks for sending this information. Confirming that I withdraw the FOI request hereby.

Best regards

On 6 December 2017 at 17:19, John Mathieson < <u>John.Mathieson@fedcourt.gov.au</u>> wrote:

UNCLASSIFIED

Dear

I refer to our telephone discussions. I am authorised under section 23 of the Freedom of Information Act 1982 (FOI Act) to make decisions on behalf of the Federal Court of Australia on requests under that Act for access to documents.

As discussed, at least in the form sought, the information requested in your message below is not available under the FOI Act. Nevertheless, the Court is prepared to provide you with information outside of the FOI Act which I think will assist you in your enquiries.

Since May 2016, there have only been two formal complaints of bullying made by and in relation to staff of the Federal Court. The latter now encompasses staff supporting the Federal Court, Family Court and Federal Circuit Court and the National Native Title Tribunal as well as Corporate Services staff.

Those two complaints were made by two employees in one court registry - one against the other. The following is a short and anonymised outline about these complaints which include, as relevant, the information sought in your request.

Employee A was an APS03 employee on a non-ongoing contract. The complaint from this employee was received on 6 April 2017.

Employee B is an APS05 employee on an ongoing contract and the line supervisor of Employee A. The complaint from this employee was received on 4 April 2017.

The investigation sought to make findings of fact and consider whether any substantiated allegations constituted a breach of the APS values, code of conduct or other behaviour which would constitute bullying. Employee A and B were interviewed to seek their responses to allegations. Thirteen witnesses were also interviewed.

It should be noted that this situation commenced as a range of "relationship in the workplace" issues, prior to the formal complaints being received. Both employees agreed that they

wanted to see if an informal approach including mediation would help resolve their issues. Four mediation meetings took place prior to the formal complaints being submitted.

Allegations against Employee A

As a result of the complaint by Employee B, thirty-seven allegations against Employee A were investigated. Ten allegations were substantiated. The remaining twenty-seven allegations were unable to be substantiated.

Of the substantiated allegations, nine were a breach of the code of conduct by failing to treat everyone with respect and courtesy and without harassment in connection with his/her employment. One of these allegations was also considered bullying due to Employee A deliberately not talking to Employee B (ignoring) on a number of occasions. One substantiated allegation was a breach of the code of conduct by failing to comply with a lawful and reasonable direction given by someone in the Agency who has authority to give the direction.

Allegations against Employee B

As a result of the complaint by Employee A, forty-six allegations against Employee B were investigated. Of the forty-six allegations, eighteen were put to Employee B for a response. The twenty-eight further allegations were considered by the investigation but not put to the employee due to the allegations being viewed as reasonable management action, not a breach of the code of conduct, or they were found not substantiated due to the statements provided by witnesses contradicting Employee A's allegations.

From the investigation, four allegations were found to be substantiated. Two were found to be a breach of the code of conduct by failing to treat everyone with respect and courtesy and without harassment in connection with his/her employment. One of these allegations was also considered bullying due to Employee B deliberately not talking to Employee A (ignoring) on a number of occasions. One substantiated allegation was a breach of the code of conduct by failing to act with care and diligence in connection with APS employment. This was also found to be a breach of the values. A further substantiated allegation was found to be a performance concern, rather than a breach of values or code of conduct.

Outcome

The investigation was finalised on 31 August 2017.

Employee A had resigned prior to the investigation being finalised. As a result, no sanction was imposed for the substantiated breaches.

Employee B received a reprimand in the form of a formal written warning on 19 September 2017, as a result of the substantiated allegations noted above.

I note your telephone advice that, on the basis that the above information is provided to you outside of the FOI Act, you withdraw your FOI Act request. I would be grateful if you could confirm that withdrawal at your convenience.

If you have any questions about anything above, please give me a call. Regards,

John Mathieson | Deputy Principal Registrar

Principal Registry | Federal Court of Australia Law Courts Building, Queens Square, Sydney NSW p. 02 9230 8336 | e. john.mathieson@fedcourt.gov.au www.fedcourt.gov.au





Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906 DX 613 SYDNEY

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

24 April 2018

	By email:
Dear	

Application for Internal Review under Freedom of Information Act

The purpose of this letter is to advise you of my decision following your application for internal review of the Federal Court of Australia's decision on 12 March 2018 to refuse you access to documents requested under the *Freedom of Information Act 1982* (FOI Act).

Background

In an email you sent addressed to the Court on 25 November 2017 you made the following request:

I ask you to consider this communique as an application to the Federal Court of Australia under the provisions of the Freedom of Information Act 1982 (Cth) for a copy of any document or thing of an administrative character;

- 1. related to me in the period 2005 until today's date, and
- 2. any document or thing of an administrative character relating to complaints against the Judiciary and or Administrative Arms of the Federal Court of Australia.

On 6 December 2017 the Court acknowledged receipt of your FOI request of 25 November 2017 and identified that due to the scope of your request it may give rise to a practical refusal reason as defined under section 24AA of the FOI Act. The Court enquired as to whether you were able to narrow the scope of your request to more precisely identify a relevant period and/or the type of documents that you were seeking.

On 21 December 2017 the Court acknowledged receipt of your further FOI request of 16 December 2017 and advised that due to the scope of your FOI requests an application was made to the Australian Information Commissioner for an extension of time for the processing of those requests.

On 21 December 2017 the Australian Information Commissioner granted the Court an extension of time under subsection 15AB(2) of the FOI Act to close of business on 26 February 2018.

In your email of 30 December 2017 addressed to me you narrowed your FOI request of 25 November 2017 as follows:

I note that in respect of my application dated 25th November 2017;

- 1. I wish to narrow part 1 of my application to be read for the period 1st January 2005 until 31 December 2015:
- 2. I wish to narrow part 2 of my request and confirm that the Court does not need to include copies of complaints made by me or your responses to those complaints and further if there is an administrative document or thing that is already in existence that summarises the number of complaints and the Court's responses to those complaints then I will not require copies of the actual complaints at this Juncture.

Further you stated:

I ask you to accept this communique as a Notice of Actual and Apprehended Bias that you and indeed any officer of the Crown is hopelessly conflicted in making:

- 1. any FOI decision to applications made by me;
- 2. any decision to delegate the Courts administrative powers

I request the administrative powers of the Court and its officer to make the FOI decision is delegated to a person who is not an officer of the Crown being the Supreme Court of Hong Kong as a court with Common Law jurisdiction.

On 23 February 2018 the Court provided you with a written request consultation notice under subsection 24AB(2) of the FOI Act. The Court also informed you of its intention to refuse access to any documents within your request to the extent that your request relates to complaints against the 'Administrative Arms' of the Court. The basis for this refusal was that a practical refusal reason existed pursuant to paragraph 24AA(1)(a)(i) of the FOI Act, in that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

On 26 February 2018 you responded to that request for consultation by offering to narrow your request as follows:

In order to further assist the Supreme Court of Hong Kong and the Federal Court of Australia in its support role I wish to further narrow my request to apply to only complaints against members of the Judiciary and the Registrars of the Court who have been involved in proceedings related to me which limits time frames significantly to 2005-2011 in the South Australia Registry and 2008 in the WA Registry and 2014-2017 in the Victoria Registry.

On 28 February 2018 the Court attempted to further clarify the nature of your request by asking whether it would be correct to assume that the complaints you were interested in were complaints against the relevant Registrars in the performance of their functions, be they as directed under subsection 35A(1) of the *Federal Court of Australia Act 1976* or the range of other legislative regimes for which they have powers and duties. The Court received no response.

On 12 March 2018 Deputy District Registrar Tredwell, an officer authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to FOI requests, decided to refuse access to documents falling within the scope of your request within the following categories:

- documents directly related or associated with Court proceedings or in the custody or possession of Judicial Officers;
- originating applications not accepted for filing and associated documents;
- judicial complaints;
- · complaints against Registrars involved in proceedings related to you; and
- documents associated with certain dealings on the Personal Property Security Register.

Access to these documents was refused on the basis that they were not documents to which the FOI Act applied or, to the extent that your request constituted a request for documents concerning complaints not directly related or associated with Court proceedings, because a practical refusal reason existed pursuant to paragraph 24AA(1)(a)(i) of the FOI Act.

Registrar Tredwell also decided to grant access to documents falling within the scope of your request within a number of other categories and specifically identified within various schedules to the decision of 12 March 2018. Those documents and the relevant schedules were:

- FOI requests, Schedule A;
- application for compensation, Schedule B;
- application for Test Case Funding; Schedule C; and
- application to OAIC for Vexatious Applicant Declaration; Schedule D.

In an email you sent to Registrar Tredwell on 20 March 2018 you requested an internal review of that decision be undertaken by the Supreme Court of Hong Kong under contract to the Federal Court under section 18A of the Federal Court of Australia Act 1976 (Cth).

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to applications for internal review of decisions regarding Freedom of Information (FOI) requests made to the Federal Court.

As previously noted, you have requested that the internal review be undertaken by the Supreme Court of Hong Kong under contract to the Federal Court under section 18A of the Federal Court of Australia Act and objected to me making any FOI decision in relation to requests from you because of actual and apprehended bias.

As relevant, subsection 23(2) of the FOI Act provides that a decision in respect of a request made to a court may be made on behalf of that court by the principal officer of that court or, subject to regulations, by an officer of that court acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the principal officer of that court.

I am lawfully able to make a decision in respect of your application for internal review. There is no evidence to suggest that I have an actual bias. In addition, there is nothing to suggest that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial mind to the making of a decision in response to your FOI request (see *Burgess v*

Minister for Immigration and Border Protection [2018] FCA 69 at [34] and Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337 at [6]).

In circumstances where an officer of the Court, authorised by the principal officer, is available and lawfully able to make the decision, there is no necessity to consider entering into an arrangement for that decision to be made by a person outside the Court. As noted by Registrar Tredwell in his letter of 12 March 2018, the Supreme Court of Hong Kong was abolished on 1 July 1997 and has since existed as the High Court of the Hong Kong Special Administrative Region.

Grounds for Review

In your email of 20 March 2018 you provide a list of 30 grounds for review of the original decision of the Court dated 12 March 2018. The internal review process under the FOI Act is a merit review process. The review officer can decide all issues raised by the applicant's FOI request, and exercise all the powers available to the original decision maker (paragraph 9.34 of the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act). The decision of internal review is a fresh decision (s 54C FOI Act).

To trigger the internal review process requires only that the applicant provide a written application within time where there has been an 'access refusal decision' made in relation to a request to an agency for access to a document (sections 54 and 54B of the FOI Act).

As relevant, section 53A of the FOI Act defines an 'access refusal decision' to include:

- (b) a decision giving access to a document but not giving access to all documents to which the request relates; and
- (c) a decision purporting to give, in accordance with the request, access to all documents to which the request relates, but not actually giving that access.

In your internal review application you make the following statements:

Amongst the documents of an administrative nature that are absent from your decision dated 26th February 2016 is the attached email to the Chambers of Beach J dated 18th February 2016 in response to the email from chambers dated 17th February 2016 (copy attached).

I am satisfied that the basis for your review application is therefore an 'access refusal decision' and I shall proceed on that basis.

Decision and Reasons

In undertaking this internal review I have had regard to:

- a. the terms of your request for internal review;
- b. the submissions included within your request for internal review;
- c. the content of the identified documents within the scope of your request;
- d. the relevant provisions of the FOI Act and case law considering those provisions;
- the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and

f. the Administrative Review Council Best Practice Guide on Internal Review, *Internal Review of Agency Decision Making*, Report No. 44 (2000), Chapter 8.

Searches undertaken

As identified in the Court's decision of 12 March 2018, the searches undertaken by the Court to identify documents within the scope of your FOI request were extensive and exhaustive. These searches were undertaken in conjunction with searches undertaken in response to your FOI request of 16 December 2017. Searches were conducted of the electronic and hard copy files of every relevant District Registry and the Principal Registry of the Federal Court, 32 litigation files related to you and associated entities as well as files associated with rejected originating applications, applications for fee waiver, complaints and FOI requests. The search also included the open email accounts of all current and recent Federal Court staff. Consistent with the FOI Guidelines no search was undertaken of closed email accounts that could only be accessed via back-up systems.

I am satisfied that all reasonable steps have been taken to find any and all documents within the scope of your FOI request.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court (paragraphs 2.6 – 2.8 of the Guidelines). It does not apply to Judicial Officers (paragraph 5(1)(b) of the FOI Act) or to any documents relating to the handling of complaints about Judicial Officers (subsections 5(1A) to (1C) of the FOI Act). Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act (paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 (Kline) considered the meaning of the phrase "matters of an administrative nature". In the joint judgment given by the Chief Justice and Justices Crennan, Kiefel and Bell dismissing the appeal to the High Court, this was described as documents which concern the management and administration of office resources, such as financial and human resources and information technology (see [41] with examples at [13]). That judgment also makes it clear that, in the view of those judges, documents held by a federal court relating to individual cases can never be characterised as documents "relating to matters of an administrative nature" (see [51]).

In a separate judgment, also dismissing the appeal, Justice Gageler distinguished between the exercise of substantive powers and functions and "administrative matters" which provide logistical support (or infrastructure of physical necessities or resources or platforms (see [74]). In illustration, using the example of the Governor-General's performance of a ceremonial function at a remote location, he observes that documents relating to travel by and accommodation for the Governor-General and his or her entourage would be within the scope of the FOI Act but that documents relating to the Governor-General's participation in the ceremony, generic or specific and whether prepared or received by the Governor-General or by the Official Secretary before or after the Governor-General's participation in the particular ceremony, would not relate to matters of an administrative nature and would be outside of the scope of the FOI Act.

Having considered the basis upon which the FOI Act applies to the Federal Court, I turn now to consider the range of documents identified pursuant to the searches undertaken and whether access may be granted to those documents under the FOI Act.

I am satisfied that pursuant to paragraph 5(1)(b) of FOI Act, the FOI Act does not apply to any document that is in the control or possession of a Judicial Officer, and that to the extent that your FOI request sought to access these documents your request is refused.

I am also satisfied that all documents that were lodged, filed, received or created for the purposes of or in connection with the various proceedings you have commenced or sought to commence or in which you were otherwise a party, including documents in relation to any matter ancillary or preparatory to the exercise of any of the Court's powers or functions in relation to such proceedings, regardless of their source and nature cannot 'relate to matters of an administrative nature" within the meaning of section 5 of the FOI act, are outside of the scope of the FOI Act and no valid FOI request can be made in relation to them. These documents also include a range of correspondence from you in connection with various proceedings and either addressed to the Court, or to the parties for various Court proceedings to which you, or entities to which you were associated, were a party.

To the extent that your request seeks access to documents concerning complaints directly related or associated with Court proceedings, I am satisfied that these are not documents to which the FOI Act applies. Where particular complaints are related to Judicial Officers the FOI Act does not apply due to the operation of subsections 5(1A) to (1C) of the FOI Act. Where those complaints are not related to Judicial Officers those documents are not documents to which the FOI Act applies because they are not a "document of an administrative nature" pursuant to paragraph 5(1)(a) and the decision of the High Court in Kline.

Whilst you provided no response to the Court's request for clarification, the scope of your request as narrowed by your email of 26 February 2018, potentially included any complaint ever made concerning specific Registrars that did not relate to their performance of Registrar functions related or associated with Court proceedings. In my opinion it would not be possible to determine if documents associated with such a complaint or complaints, if they existed, were documents of an administrative character without careful consideration of each document and the nature of the complaint.

Registrar Tredwell, consistent with the notice provided on 23 February 2018, decided that a practical refusal reason existed pursuant to paragraph 24AA(1)(a)(i) of the FOI Act in that the work involved in processing the request would substantially and unreasonably divert the resources of the agency from its other operations.

I am satisfied that a practical refusal reason does exist in respect of this aspect of your FOI request for the reasons outlined by Registrar Tredwell on 12 March 2018.

As Registrar Tredwell granted access to all other documents identified pursuant to searches undertaken by the Court, whether pursuant to the FOI Act or otherwise, it is unnecessary to consider these documents further as part of this application for internal review of the decision of 12 March 2018.

My decision on internal review affirms the decision of Registrar Tredwell set out in his letter dated 12 March 2018. In summary my decision is that:

- the basis of your review application is an 'access refusal application';
- all reasonable steps have been taken to find any and all documents within the scope of your FOI request;
- the FOI Act does not apply to any document that is in the control or possession of a
 Judicial Officer, and that to the extent that your FOI request sought to access these
 documents your request is refused;
- all documents that were lodged, filed, received or created for the purposes of or in
 connection with the various proceedings you have commenced or sought to
 commence or in which you were otherwise a party, including documents in relation to
 any matter ancillary or preparatory to the exercise of any of the Court's powers or
 functions in relation to such proceedings, regardless of their source and nature cannot
 "relate to matters of an administrative nature" within the meaning of section 5 of the
 FOI Act, are outside of the scope of the FOI Act and no valid FOI request can be
 made in relation to them:
- to the extent that your request seeks access to documents concerning complaints directly related or associated with Court proceedings, I am satisfied that these are not documents to which the FOI Act applies. Where particular complaints are related to Judicial Officers, the FOI Act does not apply due to the operation of subsections 5(1A) to (1C) of the FOI Act. Where those complaints are not related to Judicial Officers those documents are not documents to which the FOI Act applies because they are not a "document of an administrative nature" pursuant to paragraph 5(1)(a) and the decision of the High Court in Kline; and
- to the extent that your request seeks access to any complaint ever made concerning specific Registrars that did not relate to their performance of Registrar functions related or associated with Court proceedings, I am satisfied that a practical refusal reason does exist in respect of this aspect of your FOI request.

Charges

You have not been charged for the processing of your request.

Complaints

Under section 70 of the FOI Act you may complain in writing to the Australian Information Commissioner about an action taken by the Court in the performance of functions or the exercise of the powers under the FOI Act.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely



Deputy Principal Registrar

From: To: External FOI: John Mathieson Subject: Application for Internal Review Monday, 5 February 2018 4:47:50 PM Date: Attachments:

image002.nng image003.png

Executive Power Law Review . Responsible Government.pdf

Email to Commissioner and Senator Brandis dated 27042016 re Trevor Coulter.pdf
Email to Kenny J dated 25042016 regarding removal from VID 129 of 2015.pdf
Email to Kenny and Middleton dated 10042016 re commissioner holding Bills for Value & Office of the OAIC.pdf

Email to Kenny J regarding annulment 13042016 and improper corrupt conduct.pdf

Importance:

Federal Court of Australia Attn John Mathieson

Dear John

It is my view that the FOI decision published by you dated 25th January 2018 is a decision that is utravires, I understand that the attached relevant law on Executive Power has been previously provided to you by and is not referred to in the decision made by you.

I submit that the reference in my application dated to 28th November 2017 to anv document or thing related to the article also includes copies of correspondence with the Commissioner and his personell related to his comments referred to in the article.

has provided a copy of the attached correspondence dated 25th April 2016 sent to Justice Kenny amongst others.....including you.....you will note that communique specifically refers to the article that is the subject of your decision.

Other emails to Justice Kenny from are clearly also related to the article as they are related to the deal struck between the Federal Court of Australia and the Commissioner of Taxation.

It is clear from the detail provided by you that a number of people in the Federal Court have been apprised of this issue however you have not provided me with any notes of conversations, minutes of meetings and other documents produced prior to the media release

The article is directly related to any allegation of breaches of the principles of Separation of Powers and proper application of Rule of Law by the Court and the Commissioner which matters involve criminal breaches of s42 and s43 of the Crimes Act 1914 (Cth) and chapter 2 of the Criminal Code as indictable offences.

In the absence of a genuine and lawful decision it appears that application for writ Quo Warranto is necessary in the light of your continued malfeasance evidenced in your failure to investigate Judicial Complaints.

Please accept this communique as an application for Internal Review of your FOI decision which review ought be undertaken by the Supreme Court of Hong Kong pursuant to delegation of the courts powers on review as a consequence of the apprehended and actual bias that you are on Notice of as set out by

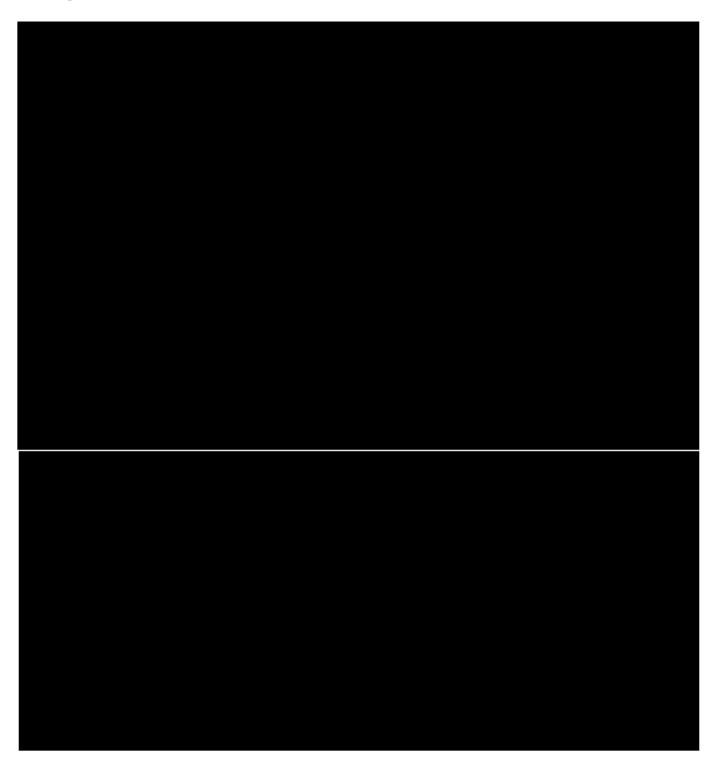
The Grounds for Review are as follows:

- 1. The Decision is so manifestly unreasonable that no reasonable person would have made the same decision.
- 2. The decision is affected by Actual Bias and Apprehended Bias in circumstances where the Decision Maker took note of submissions of other Government Agencies without considering the right of the applicant to respond

- 3. The decision is made in circumstances where the decision maker failed to inquire in accordance with the obligations of a Tribunal and determine all of the relevant facts prior to making the decision.
- 4. The Decision was made in circumstances where relevant materials were withheld by others and/or the decision maker.
- 5. The Decision Maker did not comply with the Hearing Rule that requires the Decision Maker to provide not only the adverse materials, but all of the materials relevant to the matter in issue whether or not the decision maker intends to rely upon it.
- 6. There is an absence of relevant law in the decision and if the relevant law was properly applied then different decision would have been made.
- 7. There is inadequate reasons given for the making of the Decision.
- 8. The decision failed to consider the evidence; if the evidence was properly considered then a different decision would have been made.
- 9. The decision is not fair.
- 10. The decision is a denial of procedural fairness.
- 11. The decision is a jurisdictional error of the Decision Maker that leads to the decision being a nullity and a constructive failure to exercise jurisdiction.
- 12. The decision was made on the instruction of others and was not made independently and in the public interest.
- 13. The Decision Maker fell into error as a question of law and jurisdictional error in causing himself to identify a wrong issue and to ask himself a wrong question in order to ignore relevant materials to make an erroneous decision in order to reach a mistaken conclusion and the tribunal's exercise of power or purported exercise of power is thereby affected.
- 14. The decision is an abuse of process for the improper purpose.
- 15. The Decision Maker failed to make decision on the private binding ruling in circumstances where the question of law arises whether the decision maker was obliged to do so as a consequence of its statutory obligations.
- 16. The Decision Maker did not give fair consideration of the case presented.
- 17. The question of law and fact arises whether the decision maker was Negligent.
- 18. There is no Evidence to support the Decision and when all of the evidence is considered the reverse decision is supported.
- 19. The Decision is tainted by Bad Faith.
- 20. The Decision is Illogical or Irrational.
- 21. The Decision is uncertain in that it leaves a question of Judgment estimation and was no more than an opinion.
- 22. There is inadequate reasons given for the making of the Decision.
- 23. The decision is a denial of Natural Justice.

- 24. The Decision Maker acted dishonestly.
- 25. The Decision Maker acted disproportionately
- 26. The Decision is tainted by Fraud.
- 28. The Decision Maker did not comply with the obligation to give the Plaintiff a fair hearing.
- 29. The exercise of discretion to grant relief upon review would not be futile and the benefit to be gained by the applicant is substantial.
- 30. The decision maker has misinterpreted his obligation to act in accordance with the Public Trust and in the Public Interest

Regards





























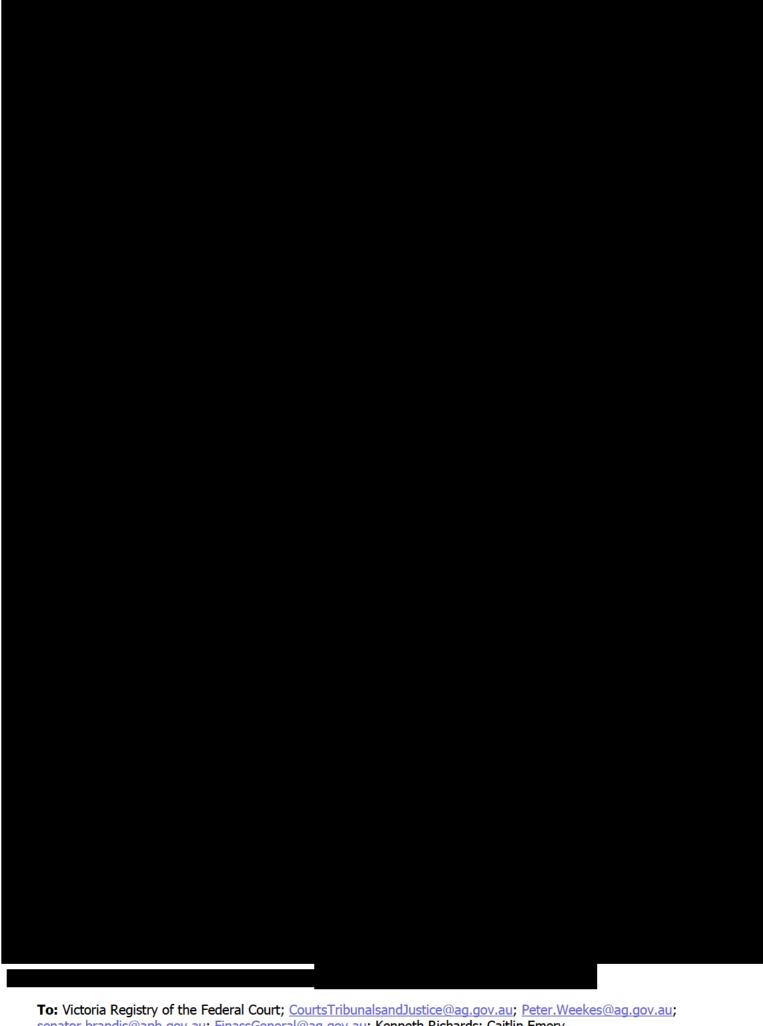












John

Freedom of Information Application

The Federal Court of Australia

The Office of the Australian Information

Commissioner

Attn Registrar Caporale

Attn The Commissioner

Dear Registrar,

I ask you to consider this communique as an application in writing pursuant to the provisions of the Freedom of Information Act 1982 (Cth) ("the Act") for a copy of any document or thing of an administrative character related to me or any proceeding involving me that is in the control or possession of the Federal Court of Australia or any of its officers, judicial or otherwise that have come into that possession and control since the date of my last application under the act addressed to the Federal Court of Australia.

I have copied the Office of the Australian Information Commissioner on this communique and request the consent of the Australian Information Commissioner to make the application and cause your compliance with the application following the s89K ruling made by the Information Commissioner, the proposed 24th Defendant by Cross Claim in

The reason for making the request is to ensure my rights as a citizen to expect proper compliance of executive government, the judiciary and the legislature with the provisions relating to separation of powers expressed in *the Commonwealth of Australia Constitution Act* 1900 (UK) and to ensure the Tribunals of this Nation Commonwealth and otherwise, including the Office of the Australian Information Commissioner, comply with the relevant statutory and common law obligations to inquire.

































Telephone: (02) 9230 8567 Facsimile: (02) 9230 8535

DX 613 SYDNEY
Internet:

www.fedcourt.gov.au

A.B.N. 49 110 847 399

Your Ref: Our Ref: FEDERAL COURT OF AUSTRALIA

NSW DISTRICT REGISTRY

LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

6th March 2018



By email:

Dear

Freedom of Information Act 1982 (FOI Act) - Request for Internal Review

I refer to your email of 5 February 2018 to the Federal Court in which you have sought internal review of an FOI decision made by the Court on 25 January 2018, presumably pursuant to s 54 of the *Freedom of Information Act 1982* (Cth) (FOI Act).

Your email of 5 February 2018 specifically provides:

Please accept this communique as an application for Internal Review of your FOI decision which review ought to be undertaken by the Supreme Court of Hong Kong pursuant to delegation of the courts powers on review as a consequence of the apprehended and actual bias that you are on Notice of as set out by Mr Garrett.

On 28 November 2017 by email to the Federal Court of Australia you made the following FOI request under the FOI Act (FOI request):

Please consider this communique as an application in writing under the provisions of the Freedom of Information Act 1982 (Cth) for a copy of any document or thing in the possession and/or control of the Federal Court related to the article appearing in the Australian Financial Review on the 23rd April 2016 a copy of which appears below;

The article attached to your request which had appeared in the Australian Financial Review on 23 April 2016 was entitled "Fed Court rebukes Tax Commissioner".

On 7 December 2017 the Federal Court acknowledged receipt of your request. On 22 December 2017 the Federal Court advised that as your request covered documents that contained another individual's personal information, the Federal Court was required to

consult with that individual (under section 27A of the FOI Act) before making a decision on the release of the documents. The period for processing your request was accordingly extended by 30 days to 29 January 2018.

On 25 January 2018 the Court granted access in full to a single document identified as falling within the scope of your FOI request, a chain of email correspondence ending with Sia Lagos, National Operations Registrar, Federal Court of Australia on 22 April 2016. The Court also indicated that it had become apparent that some documents that might have fallen within the scope of your request may have been deleted from relevant Microsoft Outlook folders and that further attempts were being made to retrieve additional documents that may be within the scope of your request.

Authorised decision-maker

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request for internal review.

You have stated that the review ought to be undertaken by the Supreme Court of Hong Kong pursuant to delegation of the courts powers on review as a consequence of the apprehended and actual bias that the Court is purportedly on notice of as set out by a

As relevant, subsection 23(2) of the FOI Act provides that a decision in respect of a request made to a court may be made on behalf of that court by the principal officer of that court or, subject to regulations, by an officer of that court acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the principal officer of that court.

I am lawfully able to make a decision in respect of your request for internal review. I have had no other dealings with you. There is no evidence to suggest that I have an actual bias. In addition, there is nothing to suggest that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial mind to the making of a decision in response to your FOI request.¹

In circumstances where an officer of the Court, authorised by the principal officer, is available and lawfully able to make the decision, there is no necessity to consider entering into an arrangement for that decision to be made by a person outside the Court. Of course, the Supreme Court of Hong Kong was abolished on 1 July 1997 and has since existed as the High Court of the Hong Kong Special Administrative Region.

Grounds for Review

In your email of 5 February 2018 you provide a list of 30 grounds for review of the original decision of the Court dated 25 January 2018. The internal review process under the FOI Act is a merit review process. The review officer can decide all issues raised by the applicant's FOI request, and exercise all the powers available to the original decision maker.² The

¹ see Burgess v Minister for Immigration and Border Protection [2018] FCA 69 at [34]; Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337 at [6]

² see paragraph 9.34 of the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act

decision of internal review is a fresh decision.3 It is not in the nature of an appeal. Accordingly it is not necessary for me to consider the individual grounds of review you have identified in support of your request.

To trigger the internal review process requires only that the applicant provide a written application within time where there has been an 'access refusal decision' made in relation to a request to an agency for access to a document.4

As relevant, s 53A of the FOI Act defines an 'access refusal decision' to include:

- (b) a decision giving access to a document but not giving access to all documents to which the request relates; and
- (c) a decision purporting to give, in accordance with the request, access to all documents to which the request relates, but not actually giving that access.

In your internal review application you make the following statements:

I submit that the reference in my application dated to [sic] 28th November 2017 to any document or thing related to the article also includes copies of correspondence with the Commissioner and his personell [sic] related to his comments referred to in the article.

has provided a copy of the attached correspondence dated 25th April 2016 sent to Justice Kenny amongst others....including you...you will note that communique specifically refers to the article that is the subject of your decision.

are clearly also related to the article as they are related to Other emails to Justice Kenny from the deal struck between the Federal Court of Australia and the Commissioner of Taxation

It is clear from the detail provided by you that a number of people in the Federal Court have been apprised of this issue however you have not provided me with any notes of conversations, minutes of meetings and other documents produced prior to the media release.

I am satisfied that the basis for your review application is therefore an 'access refusal decision' and I shall proceed on that basis.

In your application for internal review you attach a number of emails from a Mr Andrew Garrett, claiming that this correspondence is clearly related to the article published in the Australian Financial Review. Your submission is based upon the notion that they are related to the alleged deal struck between the Federal Court of Australia and the Commissioner of Taxation.

You also submit that the article is:

...directly related to any allegation of breaches of the principles of Separation of Powers and proper application of Rule of Law by the Court and the Commissioner which matters involve criminal breaches of s 42 and s 43 of the Crimes Act 1914 (Cth) and chapter 2 of the Criminal Code as indictable offences.

Decision

³ s 54C FOI Act

⁴ s 54 and s 54B of the FOI Act

I have, for the reasons set out below, decided to affirm the decision under review in so far as it provided access under the FOI Act to a chain of email correspondence ending with Sia Lagos, National Operations Registrar, Federal Court of Australia on 22 April 2016.

Further, I am satisfied that:

- the Court has taken all reasonable steps to find any documents related to the Court's
 role in the publication of the article in the Australian Financial Review, related to
 alleged discussions between the Court and the Commissioner of Taxation on fast
 tracking multinational tax avoidance cases or in any other way related to that article
 pursuant to your FOI request;
- no additional documents related to the article, with the exception of certain documents from a Mr Andrew Garrett considered below, exist or can be found;
- your FOI request was not sufficiently wide to include 'allegations of any breaches of the principles of Separation of Powers and proper application of Rule of Law by the Court and the Commissioner which matters involve criminal breaches of s 42 and s 43 of the Crimes Act 1914 (Cth) and chapter 2 of the Criminal Code as indictable offences'; and
- to the extent that your FOI request seeks access to documents held by judicial officers
 or documents directly related or associated to Court proceedings, that these are not
 documents to which the FOI Act applies as they are not documents which concern the
 management and administration of registry or office resources.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the submissions included within your application for internal review;
- c. the content of the identified documents within the scope of your request;
- d. the relevant provisions of the FOI Act and case law considering those provisions;
- e. the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act;
- f. the Administrative Review Council Best Practice Guide on Internal Review, *Internal Review of Agency Decision Making*, Report No. 44 (2000), Chapter 8; and
- g. the submissions on behalf of the person whose personal information was within the scope of your request.

Reasons for Decision

Searches Undertaken and documents identified

Searches undertaken

In responding to your initial FOI request, a search of the Court's records was conducted by Corporate Services staff of the Court. Those staff searched electronic folders and other relevant records for the period prior to and subsequent to the publication of the article in the Australian Financial Review on 23 April 2016.

The staff conducting these searches had each been involved in either the preparation of the Federal Court Media Statement, the content of which was reported in the relevant article, or were aware of consultations regarding the establishment of the National Court Framework.

During the initial search, it became apparent that some documents that might have fallen within the scope of your request may have been deleted from relevant Microsoft Outlook folders. The regular deletion of emails from these folders is part of the Court's normal administrative practice for managing the size of individual electronic mailboxes and consistent with normal administrative practice authorised under paragraph 24(2)(c) of the Archives Act 1983 (Cth). Requests were made for the recovery of those documents by the Court's Infrastructure Solutions Team from the electronic archive and/or back-up systems. Those recovery attempts are now complete. No additional documents within the scope of your FOI request could be recovered from the electronic archive and/or back-up systems. Those documents, if they did exist, no longer exist, having been disposed of appropriately in accordance with the Court's normal administrative practice for managing the size of individual electronic mailboxes and consistent with normal administrative practice authorised under paragraph 24(2)(c) of the Archives Act 1983 (Cth).

I am satisfied that the Court, by taking the actions outlined above, has taken all reasonable steps to find any documents related to the Court's role in the publication of the article in the Australian Financial Review, related to alleged discussions between the Court and the Commissioner of Taxation on fast tracking multinational tax avoidance cases or in any other way related to that article pursuant to your FOI request. I am also satisfied that no additional documents related to the article, with the exception of certain correspondence from a Mr Andrew Garrett considered below, exist or can be found.

Since your application for internal review further searches have been undertaken by the Court. These searches were undertaken by District Registry and Principal Registry staff. Those staff searched electronic folders and other relevant records of the Court, including litigation files and individual electronic mailboxes. The searches were focussed on identifying documents within your wider submissions.

Documents identified

The documents identified fit within the following categories:

- correspondence initially identified and provided in response to your FOI request;
- · correspondence from Mr Garrett specifically identifying the relevant article; and
- 'allegations of any breaches of the principles of Separation of Powers and proper application of Rule of Law by the Court and the Commissioner which matters involve criminal breaches of s 42 and s 43 of the Crimes Act 1914 (Cth) and chapter 2 of the Criminal Code as indictable offences'.

Application of the FOI Act

As previously indicated by the Court in response to your FOI request, the FOI Act has a very limited application to the Federal Court.⁵ It does not apply to Judicial Officers.⁶ or to any documents relating to the handling of complaints about Judicial Officers.⁷ Although the

⁵ see paragraphs 1.6 - 2.8 of the FOI Guidelines

⁶ paragraph 5(1)(b) of the FOI Act ⁷ subsections 5(1A) to 5(1C) of the FOI Act

Federal Court is a "prescribed authority" for the purposes of the FOI Act,8 the only request that can validly be made to it under that Act is to access a "document of an administrative nature".9

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase "matters of an administrative nature" and held that it refers to documents that concern the "management and administration of office resources, such as financial and human resources and information technology". 10

To the extent that your request seeks documents, not held by judicial officers, that concern the management and administration of office resources, I am satisfied that such documents can be accessed under the FOI Act.

Correspondence initially identified and provided in response to your FOI request

I am satisfied that the correspondence initially identified and provided by the Court in response to your FOI request is a document of an administrative nature falling within the scope of your request for which access may be requested under the FOI Act.

Correspondence from Mr Garrett specifically identifying the relevant article

The email correspondence you provided from Mr Garrett dated 25 April 2016 attaching the relevant article was identified as part of the subsequent search conducted by the Court following your application for internal review and further submissions. It is related to the article only in that it makes reference to, and attaches, the article.

This email, addressed to Justice Kenny and others, is specifically related to litigation within the Court and clearly references the actions of Justice Kenny in those proceedings as well as actions taken in VID129/2015.

Whilst it is clear that you are already in possession of the email, it is equally clear that this is not a document that can be accessed under the FOI Act. Pursuant to s 5(1) of the FOI Act and following the decision of the High Court in Kline v Official Secretary to the Governor General of Australia & Anor, I am satisfied that this document is directly related or associated to Court proceedings and not a document to which the FOI Act applies. It is not a document which concerns the management and administration of registry or office resources.

To the extent that your FOI request seeks access to documents held by judicial officers or documents directly related or associated to Court proceedings, I am satisfied that these are not documents to which the FOI Act applies as they are not documents which concern the management and administration of registry or office resources. Your request to access these documents is refused.

Allegations involving criminal breaches of s 42 and 43 of the Crimes Act 1914 (Cth)

paragraph 5(1)(a) FOI Act

⁹ section 5 FOI Act

¹⁰ see [41] with examples at [13]

I do not accept your submission that the scope of your FOI request is sufficiently wide to include:

'allegations of any breaches of the principles of Separation of Powers and proper application of Rule of Law by the Court and the Commissioner which matters involve criminal breaches of s 42 and s 43 of the Crimes Act 1914 (Cth) and chapter 2 of the Criminal Code as indictable offences'.

At its widest, the scope of your FOI request includes documents related to any special talks about fast-tracking multinational tax avoidance cases that might have been held between the Tax Commissioner and the Federal Court. The existence of such talks between the Court and the Commissioner of Taxation was denied in the article. No documents relating to these alleged talks were identified in the searches conducted by the Court.

Notwithstanding, the follow up searches undertaken by the Court following your application for internal review did identify documents making an allegation involving breaches of s 42 and s 43 of the *Crimes Act 1914*. Those documents consisted of an interlocutory application and correspondence related to that interlocutory application. The further email correspondence you have provided from Mr Garrett falls within this category.

Pursuant to s 5(1) of the FOI Act and following the decision of the High Court in Kline v Official Secretary to the Governor General of Australia & Anor, I am satisfied that these documents are directly related or associated to Court proceedings and not documents to which the FOI Act applies. They are not documents which concern the management and administration of registry or office resources.

To the extent that you FOI request seeks access to documents held by judicial officers or documents directly related or associated to Court proceedings, I am satisfied that these are not documents to which the FOI Act applies as they are not documents which concern the management and administration of registry or office resources. To the extent that your FOI request seeks access to these documents your request is refused.

Not conditionally exempt under s 47F(1)

I am satisfied that the correspondence initially identified and provided in response to the FOI request is not conditionally exempt under s 47F(1) for the reasons identified by the Court in its decision of 25 January 2018. I am therefore satisfied that it would be appropriate to affirm the Courts decision of 25 November 2017 to provide access to this document.

Charges

You have not been charged for the processing of your request.

Complaints

Under s 70 of the FOI Act you may complain in writing to the Information Commissioner about an action taken by the Court in the performance of functions or the exercise of the powers under the FOI Act.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely



Michael Wall
District Registrar (NSW & ACT)

To:	External FOI
Subject:	Freedom Of Information
Date:	Wednesday, 13 December 2017 5:57:05 PM
I am writing	this email to apply for court records under the freedom of information act. My
name is	and current address is
	i am needing my court records involving any and all domestic
violence cha	rges that were placed against my ex partner
	address unknown and also requesting copies of any and all previous
	d violence orders that were placed on him. i am currently on sole parent
pension and	i am unable to pay for this.
Event Numb	ers
My contact of	details are as follows:
Mobile numl	ber:

From:

Email:



Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

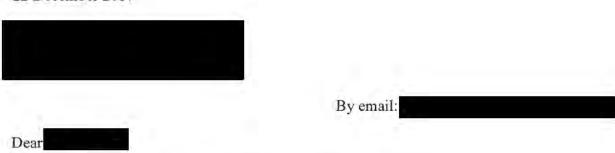
A.B.N. 49 110 847 399

Your Ref:

22 December 2017

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Freedom of Information Request

I am writing to advise you of my decision about your request under the *Freedom of Information Act 1982* (**FOI Act**) for access to documents which you sent to the Federal Court of Australia (Federal Court) on 13 December 2017.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request.

Scope of Request

You request access to documents of the Federal Court relating to 'any and all domestic violence charges that were placed against ...

You also request any and all apprehended violence orders made against

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 - 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act). Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act (Paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase "matters of an administrative nature" and held that it refers to documents that concern the "management and administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

Decision

As request relates to materials that constitute a court file they are not documents of an administrative nature and are not available under the FOI Act.

Accessing the Documents

Access to documents on Federal Court files are available under the Federal Court Rules 2011 upon payment of prescribed fees, subject to various exemptions. However the Federal Court is predominantly a commercial court and it does not deal with domestic violence matters. I suggest it is the Local Court of NSW which will hold and can provide you with the records you are seeking.

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

External Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: www.oaic.gov.au

post: GPO Box 5218, Sydney NSW 2001

fax: +61 2 9284 9666 email: enquiries@oaic.gov.au

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Yours sincerely

John Mathieson

Deputy Principal Registrar



Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906 DX 613 SYDNEY

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

24 April 2018

	By email:	
Dear		

Application for Internal Review under Freedom of Information Act

The purpose of this letter is to advise you of my decision following your application for internal review of the Federal Court of Australia's decision on 26 February 2018 to refuse you access to documents requested under the *Freedom of Information Act 1982* (FOI Act).

Background

In an email you sent addressed to the Chief Justice of the Court and myself on 16 December 2017 you said, in part:

I ask you to consider this communique as an application in writing under the provisions of the FOI Act for a copy of any document or thing of an Administrative Character related to me and/or entities related to be [sic] for the period 22^{nd} January 2016 until today's date. Those documents or things ought [sic] include emails, minutes of meetings, notes of conversations on the home [sic] or otherwise related to me and in particular with reference to your decision dated 28 November 2017 and subsequently.

On 21 December 2017 the Court acknowledged receipt of your request under the FOI Act (FOI request) of 16 December 2017 and advised that due to the scope of that request, in conjunction with an additional request you had made on 25 November 2017, an application was made to the Australian Information Commissioner for an extension of time for the processing of those requests.

On 21 December 2017 the Australian Information Commissioner granted the Court an extension of time under subsection 15AB(2) of the FOI Act in respect of both FOI requests to close of business on 26 February 2018.

On 26 February 2018 Deputy District Registrar Tredwell, an officer authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to FOI requests, decided that the FOI Act does not apply to a range of documents otherwise within the scope of the FOI request due to the operation of s 5(1) of the FOI Act. The documents to which access was refused included documents directly related or associated with Court proceedings or in the custody or possession of Judicial Officers, and originating applications not accepted for filing and associated documents.

Registrar Tredwell also granted access to a range of documents, being all other documents held by the Court within the scope of your FOI request. Those documents were identified in Schedule A of the decision of the Court dated 26 February 2018.

In an email you sent to Registrar Tredwell on 20 March 2018 you requested an internal review of that decision be undertaken by the Supreme Court of Hong Kong under contract to the Federal Court under s 18A of the Federal Court of Australia Act 1976 (Cth).

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to applications for internal review of decisions regarding Freedom of Information (FOI) requests made to the Federal Court.

As identified above, you have requested that the internal review be undertaken by the Supreme Court of Hong Kong under contract to the Federal Court under s 18A of the Federal Court of Australia Act.

As relevant, subsection 23(2) of the FOI Act provides that a decision in respect of a request made to a court may be made on behalf of that court by the principal officer of that court or, subject to regulations, by an officer of that court acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the principal officer of that court.

I am lawfully able to make a decision in respect of your application for internal review. There is no evidence to suggest that I have an actual bias. In addition, there is nothing to suggest that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial mind to the making of a decision in response to your FOI request (see *Burgess v Minister for Immigration and Border Protection* [2018] FCA 69 at [34] and *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337 at [6]).

In circumstances where an officer of the Court, authorised by the principal officer, is available and lawfully able to make the decision, there is no necessity to consider entering into an arrangement for that decision to be made by a person outside the Court. As noted by Registrar Tredwell in other correspondence, the Supreme Court of Hong Kong was abolished on 1 July 1997 and has since existed as the High Court of the Hong Kong Special Administrative Region.

Grounds for Review

In your email of 20 March 2018 you provide a list of 30 grounds for review of the original decision of the Court dated 26 February 2018. The internal review process under the FOI Act is a merit review process. The review officer can decide all issues raised by the applicant's FOI request, and exercise all the powers available to the original decision maker (paragraph 9.34 of the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act). The decision of internal review is a fresh decision (section 54C FOI Act).

To trigger the internal review process requires only that the applicant provide a written application within time where there has been an 'access refusal decision' made in relation to a request to an agency for access to a document (sections 54 and 54B of the FOI Act).

As relevant, section 53A of the FOI Act defines an 'access refusal decision' to include:

- (b) a decision giving access to a document but not giving access to all documents to which the request relates; and
- (c) a decision purporting to give, in accordance with the request, access to all documents to which the request relates, but not actually giving that access.

In your internal review application you make the following statements:

Amongst the documents of an administrative nature that are absent from your decision dated 26th February 2016 is the attached email to the Chambers of Beach J dated 18th February 2016 in response to the email from chambers dated 17th February 2016 (copy attached).

I am satisfied that the basis for your review application is therefore an 'access refusal decision' and I shall proceed on that basis.

Decision and Reasons

In undertaking this internal review I have had regard to:

- a. the terms of your request for internal review;
- b. the submissions included within your request for internal review;
- c. the content of the identified documents within the scope of your request;
- d. the relevant provisions of the FOI Act and case law considering those provisions;
- e. the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and
- f. the Administrative Review Council Best Practice Guide on Internal Review, *Internal Review of Agency Decision Making*, Report No. 44 (2000), Chapter 8.

Searches undertaken

As identified in the Court's decision of 26 February 2018, the searches undertaken by the Court to identify documents within the scope of your FOI request were extensive and exhaustive. These searches were undertaken in conjunction with searches undertaken in response to your FOI request of 25 November 2017. Searches were conducted of the electronic and hard copy files of every relevant District Registry and the Principal Registry of the Federal Court, 32 litigation files related to you and associated entities as well as files associated with rejected originating applications, applications for fee waiver, complaints and FOI requests. The search also included the open email accounts of all current and recent Federal Court staff. Consistent with the FOI Guidelines no search was undertaken of closed email accounts that could only be accessed via back-up systems.

I am satisfied that all reasonable steps have been taken to find any and all documents within the scope of your FOI request.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court (paragraphs 2.6 - 2.8 of the Guidelines). It does not apply to Judicial Officers (paragraph 5(1)(b) of the FOI Act) or to any documents relating to the handling of complaints about Judicial Officers (subsections 5(1A) to (1C) of the FOI Act). Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act (paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] considered the meaning of the phrase "matters of an administrative nature". In the joint judgment given by the Chief Justice and Justices Crennan, Kiefel and Bell dismissing the appeal to the High Court, this was described as documents which concern the management and administration of office resources, such as financial and human resources and information technology (see [41] with examples at [13]). That judgment also makes it clear that, in the view of those judges, documents held by a federal court relating to individual cases can never be characterised as documents "relating to 'matters of an administrative nature" (see [51]).

In a separate judgment, also dismissing the appeal, Justice Gageler distinguished between the exercise of substantive powers and functions and "administrative matters" which provide logistical support (or infrastructure of physical necessities or resources or platforms (see [74]). In illustration, using the example of the Governor-General's performance of a ceremonial function at a remote location, he observes that documents relating to travel by and accommodation for the Governor-General and his or her entourage would be within the scope of the FOI Act but that documents relating to the Governor-General's participation in the ceremony, generic or specific and whether prepared or received by the Governor-General or by the Official Secretary before or after the Governor-General's participation in the particular ceremony, would not relate to matters of an administrative nature and would be outside of the scope of the FOI Act.

I am satisfied that, pursuant to paragraph 5(1)(b) of the FOI Act, the FOI Act does not apply to any document that is in the control or possession of a Judicial Officer, and that to the extent that your FOI request sought to access these documents your request is refused.

I am also satisfied that all documents that were lodged, filed, received or created for the purposes of or in connection with the various proceedings you have commenced or sought to commence or in which you were otherwise a party, including documents in relation to any matter ancillary or preparatory to the exercise of any of the Court's powers or functions in relation to such proceedings, regardless of their source and nature cannot 'relate to matters of an administrative nature' within the meaning of section 5 of the FOI Act, are outside of the scope of the FOI Act and no valid FOI request can be made in relation to them.

The documents for which no valid FOI request can be made include a range of correspondence from you either addressed to the Court, or to the parties for various Court proceedings to which you, or entities to which you were associated, were a party. The correspondence you have attached to your request for internal review, being an email from yourself to Justice Beach in respect of and raising matters associated with proceedings

is not a document for which a valid FOI request can be

made.

I have decided to refuse access to those documents sought pursuant to your FOI request for which the FOI Act does not apply due to the operation of s 5(1) of the FOI Act. This includes documents directly related or associated with Court proceedings or in the custody or possession of Judicial Officers, and originating applications not accepted for filing and associated documents.

My decision on internal review affirms the decision of Registrar Tredwell set out in his letter dated 26 February 2018. In summary my decision is that:

- the basis of your review application is an 'access refusal application';
- all reasonable steps have been taken to find any and all documents within the scope of your FOI request;
- the FOI Act does not apply to any document that is in the control or possession of a
 judicial officer, and that to the extent your FOI request sought access to these
 documents, your request is refused; and
- all documents that were lodged, filed, received or created for the purposes of or in
 connection with the various proceedings you have commenced or sought to
 commence or in which you were otherwise a party, including documents in relation to
 any matter ancillary or preparatory to the exercise of any of the Court's powers or
 functions in relation to such proceedings, regardless of their source and nature cannot
 "relate to matters of an administrative nature" within the meaning of section 5 of the
 FOI act, are outside of the scope of the FOI Act and no valid FOI request can be made
 in relation to them.

Charges

You have not been charged for the processing of your request.

Complaints

Under s 70 of the FOI Act you may complain in writing to the Information Commissioner about an action taken by the Court in the performance of functions or the exercise of the powers under the FOI Act.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

John Mathieson Deputy Principal Registrar



16 January 2018

By Email: foi@fedcourt.gov.au

Deputy Principal Registrar Principal Registry Federal Court of Australia Level 16, Law Courts Building Queens Square Sydney NSW 2000

Dear Sir/Madam,

We act on behalf of a unit of a named employer, in a matter relating to the above-named individual.

We request, pursuant to the Freedom of Information Act, any information relating to proceedings involving In particular, we request copies of any of the following:

- 1. Applications made on his behalf or against him;
- 2. Affidavits which formed part of those proceedings;
- Orders of the Court;
- 4. Any other information relevant to the proceedings involving

We look forward to hearing from you as soon as possible.



Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906 DX 613 SYDNEY

Your Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

16 January 2018



By email:

Dear

Freedom of Information Request

I am writing to advise you of my decision about your request under the *Freedom of Information Act 1982* (**FOI Act**) for access to documents which was sent on your behalf to the Federal Court of Australia (**Federal Court**) on 16 January 2018.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request.

Scope of Request

You request access to 'any information relating to proceedings involving and request copies of applications made on his behalf or against him, affidavits which formed part of the proceedings in which those applications were brought, any orders of the Court in relation to those proceedings and any other information relevant to the proceedings involving

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 - 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, available at: https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act). Although the Federal Court is a 'prescribed authority' for the purposes of the FOI Act (Paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a 'document of an administrative nature' (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase 'matters of an administrative nature' and held that it refers to documents that concern the "management and administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

Decision

Your request relates to documents that constitute a court file. These are not documents of an administrative nature and are not available under the FOI Act. Access to documents relating to proceedings in the Court are governed, not by the FOI Act, but the Federal Court of Australia Act 1976 and the Federal Court Rules 2011.

Accordingly, your request for access to those documents under the FOI Act is refused.

Nonetheless, I have conducted an electronic search of all past and current proceedings in the Federal Court and have been unable to identify any matter in which a person with any combination of the first name of with or without any other names, the family name of and the date of birth was, or is, a party.

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

External Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online:

www.oaic.gov.au

post:

GPO Box 5218, Sydney NSW 2001

fax:

+61 2 9284 9666

email:

enquiries@oaic.gov.au

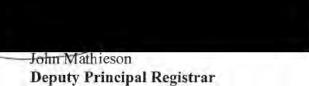
in person;

Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Yours sincerely



From:
To: External FOI

Subject: From:- Re:- FOI Request.

Date: Thursday, 19 April 2018 12:54:59 PM

Dear Sir/Madam,

I hereby make application for one (1) record that should be being held by the Federal Court of Australia. The record which I seek is a court listing. I make application for the purposes of the Freedom of Information (FOI) Act 1982. Ultimately I would like to apply for a transcript of proceeding as well as a copy of a Deed of Release document. To assist, I have had two (2) matters before the Federal Court of Australia Adelaide with both attended by Justice Charlesworth. I attended last year for the second time. The more distant matter would have been in about 2007 or 2009 by guestimate, and, for clarity, it is that record which I seek. I have already received reply from the Federal Court of Australia Adelaide in seeking the record of court listing, however the request for information was not under the Freedom of Information (FOI) Act. I now make that more formal application.

I look forward to receiving reply.

Sincerely,

.

Sent from my Samsung Galaxy smartphone.



Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906 DX 613 SYDNEY

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

27 April 2018

	By email:
Dear	

Request under Freedom of Information Act

I refer to your email of 19 April 2018 to the Federal Court of Australia in which you have sought access to the following documents under the *Freedom of Information Act 1982* (Cth) (FOI Act):

I hereby make application for one (1) record that should be being held by the Federal Court of Australia. The record which I seek is a court listing. I make application for the purposes of the Freedom of Information (FOI) Act 1982. Ultimately I would like to apply for a transcript of proceeding as well as a copy of a Deed of Release document. To assist, I have had two (2) matters before the Federal Court of Australia Adelaide with both attended by Justice Charlesworth. I attended last year for the second time. The more distant matter would have been in about 2007 and 2009 by guestimate, and, for clarity, it is that record which I seek – I was homeless at the time.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to requests under the FOI Act (FOI requests).

Decision and Reasons

In undertaking this internal review I have had regard to:

- a. the terms of your request for internal review;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court (paragraphs 2.6 - 2.8 of the FOI Guidelines). It does not apply to Judicial Officers (paragraph 5(1)(b) of the FOI Act) or to any documents relating to the handling of complaints about Judicial Officers (subsections 5(1A) to (1C) of the FOI Act). Although the Federal Court is a "prescribed authority" for the

purposes of the FOI Act (paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase "matters of an administrative nature". In the joint judgment given by the Chief Justice and Justices Crennan, Kiefel and Bell dismissing the appeal to the High Court, this was described as documents which concern the management and administration of office resources, such as financial and human resources and information technology (see [41] with examples at [13]). That judgment also makes it clear that, in the view of those judges, documents held by a federal court relating to individual cases can never be characterised as documents "relating to matters of an administrative nature" (see [51]).

In a separate judgment, also dismissing the appeal, Justice Gageler distinguished between the exercise of substantive powers and functions and "administrative matters" which provide logistical support (or infrastructure of physical necessities or resources or platforms (see [74]). In illustration, using the example of the Governor-General's performance of a ceremonial function at a remote location, he observes that documents relating to travel by and accommodation for the Governor-General and his or her entourage would be within the scope of the FOI Act but that documents relating to the Governor-General's participation in the ceremony, generic or specific and whether prepared or received by the Governor-General or by the Official Secretary before or after the Governor-General's participation in the particular ceremony, would not relate to matters of an administrative nature and would be outside of the scope of the FOI Act.

A court listing is not a document of an administrative nature because it is not a document that concerns the management and administration of the office resources of the Court. A court listing is specifically created for the purpose of or in connection with a specific proceeding. I am therefore satisfied that a court listing cannot "relate to matters of an administrative nature" within the meaning of section 5 of the FOI act, that any such listing is outside of the scope of the FOI Act and no valid FOI request can be made in relation to them.

Searches Undertaken

In responding to your FOI request, searches were undertaken of the Court's Casetrack database and the Commonwealth Court's Portal. The Commonwealth Court's Portal may be accessed by any member of the public and is located at www.comcourts.gov.au.

Whilst these searches identified a recent proceeding, no further Federal Court proceeding relating to you could be identified based on the information provided in your request.

I am satisfied that by conducting these searches the Court has taken all reasonable steps to find the document you have requested and that the document either cannot be found or does not exist. Consequently, if the court listing was a document relating to matters of an administrative nature that could be requested under the FOI Act, your request would nonetheless be refused on the basis that all reasonable steps were taken to find the document and it could not be found or does not exist.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

John Mainteson

Deputy Principal Registrar

From: External FOI To:

Subject: Freedom of Information Request Date: Monday, 25 June 2018 12:48:19 PM

image001.png image002.ipg Attachments:

To whom it may concern,

This is an application for the purposes of the FOI Act.

I am seeking the Statement of Claim document filed by the Australian Competition and

Consumer Commission on the 8th June 2018 in the Federal Court if Australia, Victoria Registry for case

This can either send as a hard copy to





Telephone: (02) 9230 8341 Facsimile: (02) 9223 1906 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref:		
0.00		

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

25 June 2018



By email:

Dear

Freedom of Information Request - VID 430 of 2017

I am writing to advise you of my decision about your request under the *Freedom of Information Act* 1982 (FOI Act) for access to documents which was sent on your behalf to the Federal Court of Australia (Federal Court) on 25 June 2018.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request.

Scope of Request

You request access to a Statement of Claim document filed by the Australian Competition and Consumer Commission on 8 June 2018 in the proceeding

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 – 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, available at: https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act). Although the Federal Court is a 'prescribed authority' for the purposes of the FOI Act (Paragraph 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a 'document of an administrative nature' (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase 'matters of an administrative nature' and held that it refers to documents that concern the "management and administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

Decision

Your request relates to documents that constitute a court file. These are not documents of an administrative nature and are not available under the FOI Act. Access to documents relating to proceedings in the Court are governed, not by the FOI Act, but the Federal Court of Australia Act 1976 and the Federal Court Rules 2011.

Specifically, requests for documents that constitute a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents that constitute a court file can be found on the Federal Court's website at http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

Accordingly, your request for access to the Statement of Claim requested under the FOI Act is refused.

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

External Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: www.oaic.gov.au

post: GPO Box 5218, Sydney NSW 2001

fax: +61 2 9284 9666 email: enquiries@oaic.gov.au

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Vours sincerely

John Mathieson

Deputy Principal Registrar



From:

Sent: Monday, 16 July 2018 6:53 PM

To: External FOI <External.FOI@fedcourt.gov.au>

Subject: FOI Application

Attn: Freedom of Information Officer, Federal Court of Australia

Dear FOI Officer,

I make this application under the Freedom of Information Act.

I request all information and documentation pertaining to handling and administrative processing of my application since lodgement at the Federal Court of Australia (Perth District) on 5 July 2018.



Telephone: (07) 3248 1100

Facsimile: (07) 3248 1260 (General)

(07) 3248 1240 (Approved for Document Filing)

Email: qldreg@fedcourt.gov.au

Your Ref: Our Ref: FEDERAL COURT OF AUSTRALIA QUEENSLAND DISTRICT REGISTRY

HARRY GIBBS COMMONWEALTH LAW COURTS

119 NORTH QUAY

BRISBANE QLD 4000

PO BOX 13084 GEORGE STREET BRISBANE QLD 4003

23 July 2018

	By email:	
Dear		7

Request under Freedom of Information Act

I refer to your email of 16 July 2018 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act).

In your email of 16 July 2018 you make the following request (FOI request):

I request all information and documentation pertaining to handling and administrative processing of my application since lodgement at the Federal Court of Australia (Perth District) on 5 July 2018.

Authorised decision-maker

I am authorised under section 23(1) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to those documents sought pursuant to your FOI request. This is because the FOI Act does not apply to Court documents due to the operation of s 5(1) of the FOI Act. This includes:

- your originating application not accepted for filing and associated documents; and
- internal correspondence generated within the Court's eLodgment System.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner;

Reasons for Decision

Searches undertaken and documents identified

Searches undertaken

In responding to your FOI request, searches were undertaken of the Court's eLodgment system. Discussions were also undertaken with relevant court staff to determine if any additional documents existed. I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested. I am also satisfied that the Court has identified all documents within the scope of your request.

Documents identified

The documents identified as coming within the scope of your request included:

- your originating application not accepted for filing and associated documents; and
- internal correspondence generated within the Court's eLodgment System.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".⁶

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of

 $^{^{1}}$ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

support was the management and administration of office resources, such as financial and human resources and information technology. The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. ¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. ¹³

Pursuant to s 5(1) of the FOI Act and following the decision of the High Court in Kline v Official Secretary to the Governor General of Australia & Anor, I am satisfied that any documents directly related or associated with an originating application that was not accepted for filing were all lodged, received or created in connection with a proceeding which you sought to commence. These documents are not, following Kline v Official Secretary to the Governor General of Australia & Anor, documents relating to the management and administration of registry and office resources.

I am satisfied that these documents, which include, but are not limited to, the originating application that was sought to be filed, any accompanying material, and internal correspondence generated within the Court's eLodgment system are not matters of an

⁹ at [47]

⁸ at 13]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

administrative nature pursuant to s 5(1) of the FOI Act. They are not accessible under the FOI Act and your FOI request is therefore refused.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerel

Scott Tredwell

Judicial Registrar

 From:
 External FOI

 To:
 Bcc:

 Libby Cooper

Subject: RE: Freedom of Information Request

Date: Monday, 22 October 2018 3:25:48 PM

For Official Use Only				
Dear ,				
The Federal Court of Australia (FCA) acknowledges receipt of your email, in which you seek access to a document in relation to a matter instituted in the Federal Circuit Court of Australia (FCCA).				
For the purposes of the <i>Freedom of Information Act 1982</i> , the FCA and the FCCA are distinct agencies.				
Having sought the agreement of the relevant officer in the FCCA, your request for a document relating to FCCA proceeding has been transferred to the FCCA as the subject-matter of the document sought is more closely connected with the function of the FCCA.				
Yours sincerely FOI Officer				
From:				
Sent: Monday, 22 October 2018 12:28 PM				
To: External FOI <external.foi@fedcourt.gov.au> Subject: Freedom of Information Request</external.foi@fedcourt.gov.au>				
To whom it may concern,				
I was hoping to obtain through freedom of information a letter sent by the pro bono barrister assigned to me in the proceeding for their withdrawal of service.				
They had sent this letter directly to the court and I had no opportunity to review the contents.				
As I am appealing the matter which was finally determined, I was hoping to access this letter to understand the reason for the withdrawing of their services since they never made this known to				

I was unsure whether to ask the registry or FOI, so if I have asked the wrong person please let me know.

Best Regards,

me.

-



23 November 2018

Mr John Mathieson
Deputy Principal Registrar
Principal Registry
Federal Court of Australia

By email: foi@fedcourt.gov.au

Request for the Purposes of the Freedom of Information Act 1982 (Cth)

Dear Deputy Principal Registrar,

I am a when he was a Judge of the Court.

Pursuant to the provisions of the Freedom of Information Act 1982 (Cth), I wish to apply to access copies of the following documents:

- any and all letter/s offering me employment at the Court;
- · any and all contracts in respect to my employment at the Court;
- Federal Court of Australia Certified Agreement 2002–2005; and
- any and all records pertaining to superannuation offered and/or paid to me during the
 period of my employment at the Court, including whether I was offered membership of the
 Public Sector Superannuation Scheme (PSS), whether I accepted such an offer, details of any
 applicable PSS membership number and details of the fund where payments were made.

Thank you for considering my request. My postal and email addresses are provided above and you may reply at whichever is more convenient.

Yours sincerely

Original Message From:
Sent: Thursday, 22 November 2018 11:52 AM To: FOI Requests
Subject: Freedom of Information request -
Dear Attorney-General's Department,
I bought a case before the Federal Court of Australia and require all transcripts and documents in relation to
The File Number is
Please provide this information to me.
Yours faithfully,





Telephone: (02) 9230 8341 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref:	

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

ar	A T	4	201	0
26	Nove	mber	20	- 8

4/		
	By email:	

Dear

Freedom of Information Request - SAD 338 of 2016

On 22 November 2018, you sent correspondence to the Commonwealth Attorney-General's Department (the AGD) in which you made a request under the *Freedom of Information Act 1982* (FOI Act). In that correspondence you requested 'all transcripts and documents in relation to

On 26 November 2018, the AGD transferred your request to the Federal Court of Australia (Federal Court) pursuant to section 16(1) of the FOI Act.

I am writing to advise you of my decision about your request for access under the FOI Act (FOI request) as transferred to the Federal Court on 26 November 2018.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of an FOI request.

Scope of Request

You request access to 'all transcripts and documents in relation to

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 – 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, available at: https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act). Although the Federal Court is a 'prescribed authority' for the purposes of the FOI Act (section 5(1)(a)), the only request that can validly be made to it under the FOI Act is to access a 'document of an administrative nature' (section 5).

The High Court of Australia, in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52, considered the meaning of the phrase 'matters of an administrative

nature' and held that it refers to documents that concern the 'management and administration of office resources, such as financial and human resources and information technology' (see [41] with examples at [13]).

Decision

Your request relates to documents that constitute a court file. These are not documents of an administrative nature and are not available under the FOI Act. Access to court documents (e.g. judicial process, affidavits etc) relating to proceedings in the Federal Court are governed by the Federal Court of Australia Act 1976 and the Federal Court Rules 2011 and not by the FOI Act.

Requests for judicial documents that constitute a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. Requests to purchase transcripts can be made to Auscript, the Federal Court's transcript provider.

More information on accessing documents that constitute a court file and purchasing transcripts can be found on the Federal Court's website at http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

Accordingly, your request for documents pursuant to the FOI Act is refused.

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

External Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: www.oaic.gov.au

post: GPO Box 5218, Sydney NSW 2001

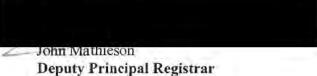
fax: +61 2 9284 9666 email: enquiries@oaic.gov.au

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Yours sincerely





----Original Message----

From:

Sent: Friday, 30 November 2018 9:49 AM

To: FOI Requests

Subject: Internal review of Freedom of Information request -

Dear Attorney-General's Department,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Attorney-General's Department's handling of my FOI request 'Court Transcripts from Hazledine vs A full history of my FOI request and all correspondence is available on the Internet at this address:

I will protest against firstly having to pay \$800 to a third party who I suspect makes a profit in order to obtain information which is of interest to the public.

The case involved myself and for that reason I should be provided with a copy of the transcripts free of charge.

Yours faithfully,







Telephone: (02) 9230 8341 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref:	

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

10 December 2018

By email:

Freedom of Information Act 1982 (FOI Act) - Request for Internal Review

I refer to your correspondence of 30 November 2018, addressed to the Attorney-General's Department (the AGD).

In your correspondence of 30 November 2018, you state:

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Attorney-General's Department's handling of my FOI request

I will protest against firstly having to pay \$800 to a third party who I suspect makes a profit to obtain information which is of interest to the public.

The case involved myself and for that reason I should be provided with a copy of the transcripts free of charge.

Your correspondence to the AGD has been drawn to the attention of the Federal Court of Australia (Federal Court).

Background

On 22 November 2018 you made an FOI request to the AGD. In that FOI request you sought access to 'all transcripts and documents in relation to

The AGD transferred your FOI request to the Federal Court, pursuant to section 16(1) of the FOI Act, on 26 November 2018.

On 26 November 2018, John Mathieson, the Deputy Principal Registrar of the Federal Court, refused your request for access to the documents sought as they were not documents that could be accessed pursuant to the provisions of the FOI Act.

Internal Review Application

I note that, in his correspondence of 26 November 2018 (access refusal decision), the Deputy Principal Registrar stated:

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

Your application for internal review was made to the AGD and not the Federal Court. It was then referred by the AGD to the Federal Court as the agency that made the FOI decision of 26 November 2018. This referral and its acceptance is based on the assumption that your application for internal review is a request pursuant to s 54 of the FOI Act for an internal review of the FOI decision of 26 November 2018 by the Deputy Principal Registrar of the Federal Court. The referral by the AGD was appropriate given there exists no other decision under the FOI Act for which an application for internal review could be made to that agency and such an application for internal review must be conducted by the principal officer or authorised officer of the Federal Court.

For the reasons provided above, I have at your request, conducted an internal review of the access refusal decision of 26 November 2018 pursuant to section 54 of the FOI Act.

Authorised decision-maker

Subsection 23(2) of the FOI Act provides that a decision in respect of a request made to a court may be made on behalf of that court by the principal officer of that court or, subject to regulations, by an officer of that court acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the principal officer of that court.

The principal officer has authorised me to conduct internal reviews of decisions in relation to requests for access to documents. Thus, I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request for internal review.

Review Decision

I have, for the reasons set out below, decided to affirm the decision under review.

In making my decision I have had regard to:

- a. the terms of your application for internal review;
- b. the content of the identified documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions;
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and
- e. the Administrative Review Council Best Practice Guide on Internal Review, *Internal Review of Agency Decision Making*, Report No. 44 (2000), Chapter 8; and

Reasons for decision

As indicated by the Deputy Principal Registrar in the access refusal decision, the FOI Act has a very limited application to the Federal Court.1 Although the Federal Court is a 'prescribed authority' for the purposes of the FOI Act,2 the only request that can validly be made to it under the FOI Act is to access a 'document of an administrative nature'.3

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645 considered the meaning of the phrase 'matters of an administrative nature' and held that it refers to documents that concern the 'management and administration of office resources, such as financial and human resources and information technology'.4

Your request of 22 November 2018 was for 'all transcripts and documents in relation to The scope of your internal review application appears to be limited to that aspect of the access refusal decision by which access to transcripts was denied. However, even if your request for internal review could be construed as being wide enough to cover all other documents sought in your FOI request, it would still not affect the outcome of your application for internal review.

Transcripts and documents related to a legal proceeding in the Federal Court are not documents of an administrative nature. They are not documents that concern the 'management and administration of office resources, such as financial and human resources and information technology'. As such, they cannot be requested pursuant to the provisions of the FOI Act.

In your correspondence of 30 November 2018 you suggested that your involvement in the proceedings in was sufficient reason for you to be provided with a copy of the transcripts free of charge. The extent of your involvement in these proceedings is not a determinative factor in refusing you access to the transcripts or other documents in circumstances where those transcripts and other documents cannot be requested pursuant to the provisions of the FOI Act.

I am satisfied that the Deputy Principal Registrar's decision to refuse access to 'all transcripts and documents in relation to

Accordingly, I affirm the decision of 26 November 2018.

Charges

You have not been charged for the processing of your request.

Complaints

Under s 70 of the FOI Act you may complain in writing to the Information Commissioner about an action taken by the Court in the performance of functions or the exercise of the powers under the FOI Act.

¹ see paragraphs 1.6 - 2.8 of the FOI Guidelines

² paragraph 5(1)(a) FOI Act

³ section 5 FOI Act

⁴ see [41] with examples at [13]

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell Registrar Principal Registry

	nal Message			
From: Sent: Mor	nday, 3 December 2018	3 6:51 PM		

633

Dear Attorney-General's Department,

Please provide a copy of the transcripts for the

This information is in the interest of the public. A full bench made a decision not to proceed with a legitimate Fair Work victimisation Case, with sufficient evidence of discrimination, victimisation, harrassement, sexual harrasment and a sexually hostile environment.

That decision was mad	e on the basis	was double dipping.	was seeking disciplinary
action against the indiv	iduals. In addition, given he	er losses the amount p	aid will prove that there was no dipole
dipping,	suffered a severe breakdow	vn and l	nas intentionally and with malice
defamed	whilst she was trying to rec	cover. This led to furth	ner decay in health and
well being.			
This was supported by	, who was	the	
•			
Both men should be he	ld accountable instead hold	senior positions wher	e they can continue to victimise.
Please provide the trans	scripts.		
L			

Yours faithfully,



Telephone: (02) 9230 8341 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

			FRINCIPAL REGISTRY
Your Ref:			LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000
21 December 2018			
	I		
	By email	1:	
Dear			
	Freedom of Information	Request – SAD 338 o	f 2016
	B, you sent an email to the made a request under the ested AGD to:		-
[p]lease provid	e a copy of the transcripts for t	the	
	de <u>ral Court, under secti</u> on 1	16 of the FOI Act, that	n 11 December 2018, AGD part of your request seeking t in the possession of AGD
is a reference to the a commenced in the So the Federal Court on 6 December 2017		Human Rights Commingistry of the Federal Condition 16 December 2016 claim for unlawful disc	ssion Act 1986 which you burt. Those proceedings in and dismissed by consent crimination. In this regard,
accessorial pr	n application to the Fair Work A covisions of the Fair Work A imployees, exposing those in 09 (Cth)"	Act 2009 (Cth) by certain	of the Respondent's
and that you were:			

635

November 2016 in proceedings

the Fair Work Commission is pending".

"currently awaiting the outcome of a decision of the Full Bench of the Fair Work Commission regarding a jurisdictional objection brought against the Applicant's application to the Fair Work Commission. That appeal heard before the Fair Work Commission on 10

dings , in the matter of in the Fair Work Commission. The decision of the Full Bench of

I am writing to advise you of my decision about that part of your request for access under the FOI Act (**FOI request**) as transferred to the Federal Court on 11 December 2018.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of an FOI request.

Scope of Request

Your FOI request is for a copy of the transcript of hearings held in the Federal Court in proceedings SAD 338 of 2016.

I note that on 22 November 2018, you also made a request under the FOI Act for, amongst other things, all transcripts in relation to that same proceeding; that on 26 November 2018 I refused that request; and on 10 December 2018, Registrar Tredwell, on internal review, affirmed my decision.

Application of the FOI Act

As both I and Registrar Tredwell have previously explained, the FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 – 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, available at: https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act). Although the Federal Court is a 'prescribed authority' for the purposes of the FOI Act (section 5(1)(a)), the only request that can validly be made to it under the FOI Act is to access a 'document of an administrative nature' (section 5).

The High Court of Australia, in *Kline v Official Secretary to the Governor General of Australia & Anor* [2013] HCA 52, considered the meaning of the phrase 'matters of an administrative nature' and held that it refers to documents that concern the 'management and administration of office resources, such as financial and human resources and information technology' (see [41] with examples at [13]).

Decision

Your request relates to transcripts for proceedings SAD 338 of 2016. These are not documents of an administrative nature and are not available under the FOI Act. Access to court documents, including transcripts of hearings, relating to proceedings in the Federal Court are governed by the *Federal Court of Australia Act 1976* and the *Federal Court Rules 2011* and not by the FOI Act.

In addition, as I also explained in my letter to you dated 26 November 2018, transcripts of proceedings in the Federal Court are available for purchase.

Subsection 12(1)(c) of the FOI Act provides that a person is not entitled to obtain access under that Act to any document which is available for purchase by the public in accordance with arrangements made by an agency.

Even if subsection 5(1)(a) of the FOI Act didn't exclude the operation of the FOI Act to transcripts, subsection 12(1)(c) would preclude a valid request being made to obtain transcripts of Federal Court proceedings.

As previously advised, information on purchasing transcript of proceedings is available on the Federal Court's website at http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

External Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: www.oaic.gov.au

post: GPO Box 5218, Sydney NSW 2001

fax: +61 2 9284 9666 email: enquiries@oaic.gov.au

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Yours sincerely

John Mathieson

Deputy Principal Registrar

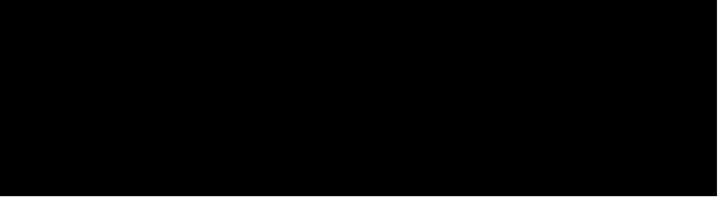
From:
To: External FOI

Subject: Hi, I need some information

Date: Sunday, 23 December 2018 5:58:02 AM

Hi, my name is I am a constitutional law professor and I need crucial information for a research about freedom of information in the judiciary, can you tell me about where to find it? Thanks!

Enviado desde <u>Correo</u> para Windows 10



On Thu, Jan 10, 2019 at 10:37 PM External FOI < External.FOI@fedcourt.gov.au > wrote:

UNCLASSIFIED



My apologies for the delay in response. Unfortunately, your email reached the Court during the 'shut-down period' at the end of the Court term. The Court term has only recently recommenced and that is why I am only now responding to your query.

There are many sources of information relating to freedom of information laws in Australia and the application of those laws to the judiciary. I would encourage you to consider the main item of Commonwealth legislation that governs freedom of information at the federal level of government, the *Freedom of Information Act 1982* (Cth), as a starting point. Very useful information about that Act can be found on the website of the Office of the Australian Information Commissioner at https://www.oaic.gov.au/freedom-of-information/foi-guidelines/.

You may also wish to review the relevant legislative schemes that apply in Australia's States and Territories. Most State and Territory governments maintain online registers of legislation. For example, the State of New South Wales maintains a register of its legislation at https://www.legislation.nsw.gov.au/#/. New South Wales' counterpart of the *Freedom of Information Act 1982* (Cth) is the *Government Information (Public Access) Act 2009* (NSW). The relevant statute can be accessed on the NSW Government's register of legislation.

You may also wish to avail yourself of legal journals, particularly journals that focus on the subject of administrative law in Australia.

Regrettably, I cannot provide you with detailed information on freedom of information laws and the application of those laws to the judiciary in Australia.

Sincerely

FOI Officer

Federal Court of Australia



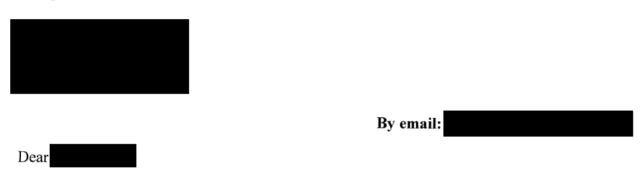
Telephone: (02) 9230 8567 DX 613 SYDNEY

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

24 April 2019



Request under Freedom of Information Act

I refer to your email of 25 March 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 4 April 2019 acknowledging receipt of your request.

In your email of 25 March 2019, you make the following request (FOI request):

- A. I request all documents connected to or related to the so-called pro bono certificate issued, and kept active, between August 2018 and December 2018.
- B. In so far as the CCTV footage captures I am requesting a copy of the 22 February 2019 CCTV footage of the Level 7 Registry of the Melbourne Registry of the Federal Court of Australia (FCA).
- C. I also request all items of correspondence/documents between/among Wheelahan J, Registrars Stone, Allaway, Luxton, Burns and Thomas Stewart, in so far as those documents make reference to me in any form, whether by name or otherwise.
- D. I request a copy of all out of court correspondence between Wheelahan J and any party to the proceedings or their legal representative or other surrogate, in so far as such documents reference
- E. I request a copy of all out of court correspondence between Registrars Stone, Allaway, Luxton, Burns and/or Thomas Stewart and any party to the proceedings or their legal representatives or other surrogate, in so far as such documents reference

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to those documents sought pursuant to your FOI request for which the FOI Act does not apply due to the operation of s 5(1) of the FOI Act. This includes:

- all documents connected to or related to the pro bono certificate issued, and kept active, between August 2018 and December 2018;
- all items of correspondence/documents between/among Justice Wheelahan, Registrars Stone, Allaway, Luxton, Burns and Thomas Stewart, in so far as those documents make reference to by name or otherwise;
- all out of court correspondence between Justice Wheelahan and any party to the proceedings or their legal representatives or other surrogate, in so far as such documents reference
- all out of court correspondence between Registrars Stone, Allaway, Luxton, Burns and/or Thomas Stewart and any party to the proceedings or their legal representatives or other surrogate, in so far as such documents reference

I have decided to refuse access to a copy of the CCTV footage of at the Victorian Registry of the Federal Court, on Level 7 of the Own Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne. I was satisfied that the relevant footage was conditionally exempt under s 47F of the FOI Act and its release against the public interest. Further, it was not reasonably practicable for the Court to edit the footage pursuant to s 22(2) of the FOI Act to enable access to be granted.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the content of the documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been extensive and exhaustive, involving a search of the electronic and hard copy files of the Victorian District Registry of the Federal Court. The search also included the open email accounts of Registrars Stone, Allaway, Luxton, and Burns as well as those of Thomas Stewart.

Discussions were also undertaken with relevant court staff to determine if any additional documents existed. I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested. I am also satisfied that the Court has identified all documents within the scope of your request.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁷

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology. The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in

⁶ at [19]

⁷ at [41]

8 at 13]

⁹ at [47]

 $[\]frac{1}{2}$ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

¹⁰ (2008) 170 FCR 382

nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. 11

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

All documents connected to or related to the pro bono certificate issued, and kept active, between August 2018 and December 2018

A Referral Certificate certifying that Justice Steward had determined that	be
referred for legal assistance under rule 4.12 of the Federal Court Rules 2011 was issued or	i 14
August 2018 in both of	

Subsequent to the issuing of a referral certificate, the Court commenced the process of seeking a pro bono lawyer to accept the brief to provide assistance in these proceedings. On 5 November 2018 you made a party request for the following documents pursuant to Rule 2.32(1) of the Federal Court Rules:

- all outcomes and processes of approaches to lawyers
- any other documents not barred under the Freedom of Information Act1982; and
- all court transcripts were provided for.

On 7 November 2018, Judicial Registrar Ryan advised that the registry's communications as part of this process had been by telephone and no documents had been generated. Judicial Registrar Ryan also advised that in any event, such documents would not be "documents in the proceeding" for the purpose of any request for documents under r 2.32(1) of the Rules.

Pursuant to s 5(1) of the FOI Act and following the decision of the High Court in Kline v Official Secretary to the Governor General of Australia & Anor, I am satisfied that any documents connected to or related to the referral certificates issued on 14 August 2018 are not documents relating to the management and administration of registry and office resources. These documents, whilst not documents in the relevant proceeding for the purposes of the Federal Court Rules, are documents specifically related to those proceedings within the Court.

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¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

I am satisfied that these documents are not matters of an administrative nature pursuant to s 5(1) of the FOI Act. They are not accessible under the FOI Act and your FOI request, to the extent that it seeks such documents, is therefore refused.

In so far as the CCTV footage captures the 22 February 2019 CCTV footage of the Level 7 Registry of the Melbourne Registry of the Federal Court of Australia

CCTV footage may constitute a document for which a request may be made under the FOI Act. 14 The Court identified CCTV footage of the reception desk of the Victorian District Registry of the Federal Court falling within the scope of this FOI request. The specific footage covered a period of approximately 30 minutes from 4:25 pm local time on 22 February 2019.

Personal Information of Third Parties

In addition to the footage contains images of third parties who were also present at the reception desk of the Victorian District Registry of the Federal Court during the relevant period. The images of these third parties may amount to personal information.

Section 4 of the FOI Act provides that 'personal information' has the same meaning as in the Privacy Act 1988 (Cth) (the Privacy Act). Section 6 of the Privacy Act provides:

Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

The OAIC FOI Guidelines provide that:

what constitutes personal information will vary, depending on whether an individual can be identified or is reasonably identifiable in particular circumstances. For particular information to be personal information, an individual must be identified or reasonably identifiable. 15

There is clear authority that third parties will be readily identifiable where their faces are in focus and clearly visible, and in such circumstances the footage contains personal information of those third parties.¹⁶

I am satisfied that the faces of the third parties visible in the footage are in focus and clearly visible and that the footage therefore contains the personal information of a number of third parties.

Conditionally Exempt under s 47F FOI Act

As relevant section 47F of the FOI Act provides as follows:

(1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

¹⁴ see s 4 FOI Act definition of document and 2.30 OAIC FOI Guidelines

¹⁵ OAIC FOI Guidelines paragraph 6.131

¹⁶ See Kelvin Bissett and Department of Human Services [2015] AICmr 10; and 'BZ' and

- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.

In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 stated that:

... whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

I am satisfied that the identified CCTV footage is conditionally exempt pursuant to s 47F of the FOI Act because its disclosure would involve the unreasonable disclosure of the personal information for each of those third parties who can be identified or who are reasonably identifiable in that footage. In reaching that conclusion I have taken into consideration that:

- the presence of the individuals in the registry of the Federal Court on 22 February 2019 is not well known;
- those individuals are not known to be associated with the matters dealt with in the CCTV footage;
- the information is not available from publicly accessible sources, being captured only on CCTV footage that is created privately and solely for the purposes of the security of the public and staff within the Victorian Registry of the Federal Court in Melbourne;
- it is unlikely that those third parties whose personal information is captured on the footage would wish to have that information disclosed without their consent, and in the circumstances in which the information has been captured the Court has no ability to determine whether consent might be granted; and
- the public interest in protecting the privacy of individuals captured on CCTV security footage.

Public Interest Test

Where a document is conditionally exempt, access must be given unless in the circumstances giving access would, on balance, be contrary to the public interest. ¹⁷

I am satisfied, having reviewed the CCTV footage, that there are two factors favouring access being granted to the CCTV footage, namely:

- the promotion of the objects of the FOI Act; and
- allowing Darron Thomas access to his personal information.

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¹⁷ section 11A(5) FOI Act

I am not satisfied that disclosure of the relevant footage will inform debate on a matter of public importance; nor will it promote effective oversight of public expenditure. Further, it will not contribute to the administration of justice generally, including procedural fairness, or advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.

The public interest factors against disclosure include the prejudice that such access would cause to the protection of the individual rights to privacy of persons who attend the Victorian Registry of the Federal Court in exercising their rights to access justice.

In weighing the public interest factors for and against disclosure, I am satisfied that the public interest in protecting the rights to privacy of persons who attend a Court to exercise their rights to access justice, outweigh the promotion of the objects of the FOI Act and allowing an individual to access their personal information captured on CCTV footage. The protection of the right to privacy and access to justice are significant cornerstones upon which the administration of Australian society relies.

Edited Copy

Section 22(2) of the FOI Act requires an agency to give an applicant access to an edited copy of an exempt document, with the exempt matter deleted, if reasonably practicable.

Significant efforts were undertaken by the Court to edit the identified CCTV footage to remove the personal information of third parties whilst maintaining the information subject to the FOI request. Unfortunately, these efforts, involving several Court employees and contracted providers of Court security services, over several days, were unable to successfully edit the relevant footage.

Ultimately, the Court sought assistance from external professionals. A quote was obtained to perform the required editing work, which indicated that the work could be performed at a cost of \$900 for 5 hours of professional video editing services.

I am satisfied that it is therefore not reasonably practicable for the Court to edit the identified CCTV footage to remove the personal information of third parties whilst maintaining the information subject to the FOI request.

Conclusion re CCTV Footage

I am satisfied for the reasons identified above that the CCTV footage contains the personal information of third parties that is conditionally exempt under s 47F of the FOI Act. Further, it would be contrary to the public interest to provide access to that footage in circumstances where it is not reasonably practicable to edit the CCTV footage to remove the personal information of third parties whilst maintaining the information subject to the FOI request.

Access to the requested CCTV footage is therefore refused.

All items of correspondence/documents between/among Wheelahan J, Registrars Stone, Allaway, Luxton, Burns and Thomas Stewart, in so far as those documents make reference , whether by name or otherwise

As previously discussed, the FOI Act does not apply to Judicial Officers. ¹⁸ Consequently, I am satisfied that the FOI Act would have no application to documents in the possession of Justice Wheelahan that might fall within the scope of the FOI request.

The searches undertaken revealed a small number of documents falling within the scope of this request, primarily correspondence between Registrars Stone, Allaway, Luxton, Burns and Thomas Stewart. All of these identified documents constitute correspondence between Court staff in connection with proceedings in the Federal Court. These documents are not, following Kline v Official Secretary to the Governor General of Australia & Anor, documents relating to the management and administration of registry and office resources.

I am satisfied that these documents are not documents of an administrative nature pursuant to s 5(1) of the FOI Act and that they are not accessible under the FOI Act. To the extent the FOI request seeks access to them, it is refused.

A copy of all out of court correspondence between Wheelahan J and any party to the proceedings or their legal representative or other surrogate, in so far as such documents reference

As previously discussed, the FOI Act does not apply to Judicial Officers. Consequently, any out of court correspondence between Justice Wheelahan and any party to the proceedings or their legal representatives or other surrogate that referenced could not be a document for which a valid request may be made pursuant to the FOI Act.

I am satisfied that the documents requested are not documents for which a valid request may be made under s 5(1) of the FOI Act. To the extent the FOI request seeks access to these documents it is refused.

A copy of all out of court correspondence between Registrars Stone, Allaway, Luxton, Burns and/or Thomas Stewart and any party to the proceedings or their legal representatives or other surrogate, in so far as such documents reference

The searches undertaken revealed a small number of documents constituting correspondence between any of Registrars Stone, Allaway, Luxton, Burns and/or Thomas Stewart and parties to the proceedings or their legal representatives.

All of these identified documents constitute correspondence between Court staff and parties or their legal representatives that is directly connected with proceedings in the Federal Court. These documents are not, following Kline v Official Secretary to the Governor General of Australia & Anor, documents relating to the management and administration of registry and office resources.

I am satisfied that these documents are not documents of an administrative nature pursuant to s 5(1) of the FOI Act. These documents are not documents that are accessible under the FOI Act. To the extent the FOI request seeks access to them it is refused.

¹⁸ paragraph 5(1)(b) of the FOI Act

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Acting Deputy Principal Registrar

From: Customer Service
To: External FOI

Subject: FW: FOI request for documents

Date: Friday, 5 April 2019 2:46:26 PM

Attachments: <u>image001.png</u>

UNCLASSIFIED

From:

Sent: Friday, 5 April 2019 2:30 PM

To: customer_service@federalcircuitcourt.gov.au

Cc:

Subject: | FOI request for documents

I wish to obtain copies of the pleadings in the matter of:

Specifically, the Application, Statement of Claim, Defence and Reply, all of which have been filed with the NSW registry of the FCA.

Could you advise on how I may be able to obtain these documents.

Kind regards



DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

	PRINCIPAL REGISTRY
Your Ref:	LEVEL 16
	LAW COURTS BUILDING QUEENS SQUARE
	SYDNEY NSW 2000
5 A	
5 April 2019	
	By email:
	By email.

Freedom of Information Request

I am writing to advise you of my decision about your request under the *Freedom of Information Act 1982* (**FOI Act**) for access to documents, which was sent to the Federal Circuit Court of Australia, in the form of an email, on 5 April 2019. That email was directed from the Federal Circuit Court of Australia to the Federal Court of Australia (**Federal Court**) on 5 April 2019.

Authority

Dear

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of a Freedom of Information (FOI) request.

Scope of Request

You request access to 'the Application, Statement of Claim, Defence and Reply, all of which have been filed with the NSW registry of the FCA' in the proceeding

I take your reference

to 'the Application' to mean the Originating Application and 'FCA' to mean the Federal Court.

Application of the FOI Act

The FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 – 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, available at: https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act). Although the Federal Court is a 'prescribed authority' for the purposes of the FOI Act (section 5(1)(a)) the only request that can validly be made to it under the FOI Act is to access a 'document of an administrative nature' (section 5).

The High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor [2013] HCA 52 considered the meaning of the phrase 'matters of an administrative nature' and held that it refers to documents that concern the "management and administration of office resources, such as financial and human resources and information technology" (see [41] with examples at [13]).

Decision

Your request relates to documents that constitute a court file. These are not documents of an administrative nature and are not available under the FOI Act. Access to documents relating to proceedings in the Court are governed by the Federal Court of Australia Act 1976 and the Federal Court Rules 2011, and not by the FOI Act.

Specifically, requests for documents that constitute a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents that constitute a court file can be found on the Federal Court's website at http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

Accordingly, your request for access to 'the Application, Statement of Claim, Defence and Reply, all of which have been filed with the NSW registry of the FCA', requested pursuant to the FOI Act, is refused.

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au, Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

External Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: www.oaic.gov.au

post: GPO Box 5218, Sydney NSW 2001

fax: +61 2 9284 9666 email: enquiries@oaic.gov.au

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Yours sincerely

John Mathieson

Deputy Principal Registrar

From:
To: External FOI
Subject: Media enquiry

Date: Sunday, 21 April 2019 11:00:36 AM

Hello,

I would like the documents released released under FOI request

Kind regards,











From:
To: External FOI
Subject: Information

Date: Sunday, 21 April 2019 2:08:23 AM

Dear Sirs,

I am seeking some information on the statistics of Federal Court.

Can you please advise the case files of all the cases where a review was filed under Rule 3.11 only when an original application was not filed; if convenient for the last ten years. I suspect that there may be only few.

You may give me a list of file numbers or judgment numbers. Thanks a lot

Best Regards



Telephone: (02) 9230 8567 DX 613 SYDNEY

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

16 May 2019

	By email:	
Dear		

Freedom of Information Act 1982 - Request for Access

I refer to your email of 21 April 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 3 May 2019 acknowledging receipt of your request.

In your email of 21 April 2019, you make the following request (FOI request):

Can you please advise the case files of all the cases where a review was filed under Rule 3.11 only when an original application was not filed; if convenient for the last ten years. I suspect there may be only a few.

You may give me a list of file numbers or judgment numbers. Thanks a lot

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, to refuse access to those documents sought pursuant to your FOI request for the following reasons:

- pursuant to section 24A(1)(b)(ii) of the FOI Act the document or documents you have requested do not exist;
- the production of the requested document or documents is outside the requirements of section 17 of the FOI Act and has not been produced for the purposes of your FOI request; and
- pursuant to s 5(1) of the FOI Act and following the decision of the High Court in *Kline* v Official Secretary to the Governor General of Australia & Anor, I am satisfied that even if such a document or documents did exist, it would not be, of itself, a document relating to the management and administration of registry and office resources, and accessible under the FOI Act.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the information held by the Court in respect of applications filed;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Assumptions

In your FOI request of 21 April 2019, you requested to be advised of all case files where a review was filed under Rule 3.11 only when an original application was not filed. It is assumed that the 'original application' you refer to in qualifying your request is an 'originating application'. It is further assumed that you are therefore seeking to be advised of all case files where a review was filed under Rule 3.11 by means other than an originating application, such as by means of an interlocutory application. It should be noted that the substance of my decision would not be impacted by either of these assumptions being incorrect.

Searches undertaken

Extensive consultation was undertaken with officers and staff within the Court's Corporate Services Group who are responsible for the management of the Court's Electronic Court File and eLodgment systems to determine if a document that included the information requested existed or could be produced. This consultation extended to staff within the District Registries. No document or documents were identified that fell within the scope of your request.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

paragraphs 2.6 - 2.8 of the FOI Guidelines

paragraph 5(1)(b) of the FOI Act

subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".7

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.9

The High Court, in considering the decision of Bienstein v Family Court of Australia¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. 11

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters. 12

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context". on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

⁷ at [41] ⁸ at 13] ⁹ at [47] ¹⁰ (2008) 170 FCR 382 ¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

List of file numbers or judgment numbers

Pursuant to s 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, I am satisfied that a list of file numbers or judgment numbers identifying all cases where a review has been initiated under Rule 3.11, by means other than an originating application, would not be, of itself, a document relating to the management and administration of registry and office resources. Such a document would be specifically related to proceedings within the Court. It would not be a document accessible under the FOI Act.

Document does not exist under paragraph 24A(1)(b)(ii)

I consider that the document or documents you have requested do not exist.

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevant provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

In seeking to respond to your request I am satisfied that all reasonable steps were taken to try to identify a document or documents falling within the scope of your request. Extensive consultation was undertaken with officers and staff within the Court's Corporate Services Group who are responsible for the management of the Court's Electronic Court File and eLodgment systems to determine if a document that included the information requested existed or could be produced. This consultation extended to staff within the District Registries. No document or documents were identified that fell within the scope of your request.

Section 17 of the FOI not applicable

I am not satisfied that there is a requirement on the Court, pursuant to section 17 of the FOI Act, to produce a document that meets the terms of your request.

Section 17 provides:

- (1) Where:
 - (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and

- (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
- (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer program or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency; the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

The FOI Guidelines issued by the Office of the Australian Information Commissioner provide:

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in a discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

The Guidelines provide further:

- 3.182 Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if the applicant does not wish to be provided with a computer tape or disk. Examples include a transcript of a sound recording or a written compilation of information held across various agency databases. The obligation to produce a written document arises if:
- The agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- Producing a written document would not substantially or unreasonably divert the resources of the agency from its other operations (s 17(2)).

If those conditions are met the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession.

The Court does not maintain statistics or any sort of digital record that would enable it to advise of the relevant case files where a review was filed under Rule 3.11 in circumstances where no originating application was filed. Further, the development of a document of the type requested, is not something that could be achieved merely by the use of a computer or other equipment that is ordinarily available to the Court for retrieving or collating stored information. A document of this type could only be achieved through a complete physical analysis by Court staff, of all Court files, both digital files and those in hard copy, for the 10 year period to which your request relates. The analysis of tens of thousands of files in this way would clearly be grounds for a practical refusal under s24AA(1)(a)(i) in that it would substantially and unreasonably divert the resources of the Court. These resources would be substantially and unreasonably diverted in the analysis of documents that are not themselves subject to the FOI Act.

The production of the requested document is therefore outside the requirements of section 17 of the FOI Act and has not been produced for the purposes of your FOI request.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

From:
To: External FOI

Subject: Freedom of Information request - Initiating documents of

Date: Friday, 26 April 2019 1:34:41 PM

Dear Federal Court of Australia,

I would like to request access to the initiating documents of the Specifically, I am looking for copies of the contracts in issue:

(1) the contract dated 24 April 2015, renewed on 15 June 2016 and 15 June 2017, between

(2) the contract dated 13 October 2016, renewed on 12 June 2017, between

(3) the contract dated 8 December 2015, renewed on 1 January 2017, between

Kind regards,



DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref:		LEVEL 16 LAW COURTS BUILDING
		QUEENS SQUARE SYDNEY NSW 2000
30 April 2019		
	By email:	
Dear		

Freedom of Information Request

I refer to your email of 26 April 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (**FOI Act**).

In your email of 26 April 2019, you make the following request (FOI request):

I would like to request access to the initiating documents of the Specifically, I am looking for copies of the contracts in issue:				
Spe	scrittary, I am tooking for copies of the contracts in issue.			
(1)	the contract dated 24 April 2015, renewed on 15 June 2016 and 15 June 2017, between			
(2)	,			
(3)	the contract dated 8 December 2015, renewed on 1 January 2017, between			
10)	The second secon			

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to all the documents sought pursuant to your FOI request. These are documents for which the FOI Act does not apply due to the operation of s 5(1) of the FOI Act.

The documents you have requested are documents relating to proceedings in the Court. These are not documents of an administrative nature and are not available under the FOI Act.

Access to documents relating to proceedings in the Court are governed by the Federal Court of Australia Act 1976 and the Federal Court Rules 2011, and not by the FOI Act. Requests for

documents that constitute a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents that constitute a court file can be found on the Federal Court's website at http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the content of the documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". 6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁷

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology. The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

 $^{^{1}}$ paragraphs 2.6 - 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

 $^{^4}$ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

⁸ at 13]

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.9

The High Court, in considering the decision of Bienstein v Family Court of Australia¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. 11

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. 13

Initiating documents and contracts in issue

The documents you have requested are documents relating to proceedings in the Court. These are documents for which the FOI Act does not apply due to the operation of s 5(1) of the FOI Act, as they are not documents of an administrative nature.

Access to documents relating to proceedings in the Court is governed by the Federal Court of Australia Act 1976 and the Federal Court Rules 2011. Requests for documents that constitute a court file may be made pursuant to Division 2.4 of the Federal Court Rules 2011. More information on accessing documents that constitute a court file can be found on the Federal Court's website at http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

Your request for access pursuant to the FOI Act, is refused.

⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

Charges

You have not been charged for the processing of your request

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

External Review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: www.oaic.gov.au

post: GPO Box 5218, Sydney NSW 2001

fax: +61 2 9284 9666 email: enquiries@oaic.gov.au

in person: Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Yours sincerely

Scott Tredwell

Acting Deputy Principal Registrar

External FOI

From:

Sent: Wednesday, 1 May 2019 1:50 PM

To:

External FOI

Subject:

FOI Request Regarding File Statistics; and CCTV Footage of 20 February 2019 and 10

October 2018

Dear FOI Officer of the Federal Court of Australia,

I hereby make a formal request for access to the following documents under the Freedom of Information Act (Cth) 1982:

- 1. The CCTV footage of the Level 7 Registry of the Victoria District Registry of the Federal Court of Australia (FCA) on 10 October 2018, in so far as said CCTV footage captures
- 2. The CCTV footage of any part of the FCA building at 305 William Street, Melbourne Vic, 3000 on 10 October 2018, in so far as said CCTV footage captures
- 3. The CCTV footage of the Level 7 Registry of the Victoria District Registry of the Federal Court of Australia (FCA) on 20 February 2019 between 10:20 AM and 10:50 AM, in so far as said CCTV footage captures
- 4. As it relates to 10 October 2018 3:30 PM and 5 PM, 20 February 2019 between 10:20 AM and 10:50 AM; 22 February 2019 between 4 PM and 5 PM, the following statistics regarding FCA files on which documents were entered or other activity undertaken as a result of a party or their representative making a physical appearance, at the specified times, at the Level 7 Registry of the FCA -- the Victoria District Registry of the FCA:
 - (a) on the day and time in question, the title of each file -- for example, Walker (a Minor) v State of Victoria --; and the associated file number of each file -- for example.
 - (b) on the day and time in question, the total number of files captured in the reference group and the type of documents lodged, for example affidavit sworn in person at the time;
 - (c) on the day and time in question, the number of parties who appeared at the Victoria District Registry in person, along with the associated file title and file number
 - (d) on the day and time in question, along with the associated file title and file number, the number of parties on whose behalf a representative who is not a legal practitioner appeared at the Victoria District Registry;
 - (e) on the day and time in question, along with the associated file title and file number, the number of parties on whose behalf a representative who is a legal practitioner appeared at the Victoria District Registry.
- 5. For each of the last two years, for each item listed at (a) through (h), I am requesting statistics on (i) the total number of originating applications submitted using Form 81 for which amendments to the originating application were requested; (ii) the proportion of the Court's files described at "(i)" in which leave to amend is requested, that leave is deemed "processed and accepted", thereafter a draft document consistent with Federal Court Rules (FCR) 8.21 8.24 is submitted, and any of the following happens:
 - (a) Where the applicant is self represented, a Registrar writes back to the applicant, indicating (or making any statement to a similar effect) that the applicant will need to request leave to amend;
 - (b) Where the applicant is represented by one or more legal practitioners, a Registrar writes back to the applicant, or their legal representative, indicating (or making any statement to a similar effect) that the applicant will need to request leave to amend;

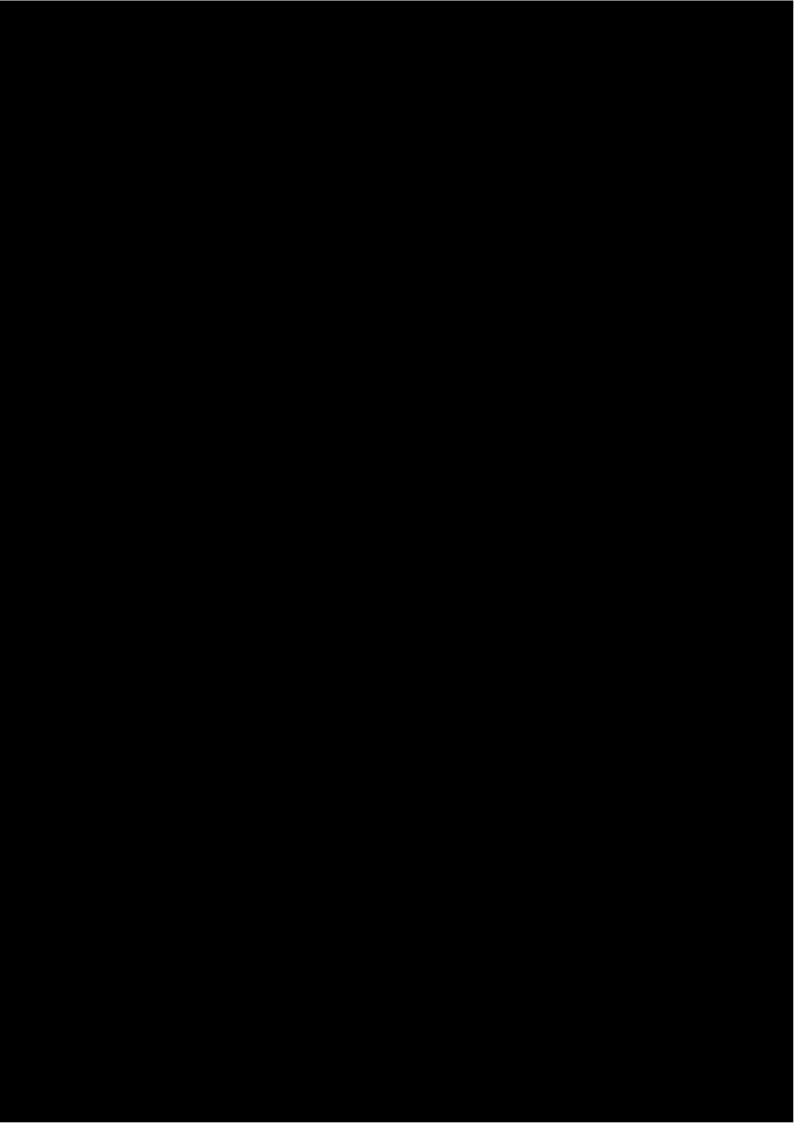
- (c) Where the applicant is represented by one or more persons who are not legal practitioners, a Registrar writes back to the applicant, or their representative, indicating (or making any statement to a similar effect) that the applicant will need to request leave to amend;
- (d) Where the applicant is self represented, a Registrar writes back to the applicant, indicating (or making any statement to a similar effect) that the applicant will need to submit a draft document consistent with FCR 8.21 -8.24;
- (e) Where the applicant is represented by one or more legal practitioners, a Registrar writes back to the applicant, or their legal representative, indicating (or making any statement to a similar effect) that the applicant will need to submit a draft document consistent with FCR 8.21 -8.24;
- (f) Where the applicant is represented by one or more persons who are not legal practitioners, a Registrar writes back to the applicant, or their representative, indicating (or making any statement to a similar effect) that the applicant will need to submit a draft document consistent with FCR 8.21 8.24;
- (g) Where the applicant is self represented, a Registrar, or a person carrying out the functions of a Registrar, writes back to the applicant indicating (or making any statement to a similar effect) that the documents have been accepted, but this cannot be reflected on the system, instead the system will reflect that the documents have been rejected;
- (h) Where the applicant is represented by one or more persons who are either legal practitioners or other kind of representative, a Registrar, or a person carrying out the functions of a Registrar, writes back to the applicant or their representative indicating (or making any statement to a similar effect) that the documents have been accepted, but this cannot be reflected on the system, instead the system will reflect that the documents have been rejected.
- 6. For each of the last two years, for each item listed at (a) through (f), I am requesting statistics on (i) the total number of originating applications or requests for leave to appeal submitted using Form 81, 116, 15, 118 or 122 for which leave to amendment an originating application, including adding parties, or urgency is requested by way of an accompanying letter; (ii) the proportion of applicants falling in the category at subitem "(i)", who are not designated vexatious litigants, who have all their submissions made in any three (3) month period either rejected or listed as pending because information is needed from within the court; (iii) the proportion of applicants falling in the category at sub-item "(i)", who are not designated vexatious litigants, who have multiple submissions made in any three (3) month period listed as pending because information is needed from within the court, and that pending status persists for two (2) or more months without any further activity; (iv) the proportion of applicants, who are not designated vexatious litigants, who have multiple submissions made submitted via eLodgment, but does not receive any correspondence from the court regarding said submission after five (5) or more business days have elapsed; (v) the proportion of applicants who have lodged documents, including Forms 118 and/or 122, or originating applications, and have selected the urgent option on eLodgment, or have submitted a letter requesting urgency, and the originating application is not heard within 30 days, or the leave to appeal is not heard within three months; and any of the following is the case:
 - (a) Where the applicant is self represented, a Registrar writes back to the applicant indicating (or making any statement to a similar effect) that the applicant has not requested leave to amend, or leave to add parties;
 - (b) Where the applicant is represented by one or more legal practitioners, a Registrar writes back to the applicant, or their legal representative, indicating (or making any statement to a similar effect) that

the Registrars or other officers of the court have powers conferred by statute, but refuses to identify the specific statute as well as the relevant sections or subsections of the relevant statute;

- (c) Where the applicant is represented by one or more persons who are not legal practitioners, a Registrar writes back to the applicant, or their representative, indicating (or making any statement to a similar effect) that the Registrars or other officers of the court have powers conferred by statute, but refuses to identify the specific statute as well as the relevant sections or subsections of the relevant statute;
- (d) Where the applicant is self represented and submits documents prior to the judge making orders to vacate a hearing, a Registrar, or a person carrying out the functions of a Registrar, writes back to the applicant indicating (or making any statement to a similar effect) that the judge has made orders vacating the hearing and, as such, the submissions are an abuse of process;
- (e) Where the applicant is represented by one or more legal practitioners and submits documents prior to the judge making orders to vacate a hearing, a Registrar, or a person carrying out the functions of a Registrar, writes back to the applicant or their legal representative indicating (or making any statement to a similar effect) that the judge has made orders vacating the hearing and, as such, the submissions are an abuse of process;
- (f) Where the applicant is represented by one or more persons who are not legal practitioners and submits documents prior to the judge making orders to vacate a hearing, a Registrar, or a person carrying out the functions of a Registrar, writes back to the applicant, or their representative, indicating (or making any statement to a similar effect) that the judge has made orders vacating the hearing and, as such, the submissions are an abuse of process.

Where the FOI officer finds that the documents requested at items 1-4 can be processed within 1-3 weeks or less, but that the requests outlined at items 5 and 6 would take longer, I am amenable to the items at 1 through 4 being provided in the shortest possible time. In other words, if obtaining items 5 and 6 would cause items 1-4 to take more than 1-3 weeks to be processed, please process items 1-4 before addressing items 5 and 6.

Yours Sincerely,





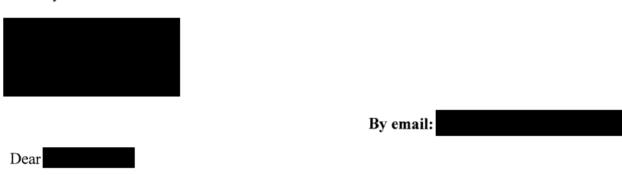
Telephone: (02) 9230 8567 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

27 May 2019



Request under Freedom of Information Act

I refer to your email of 1 May 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 15 May 2019 acknowledging receipt of your request.

The specific details of your FOI request of 1 May 2019 are included as Annexure A.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to those documents sought pursuant to your FOI request for the following reasons:

- Request 1 to 3: Pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to CCTV footage which does not exist;
- Request 4: Pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to documents that do not exist and which could not be produced pursuant to section 17 of the FOI Act, even if such an obligation existed, which it does not;
- Request 5: Pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to documents that don't exist and for which the production of a document to satisfy the request would not fall within the requirements of section 17 of the FOI Act;
- Request 6: Pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to documents that don't exist and for which the production of a document to satisfy the request would not fall within the requirements of section 17 of the FOI Act.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Reasons for Decision

Searches undertaken

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been extensive and exhaustive. Extensive consultation was undertaken with officers and staff within the Court's Corporate Services Group who are responsible for the management of the Court's case management, Electronic Court File and eLodgment systems, as well as with staff within the District Registries and MSS Security.

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested. I am also satisfied that the Court has identified all documents within the scope of your request.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature"5.

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

⁶ at [19]

 $^{^{1}}$ paragraphs 2.6 - 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁷

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology. The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court also held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

8 at 13]

⁷ at [41]

⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevant provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Production of a document under section 17

Section 17 provides:

- (1) Where:
 - (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
 - (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer program or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency; the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

The FOI Guidelines issued by the Office of the Australian Information Commissioner provide:

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in a discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

The Guidelines provide further:

3.182 Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if the applicant does not wish to be provided with a computer tape or disk. Examples include a transcript of a sound recording or a written compilation of information held across various agency databases. The obligation to produce a written document arises if:

- The agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- Producing a written document would not substantially or unreasonably divert the resources of the agency from its other operations (s 17(2)).

If those conditions are met the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession.

Requests 1 to 3: CCTV footage that captures on 10 October 2018 and 20 February 2019

The specific details of these aspects of your request may be found within Annexure A.

CCTV footage may constitute a document for which a request may be made under the FOI Act. ¹⁴ In response to your request, the appropriate security officers employed by MSS Security within the Owen Dixon Commonwealth Law Courts Building, 305 William Street, were contacted to determine if CCTV footage within the scope of your request could be identified.

It was found that no CCTV footage dating from either 10 October 2018 or 20 February 2019 had been retained. All footage relating to these dates has been erased consistent with the Court's standard practices for the management of information associated with CCTV footage captured in the Owen Dixon Commonwealth Law Courts Building and other Commonwealth Law Court Buildings around the country.

I am satisfied that all reasonable steps were taken to try to identify a document or documents falling within the scope of your request. Consultation was undertaken with the appropriate officers and staff within the Owen Dixon Commonwealth Law Court Building to determine whether CCTV footage within the scope of the request existed. I am satisfied that no CCTV footage within the scope of your request exists.

Your FOI request is refused pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to CCTV footage which does not exist

Request 4: Documents containing specific details related to appearances at the Victoria District Registry on 10 October 2018, 20 February 2019 and 22 February 2019.

The specific details of this aspect of your FOI request may be found within Annexure A.

I am satisfied that the document or documents that you request do not exist. In seeking to respond to your request, I am satisfied that all reasonable steps were taken to try to identify a document or documents falling within the scope of your request. Extensive consultation was undertaken with officers and staff within the Court's Corporate Services Group who are

¹⁴ see s 4 FOI Act definition of document and paragraph 2.30 OAIC FOI Guidelines

responsible for the management of the Court's case management system and its Electronic Court File as well as staff within the District Registries to determine if the information requested existed or could be produced. No document or documents were identified that fell within the scope or your request.

I am also satisfied that the Court does not record or store information of the type requested in any form. Further, the development of a document or documents of the type requested, is not something that could be achieved merely by the use of a computer or other equipment that is ordinarily available to the Court for retrieving or collating stored information such that it could be produced under s 17 of the FOI Act. A document, or documents, of this type could only be created by a physical analysis by Court staff, of a range of information sources including Court files and CCTV footage. Court files are not documents of an administrative nature for which a valid request may be made by virtue of section 5 of the FOI Act. Further, as indicated previously, no CCTV footage exists for the relevant time periods to assist staff in the development of such a document.

I am satisfied that there is no requirement on the Court, pursuant to section 17 of the FOI Act, to produce a document that meets the terms of your request, even if the necessary information existed to produce such a document. As the production of the requested document or documents is outside the requirements of section 17 of the FOI Act, no such document has not been produced for the purposes of your FOI request.

Your FOI request is therefore refused pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to documents that do not exist and which could not be produced pursuant to section 17 of the FOI Act, even if such an obligation existed, which it does not.

Request 5: Documents containing specific details, for the last two years, of matters where originating applications were submitted, leave to amend requested and thereafter subject to specific events.

The specific details of this aspect of your FOI request may be found within Annexure A.

I am satisfied that the document or documents that you request do not exist. I am satisfied that all reasonable steps were taken to try to identify a document or documents falling within the scope of your request. Extensive consultation was undertaken with officers and staff within the Court's Corporate Services Group who are responsible for the management of the Court's case management, Electronic Court File and eLodgment systems, as well as staff within the District Registries, to determine if the information requested existed or could be produced. No document or documents were identified that fell within the scope or your request.

I am also satisfied that the Court does not record or store information of the type requested in any form. Further, the development of a document, or documents, of the type requested, is not something that could be achieved merely by the use of a computer or other equipment that is ordinarily available to the Court for retrieving or collating stored information such that it could be produced under section 17 of the FOI Act. A document, or documents, of this type could only be created by a physical analysis by Court staff, of all Court files for the two year period to which your request relates. The analysis of thousands of files in this way would clearly be grounds for a practical refusal under section 24AA(1)(a)(i) in that it would substantially and unreasonably divert the resources of the Court. These resources would be substantially and unreasonably diverted in the analysis of documents that are not themselves subject to the FOI Act.

Your FOI request is therefore refused pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to documents that don't exist and for which the production of a document to satisfy the request would not fall within the requirements of section 17 of the FOI Act.

Request 6: Documents containing specific details, for the last two years, relating to original applications or requests for leave to appeal subject to specific events.

The specific details of this aspect of your FOI request may be found within Annexure A.

I am satisfied that the document or documents that you request do not exist. I am satisfied that all reasonable steps were taken to try to identify a document or documents falling within the scope of your request. Extensive consultation was undertaken with officers and staff within the Court's Corporate Services Group who are responsible for the management of the Court's case management, Electronic Court File and eLodgment systems, as well as staff within the District Registries, to determine if the information requested existed or could be produced. No document or documents were identified that fell within the scope or your request.

I am also satisfied that the Court does not record or store information of the type requested in any form. Further, the development of a document, or documents, of the type requested, is not something that could be achieved merely by the use of a computer or other equipment that is ordinarily available to the Court for retrieving or collating stored information such that it could be produced under section 17 of the FOI Act. A document, or documents, of this type could only be created by a physical analysis by Court staff, of all Court files for the two year period to which your request relates. The analysis of thousands of files in this way would clearly be grounds for a practical refusal under section 24AA(1)(a)(i) in that it would substantially and unreasonably divert the resources of the Court. These resources would be substantially and unreasonably diverted in the analysis of documents that are not themselves subject to the FOI Act.

Your FOI request is therefore refused pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to documents that don't exist and for which the production of a document to satisfy the request would not fall within the requirements of section 17 of the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

From: To:

External FOI

Subject:

Re: Correspondence in reply to a request pursuant to the Freedom of Information Act dated 1 May 2019

Date:

Tuesday, 25 June 2019 4:52:03 PM

Attachments:

FOI Internal Review Comparison Document 25June2019.pdf

Dear Mr Tredwell or other FOI Officer of the FCA,

Please find, attached to this email, a document which relates to an internal review regarding access to documents for which you denied access on 27 May 2019.

Kind regards,





Telephone: (02) 9230 8567 DX 613 SYDNEY FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY

Your Ref: Our Ref: LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

23 July 2019

By email:

Request under Freedom of Information Act 1982

I refer to your email of 25 June 2019 seeking an internal review of the decision made by Registrar Tredwell, on behalf of the Federal Court of Australia (the **Court**), on 27 May 2019 refusing you access to documents you requested under the *Freedom of Information Act 1982* (**FOI Act**). An acknowledgment of receipt of this email was sent to you on 9 July 2019.

I am authorised under section 23(2) of the FOI Act to make a decision on behalf of the Court in relation to your internal review request.

Summary of Decision on Internal Review

For the reasons set out below, after reconsidering your request received by the Court on 1 May 2019, Registrar Tredwell's decision and the document you attached to your email request for internal review, I have decided to refuse access to the documents you sought in your request of 1 May 2019. In summary, my reasons and the relevant statutory basis for doing so are:

- Requests 1 to 3 (CCTV recording): as the requested CCTV recordings do not exist, access is refused under section 24A(1)(b)(ii) of the FOI Act;
- Request 4 (statistics): first, as no document containing the information requested exists, access is refused under section 24A(1)(b)(ii) of the FOI Act and, second, as section 17 does not apply, there is no requirement to produce a document which provides the requested information;
- Request 5 (statistics): first, as no document containing the information requested exists, access is refused under section 24A(1)(b)(ii) of the FOI Act and, second, as section 17 does not apply, there is no requirement to produce a document which provides the requested information; and
- Request 6 (statistics): first, as no document containing the information requested exists, access is refused under section 24A(1)(b)(ii) of the FOI Act and, second, as section 17 does not apply, there is no requirement to produce a document which provides the requested information or provide complete information to you so you can perform a computer collation.

In the document attached to your email request for internal review, you include a request for access to additional documents under the FOI Act. This cannot be considered as part of the internal review and I have made no decisions about this new request.

Material taken into account

In making my decisions on internal review, I have taken the following material into account:

- your email request received on 1 May 2019;
- Registrar Tredwell's letter to you dated 27 May 2019;
- · your email request received on 25 June 2019;
- the document attached to your email request received on 25 June 2019;
- · the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

For completeness, I note that on 22 July 2019 you sent two emails to the Court's email address for freedom of information (FOI) communications (FOI@fedcourt.gov.au).

The first, addressed to the Court, attaches a copy of a decision made by Registrar Tredwell in regard to a FOI access request which you made on 25 March 2019, a detailed request for internal review of that decision and responses to Registrars Luxton and Ryan in regard to correspondence each had sent to you regarding aspects of the substantive issues that were or are before the Court. As you acknowledge in your email, the request for internal review had erroneously not been sent to the Court until after the time for making such a request had passed and you are no longer seeking internal review of Registrar Tredwell's decision on your 25 March 2019 request. However, you suggest in your email that the "attachments are relevant to the other FOI requests that are still before (the Court) for consideration".

Your responses to Registrars Luxton and Ryan raise complaints about the communications you had received from those Registrars and ask for responses to various questions. Neither refers in any way to any of your various FOI requests, any decisions made in respect to them, the FOI Act or FOI law. Registrar Tredwell's decision on your 25 March 2019 FOI access request deals with the operation of section 5(1) of the FOI Act in regard to correspondence to, from and within the Court and connected with a pro bono certificate issued in relation to proceedings which were or are before the Court as well as whether a CCTV recording was exempt under section 47F of the FOI Act and the operation of, first, the public interest test under section 11A(5) of FOI Act and, second, the requirement of section 22(2) to consider providing an edited copy of an exempt document. Your response to this decision of Registrar Tredwell addresses the operation of sections 47F and 22(2) and makes lengthy allegations about impropriety, unlawful actions and omissions by a Judge and Registrars and other staff. It does not, otherwise, refer to any of your other FOI requests, any decisions made in respect of them, the FOI Act or FOI law (other than in relation to sections 47F and 22(2)).

Your second email is addressed to the Australian Information Commissioner. You noted that a decision in relation to your internal review request of 25 June 2019 (i.e. this decision) had, at that time, not been made and was still not due. Nevertheless, you requested that the Commissioner "review any decision, or lack thereof, made by the FOI officer of the federal (sic) Court of Australia" in respect of that request if that decision is "to refuse access" or "should the FOI officer of the FCA fail to make a decision by the deadline" so the Commissioner's office can "commence a review at the earliest possible time".

Other than noting the contents of these emails and the attachments to the first, as these documents do not contain any material relevant to the access review decision that I am reviewing, I have had no regard to them.

Reasons for Decision

Your Requests and the Decision Under Review

On 1 May 2019, you sent to the Court an email request under the FOI Act for access to 6 documents. A copy of your email of 1 May 2019 is attached to this letter as Annexure A.

On 27 May 2019, Registrar Tredwell decided to refuse you access to all documents sought. A copy of Registrar Tredwell's letter advising you of his decision is attached to this letter as Annexure B.

On 25 June 2019, you sent to the Court an email request seeking an internal review under the FOI Act of Registrar Tredwell's decision. A copy of your email of 25 June 2019 is attached to this letter as Annexure C.

Your email of 25 June 2019 attached a document. A copy of that attachment is attached to the letter as Annexure D.

Limited application of the FOI Act to the Court

As Registrar Tredwell explained in his letter to you of 27 May 2019 (Annexure B), the FOI Act applies to the Court only in relation to a very limited range of documents.

In that letter he said:

"The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature".

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".

¹ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology. The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of Bienstein v Family Court of Australia¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court also held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters. ¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. 13"

I agree with and adopt that explanation.

⁸ at 13]

⁹ at [47]

^{10 (2008) 170} FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

Some Provisions of the FOI Act Relevant to Your Reguest

Registrar Tredwell set out, in his letter to you of 27 May 2019 (Annexure B), some provisions and parts of provisions relevant to your request and the decisions he made in relation to this. He said:

"Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevant provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist."

and:

"Section 17 provides:

- (1) Where:
 - (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
 - (c) the agency could produce a written document containing the information in discrete form by:
 - the use of a computer program or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency;

the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.

(2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations."

Some Relevant Guidelines

Registrar Tredwell also set out, in his letter to you of 27 May 2019 (Annexure B), some paragraphs of the FOI Guidelines relevant to your request and the decisions he made in relation to this. He said:

"The FOI Guidelines issued by the Office of the Australian Information Commissioner provide:

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in a discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

The Guidelines provide further:

3.182 Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if the applicant does not wish to be provided with a computer tape or disk. Examples include a transcript of a sound recording or a written compilation of information held across various agency databases. The obligation to produce a written document arises if:

- The agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- Producing a written document would not substantially or unreasonably divert the resources
 of the agency from its other operations (s 17(2)).

If those conditions are met the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession."

Searches and Enquiries Undertaken

Registrar Tredwell undertook, and had other Court personnel undertake, extensive searches and enquiries to identify documents that may have been within the scope of your FOI request. I have also undertaken or had other Court personnel undertake similar searches and enquiries. These included consultation with personnel within the Court's Corporate Services Group, which is responsible for the management of the Court's case management, Electronic Court File and eLodgment systems, as well as the preparation of business intelligence information, and with staff within District Registries, including the Victoria District Registry, and MSS Security.

I have also relied on my own knowledge and experience about the Court's practice and procedures, particularly in relation to the collection of data in systems maintained by the Court and Court personnel.

I am satisfied that these searches are as thorough and comprehensive as reasonably appropriate, I do not believe that any further search or enquiry that could be reasonably undertaken is likely to identify or discover further information that would assist in locating further documents within the scope of your request or in making my decision.

Consideration and Conclusions

In considering and reaching my conclusions on internal review about each part of your request, I have adopted the same numbering for each "request" as you used in your request of 1 May 2019 (Annexure A), Registrar Tredwell adopted in his letter of 27 May 2019 (Annexure B) and used by you in the attachment to your email of 25 June 2019 (Annexure D).

Requests 1 to 3: CCTV recordings that capture February 2019 on 10 October 2018 and 20

For the purposes of the FOI Act, "document" is defined broadly and can include material from which images are capable of being reproduced. For the reasons set out below, it is not necessary for me to decide whether CCTV recordings of relevant images captured in the Registry of the Victoria District Registry of the Court or in other parts of the building in which it is situated may be a "document ... of an administrative nature" within the meaning of the FOI Act, as interpreted by the High Court in its judgment in *Kline* as discussed above. In considering your request and in making my decision on internal review, I have assumed that any CCTV recording within the scope of your request which could be found is a document to which the FOI Act applies.

I note your references in the attachment to your email of 25 June 2019 (Annexure D) in relation to these parts of your request to the National Archives of Australia's Administrative Functions Disposal Authority (AFDA). That document, amongst other things, authorises the destruction of certain Commonwealth records for the purposes of the *Archives Act 1983*. It, however, has no relevance or bearing on a decision on an access request under the FOI Act.

CCTV recordings captured in the Victorian District Registry of the Court are managed by security officers employed by MSS Security who are located within the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne (Melbourne CLC). MSS Security is contracted by the Court, on behalf of the relevant building occupants, to provide security services within that, and other, Commonwealth Law Court buildings.

As Registrar Tredwell explains in his letter of 27 May 2019 (Annexure B), after receiving your request, he contacted the appropriate MSS Security personnel in the Melbourne CLC and requested that any CCTV recordings that were within the scope of your request be identified.

He was advised that no CCTV recordings captured in the Melbourne CLC from either 10 October 2018 or 20 February 2019 had been retained and that all such recordings from those days had been erased consistent with the standard operating procedures for the management of such CCTV recordings captured in the Melbourne CLC.

In considering your request on internal review, I made further enquiries with MSS Security personnel in the Melbourne CLC and confirmed that no CCTV recordings from the two relevant days had been retained.

I am satisfied that all reasonable steps have been taken to try to locate the relevant documents that are within the scope of these parts of your request and that no relevant CCTV recordings exist.

Accordingly, on internal review of these parts of your request, I have decided to refuse each under section 24A(1)(b)(ii) of the FOI Act because the relevant CCTV recordings requested do not exist.

¹⁴ see definition of "document" in s 4 FOI Act

Request 4: Documents containing specific details related to appearances and other processes not involving a physical appearance at the Victoria District Registry on 10 October 2018, 20 February 2019 and 22 February 2019

You sought access to specific statistical information regarding Federal Court files detailed in part 4 of your request (Annexure A). In part 4 of the attachment to your email of 25 June 2019 (Annexure D), you clarify that this part of your request relates not only to parties who "appeared" but to those who "filed documents" and not only to parties or their representatives who made a "physical appearance" but also "by any process not involving a physical appearance".

Access under the FOI Act, generally, is available only to existing documents.¹⁵ Section 17 of the FOI Act permits, in very limited circumstances, access to information stored in an agency's computer system rather than in a discrete form.

Registrar Tredwell explained, in his letter of 27 May 2019, about the searches and enquiries he made in considering this part of your request, including the consultation he undertook with personnel within the Court's Corporate Services Group, which is responsible for the management of the Court's case management, Electronic Court File and eLodgement systems and within the District Registries, including the Victoria District Registry, to determine if the information requested existed or could be produced.

I have undertaken similar consultations, including with personnel in the Court's Corporate Services Group who prepare business intelligence information. In addition, I rely on my own knowledge and experience gained during the past 24 years in roles that I have held in the Court as a registrar and senior manager about the Court's practice and procedures, particularly in relation to the collection of data in systems maintained by the Court and Court personnel.

The Court maintains case management, Electronic Court File and eLodgment systems. In these, it captures and stores documents that are lodged, accepted for filing or created in relation to proceedings that have been commenced or have been sought to be commenced in the Court. It also records and stores information necessary for the Court's operational and business purposes in relation to these cases. It does not record or store the type of information sought in this part of your request in these or other systems.

The statistical information you are seeking is limited to specific dates and times at a single District Registry and relates to activity (by appearance or other process) in regard to files, documents and parties (or representatives) and, is hence, unique. It is not information that the Court requires for any operational or business purpose. Based on my searches and enquiries, I am satisfied that no document currently exists which provides the statistical information that you have sought in this part of your request.

As Registrar Tredwell explained, in his letter of 27 May 2019, the development of a document or documents providing the statistical information you requested is not something that could be achieved merely by the use of a computer or other equipment that are ordinarily available to the Court for retrieving or collating stored information such that it could be produced under section 17 of the FOI Act. ¹⁶ Such a document or documents, as also explained in that letter,

¹⁵ paragraph 2.33 of the FOI Guidelines

¹⁶ guidance on the application of section 17 is in paragraphs 3.204 – 3.210 of the FOI Guidelines

could only be created by the physical analysis by Court staff of a range of information sources, including Court files and CCTV recordings. The latter would be for the same days as requested in parts 1-3 of your access request and, as decided above, such recordings are not available as they have been erased. As also explained by Registrar Tredwell, court files are not documents of an administrative nature for which a valid request may be made by virtue of section 5 of the FOI Act.

I agree with and adopt Registrar Tredwell's explanation.

I am satisfied that section 17 of the FOI Act does not apply in these circumstances and that the Court is not required to produce a document containing the information detailed in part 4 of your access request even if the necessary information to do so existes within the various computer systems maintained by the Court.

On internal review, I have decided to refuse this part of your request under section 24A(1)(b)(ii) of the FOI Act because no document containing the information requested exists and section 17 does not apply to require that a document which provides that information be produced.

Request 5: Documents containing specific details, for the last two years, of matters where originating applications were submitted, leave to amend requested and thereafter subject to specific events

You sought access to specific statistical information regarding a particular form lodged in the Court, over a defined period, referenced by various criteria detailed in part 5 of your request (Annexure A). In part 5 of the attachment to your email of 25 June 2019 (Annexure D), you note that computers and statistical software programs can read and search text and you ask that the Court's statistician use a computer to find text and compile the information based on this.

Access under the FOI Act, generally, is available only to existing documents.¹⁷ Section 17 of the FOI Act permits, in very limited circumstances, access to information stored in an agency's computer system rather than in a discrete form.

Registrar Tredwell explained in his letter of 27 May 2019 the searches and enquiries he made in considering this part of your request, including the consultation he undertook with personnel within the Court's Corporate Services Group, which is responsible for the management of the Court's case management, Electronic Court File and eLodgement systems and within the District Registries to determine if the information requested existed or could be produced.

I have undertaken similar consultations, including with personnel in the Court's Corporate Services Group who prepare business intelligence information. In addition, I rely on my own knowledge and experience gained during the past 24 years in roles that I have held in the Court as a registrar and senior manager about the Court's practice and procedures, particularly in relation to the collection of data in systems maintained by the Court and Court personnel.

As noted above, the Court maintains case management, Electronic Court File and eLodgment systems. In these it captures and stores documents that are lodged, accepted for filing or created in relation to proceedings that have been commenced or have been sought to be commenced in the Court and it records and stores information about these cases required for the Court's

¹⁷ paragraph 2.33 of the FOI Guidelines

operational and business purposes. It does not record or store the type of information sought in this part of your request in these or other systems.

The statistical information is unique. It is not information that the Court requires for any operational or business purpose. Based on my searches and enquiries, I am satisfied that no document currently exists which provides the statistical information that you have sought in this part of your request.

As Registrar Tredwell explained, in his letter of 27 May 2019, the development of a document or documents providing the statistical information you have requested is not something that could be achieved merely by the use of a computer or other equipment that are ordinarily available to the Court for retrieving or collating stored information such that it could be produced under section 17 of the FOI Act. Such a document or documents, as also explained in that letter, could only be created by the physical analysis, by Court staff, of all Court files for the two year period specified in your request. As Registrar Tredwell notes, such an analysis of thousands of files for that purpose would clearly be grounds for practical refusal under section 24AA(1)(a)(i) of the FOI Act in that it would substantially and unreasonably divert the resources of the Court from its normal operations. ¹⁹

I agree with and adopt Registrar Tredwell's explanation.

I am satisfied that section 17 of the FOI Act does not apply in these circumstances and that the Court is not required to produce a document containing the information detailed in part 5 of your access request, even if the necessary information to do so exists within the various computer systems maintained by the Court.

On internal review, I have decided to refuse this part of your request under section 24A(1)(b)(ii) of the FOI Act because no document containing the information requested exists and section 17 does not apply to require that a document which provides that information be produced.

Request 6: Documents containing specific details, for the last two years, relating to original applications or requests for leave to appeal subject to specific events

You sought access to specific statistical information regarding particular forms lodged in the Court over a defined period referenced by various criteria detailed in part 6 of your request (Annexure A). In part 6 of the attachment to your email of 25 June 2019 (Annexure D), you note that computers and statistical software programs can read and search text and you ask that the Court's statistician use a computer to find text and compile the information based on this. Alternatively, you offer that you will do the collation yourself if the complete information is provided.

Access under the FOI Act, generally, is available only to existing documents.²⁰ Section 17 of the FOI Act permits, in very limited circumstances, access to information stored in an agency's computer system rather than in a discrete form.

²⁰ paragraph 2.33 of the FOI Guidelines

¹⁸ guidance on the application of section 17 is in paragraphs 3.204 – 3.210 of the FOI Guidelines

 $^{^{19}}$ guidance on practical refusal is in paragraphs 3.108-3.121 if the FOI Guidelines

Registrar Tredwell explained, in his letter of 27 May 2019 about the searches and enquiries he made in considering this part of your request, including the consultation he undertook with personnel within the Court's Corporate Services Group, which is responsible for the management of the Court's case management, Electronic Court File and eLodgement systems and within the District Registries to determine if the information requested existed or could be produced.

I have undertaken similar consultations, including with personnel in the Court's Corporate Services Group who prepare business intelligence information. In addition, I rely on my own knowledge and experience gained during the past 24 years in roles that I have held in the Court as a registrar and senior manager about the Court's practice and procedures, particularly in relation to the collection of data in systems maintained by the Court and Court personnel.

As noted above, the Court maintains case management, Electronic Court File and eLodgment systems. In these it captures and stores documents that are lodged, accepted for filing or created in relation to proceedings that have been commenced or have been sought to be commenced in the Court and it records and stores information about these cases required for the Court's operational and business purposes. It does not record or store the type of information sought in this part of your request in these or other systems.

The statistical information is unique. It is not information that the Court requires for any operational or business purpose. Based on my searches and enquiries, I am satisfied that no document currently exists which provides the statistical information that you sought in this part of your request.

As Registrar Tredwell explained, in his letter of 27 May 2019, the development of a document or documents providing the statistical information you requested is not something that could be achieved merely by the use of a computer or other equipment that are ordinarily available to the Court for retrieving or collating stored information such that it could be produced under section 17 of the FOI Act.²¹ Such a document or documents, as also explained in that letter, could only be created by the physical analysis by Court staff, of all Court files for the two year period specified in your request. As Registrar Tredwell notes, such an analysis of thousands of files for that purpose would clearly be grounds for practical refusal under section 24AA(1)(a)(i) of the FOI Act in that it would substantially and unreasonably divert the resources of the Court from its normal operations.²²

I agree with and adopt Registrar Tredwell's explanation.

I am satisfied that section 17 of the FOI Act does not apply in these circumstances and that the Court is not required to produce a document containing the information detailed in part 6 of your access request or provide complete information to you for you to perform a computer collation, even if the necessary information to do so exists within the various computer systems maintained by the Court.

On internal review, I have decided to refuse this part of your request under section 24A(1)(b)(ii) of the FOI Act because no document containing the information requested exists and section 17 does not apply to require that a document which provides that information be produced.

 $^{^{21}}$ guidance on the application of section 17 is in paragraphs 3.204-3.210 of the FOI Guidelines

²² guidance on practical refusal is in paragraphs 3.108 – 3.121 if the FOI Guidelines

Request for access to additional documents in Annexure D

In the document attached to your email request for internal review (Annexure D), you include a request for access to additional documents under the FOI Act. These, as I understand the request, are:

- documents referred to by Registrar Tredwell in his letter of 27 May 2019 in regard to the Court's standard practices for the management of information associated with CCTV footage captured in the Melbourne CLC;
- documents which shed light on a number of questions and/or statements posed by you in parts 7, 8, 9, and 10 of Annexure D;
- return of a copy of an affidavit lodged by you on 22 February 2019;
- other documents which are subject to specific Records Authorities, AFDA and other Disposal Authorities mentioned in part 11 of Annexure D;
- all documents relevant to the Court's compliance with the AFDA, Archives Act and the Records Authorities mentioned in part 11 of Annexure D; and
- documents regarding the information registrars, or other officers of the Court, must cause to be entered on the file of a proceeding in the Court when a registrar rejects a document lodged by an applicant or his, her or its legal representative.

As this request for access to these additional documents was made after Registrar Tredwell made his decision set out in his letter to you of 27 May 2019, that request was not considered by Registrar Tredwell nor dealt with in his decision. On internal review, I can decide all issues raised in the access request, consider additional material or submissions not considered by the original access request decision maker and exercise all of the powers available to the original access request decision maker.²³ I cannot, however, review a decision which has never been made.

Accordingly, I have made no decision about this request for access to these additional documents.

If you wish to request access to those documents, you must make a request in writing to the Court. As you know, this can be by email directed to the Court at FOI@fedcourt.gov.au.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

²³ paragraph 9.34 of the FOI Guidelines

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

John Mathieson

Deputy Principal Registrar

From:
Sent: Friday, 24 May 2019 11:07 AM
To: External FOI <External.FOI@fedcourt.gov.au>; admin@fedcourt.gov.au
Subject:
Change of judge

Dear FOI,

Re:

and

I request under the FOI Act, a copy any document which will inform me on what date the Honourable Justice McKerracher was replaced by the Honourable Justice Jackson to hear My Matters.

I also request under the FOI Act, a copy of all correspondence; file notes of telephone conversations and any other record or document identifying the steps (including preliminary steps) that were taken to affect the change of judge from the Honourable Justice McKerracher to the Honourable Justice Jackson, or if you suggest there was no change of Judge, the allocation of the Honourable Justice Jackson to hear My Matters.

I also request under the FOI Act, a copy of all correspondence and file notes of telephone conversations between the Attorney General's office (including OLSC) and/or the Attorney General or anyone of his staff and the Federal Court about the appointment of the Honourable Justice Jackson and any suggestions indirectly or otherwise about which cases His Honour Justice Jackson may be suited to adjudicate.

The reasons for these requests are genuine - Can a brand new judge stand up against blatant government unlawful and probably illegal conduct after the the very Attorney General that just appointed the new Judge is overseeing that behaviour as set out in My Matters?

Please note that I have been corresponding with the Attorney General and the OLSC about their complete disregard for upholding the law and the Model Litigant Obligations in the face of blatant unlawful conduct by Comcare as identified in My Matters for two years. On face value, a change of Judge from the very well suited Honourable Justice McKerracher to the Honourable Justice Jackson who is a brand new appointment by that same Attorney General appears to be a move that may have been influenced (of course indirectly) by the Attorney General and/or his staff even though the Federal Court would of course not know about that connection and influence.

I am therefore very concerned that the Attorney General or his office may have indirectly influenced or if you like suggested or hinted that the Honourable Justice Jackson would be well suited to hear My Matters. I don't know anything about the Honourable Justice Jackson or his views on open and accountable government or what relationship he had with the Attorney General and/or the Liberal party. However, the discretion to dismiss cases in the Federal Court is pretty much unfettered and sometimes you see blatant unlawful Government conduct being rewarded on the basis there was an alternative avenue of review to the Tribunal suggesting that the Tribunal if a fair arena, but consequently at the same time, rewarding that unlawful behaviour

However, with Comcare as the Respondent, the Tribunal is no longer somewhere where justice can be easily served unless you have a big budget to match Comcare's budget and tactics and you can afford to pay the fees if you win because Comcare screw people on their legal costs if they win also. So the Tribunal is a nightmare. Further, the Tribunal says there is nothing the Tribunal can do about it.

For example, there is strong evidence that suggests Comcare are misleading Tribunal members with their written legal submissions (although I'm sure its being more cautious now that I've identified that likelihood) and the Tribunal said it can do nothing about that. Where that affected the outcome of one case for an unrepresented applicant, that applicant could not even be contacted. Further, even though those apparent misleading written submissions are referred to as being filed in 2 cases. Comcare are denying they filed written submissions under FOI Act in both cases and made that same argument to the OAIC on review. Just to be clear, the reasons for decisions in the 2 cases literally refer to those written submissions being filed, and Comcare are denying having them!

Comcare also has an unlimited budget for lawyers and counsel and an array of purported independent medical experts that get paid in the words of one, "ridiculously well for these medico-legal reports" and whose reports are extremely bias and/or just completely inconsistent with the literature as is exposed in My Matters. Notwithstanding these shortfalls including the complete ignorance of the law in getting a case to the Tribunal, (and that's after I basically begged then to consider it on internal review) successful compensation outcomes at the **Tribunal have halved in less than a decade**.

Further, rather than doing something about this unjust arena, the Tribunal has changed its reporting tactics in its annual reports to try and make it look like applicants a getting a better results that they are by combing successes with varied outcomes. That is, at first glance, it artificially appears that outcomes favourable for applicants are better than they are.

Notwithstanding all of the above, the Attorney General and OLSC have completely ignored it. Given how vocal I've been about this with his office and the AG himself, a change in Judge at this time, especially to someone new and appointed by that very same Attorney General so recently is very concerning. My Matters demand an experienced Judge that would be prepared, if he or she agrees that what is presented is so far below responsible government decision making it borderlines or even is illegal to make that call and if necessary, refer the perpetrators to the AFP and write an appropriate judgment.

His Honour Justice McKerracher with his background was the perfect Judge to assess the material and to decide whether that call should be made. Whereas His Honour Justice Jackson does not appear to have any background in criminal law. My main concern though is how my case ended up before His Honour Justice Jackson so soon after his appointment by the very Attorney General who's behaviour I am seeing to address.

My main concern is that this Attorney General with his right wing views has somehow orchestrated a new Judge when the case clearly demands someone who can send a strong message to the Government and especially the Attorney General about it's complete disregard for most importantly applying law and of course the complete disregard for the model litigations. The OLSC's current stance, is that decisions by Comcare before litigation do not fall under the "Handling Claims" limb of the MLOs because they are administrative decisions. I mean really? what work has the Claims limb and the limb about avoiding litigation go to to if it does not cover behaviour before litigation in respect to a claim? It's a joke!

Thank you

Ex turpi causa non oritur actio

Compensation statistics from the Tribunal's annual reports since FYE '07

Year 20'	06/07	07/08	08/09	09/10	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18
Affirmed	24	27	30	30	32	35	38	40	40	39	40	48
Withdrawn	48	28	26	24	23	23	23	24	24	24	25	23
Total:	72	55	56	54	55	58	61	64	64	63	65	71
Set aside/	35	36	38	38	38	32	33	27	27	29	26	22
Percentage of	49	65	68	70	69	55	54	42	42	46	40	30
wins for claimants												

^{*}Since 2014/15, the AAT has combined the % of set aside and varied (as I don't know how favourable they are, they have been excluded) outcomes in its annual reports which may artificially increase the percentage of results which appear favourable for the Applicant. So I have taken the average varied of 5% over the previous 3 years and taken that from the set-aside varied percentages for the following 3 years to reduce the set aside outcome



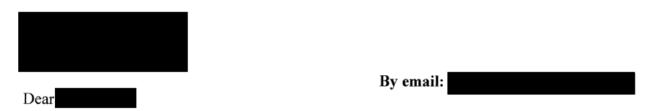
Telephone: (02) 9230 8567 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

13 June 2019



Freedom of Information Act 1982 - Request for Access

I refer to your email of 24 May 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 6 June 2019 acknowledging receipt of your request.

Specifically your request provides as follows:

I request under the FOI Act, a copy of any document which will inform me on what date the Honourable Justice McKerracher was replaced by the Honourable Justice Jackson to hear My Matters.

I also request under the FOI Act, a copy of all correspondence; file notes of telephone conversations and any other record or document identifying the steps (including preliminary steps) that were taken to affect the change of judge from the Honourable Justice McKerracher to the Honourable Justice Jackson, or if you suggest there was no change of Judge, the allocation of the Honourable Justice Jackson to hear My Matters.

I also request under the FOI Act, a copy of all correspondence and file notes of telephone conversations between the Attorney General's office (including OLSC) and/or the Attorney General or anyone of his staff and the Federal Court about the appointment of the Honourable Justice Jackson and any suggestions indirectly or otherwise about which cases His Honour Justice Jackson may be suited to adjudicate.

Authorised decision-maker

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse your FOI request. The reason for this is that, first, the FOI Act does not apply due to the operation of subsection 5(1) of the FOI Act. This part of my refusal applies to:

- any documents which would inform you on what date Justice McKerracher was replaced by the Justice Jackson in
- all correspondence, file notes of telephone conversations and any other record or document identifying the steps (including preliminary steps) that were taken to affect the change of judge from Justice McKerracher to Justice Jackson, or the allocation to Justice Jackson of

Second, I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to all correspondence and file notes of telephone conversations between the Attorney General's office (including OLSC) and/or the Attorney General or anyone of his staff and the Federal Court about the appointment of Justice Jackson and any suggestions indirectly or otherwise about which cases Justice Jackson may be suited to adjudicate. The reason for this is that I am satisfied that all reasonable steps were taken to find documents within the scope of that part of your request and that no such documents exist.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines), available at https://www.oaic.gov.au/freedom-of-information/foi-guidelines/.

Reasons for Decision

Searches undertaken

Searches undertaken

The searches undertaken by the Court to identify accessible documents within the scope of your FOI request were exhaustive. Consultation was undertaken with all officers and staff within the Principal Registry of the Federal Court, including the Chief Executive Officer/Principal Registrar, who may have possessed accessible documents within the scope of your FOI request.

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested. I am also satisfied that the Court has identified all documents within the scope of your request.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature"⁵.

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".⁶

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁷

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely

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<sup>1</sup> paragraphs 2.6 – 2.8 of the FOI Guidelines
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⁶ at [19]

⁷ at [41]

8 at 13]

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⁹ at [47]

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

¹⁰ (2008) 170 FCR 382

related to judicial independence would not need protection from the operation of the FOI Act 11

The High Court also held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. ¹³

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevant provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

1. Documents identifying the date Justice Jackson replaced Justice McKerracher in WAD12/2019 and WAD625/2018.

Pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in Kline v Official Secretary to the Governor General of Australia & Anor, I am satisfied that any documents relating to the allocation of are not documents relating to the management and administration of the registry and office resources

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¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

of the Court. These documents are directly related to the conduct of those matters before the Court and not matters of an administrative nature.

The allocation of a matter to a judge of the Federal Court is a function undertaken by way of assistance and support to the Court in the discharge of the Court's powers and functions. Documents relating to this category of support were expressly excluded by the High Court in Kline v Official Secretary to the Governor General of Australia & Anor from those documents relating to the management and administration of office resources for which a valid request could be made under the FOI Act. 14

I am satisfied that these documents are not matters of an administrative nature pursuant to subsection 5(1) of the FOI Act. They are not accessible under the FOI Act and your request to access those documents is therefore refused.

 Documents relating to or identifying the steps taken to affect the change of judge or the allocation of the steps taken to Justice Jackson

Pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in Kline v Official Secretary to the Governor General of Australia & Anor, I am satisfied that any documents relating to the allocation of are not documents relating to the management and administration of the registry and office resources of the Court. These documents are directly related to the conduct of those matters before the Court and not matters of an administrative nature for the purposes of the FOI Act.

The allocation of a matter to a judge of the Federal Court is a function undertaken by way of assistance and support to the Court in the discharge of the Court's powers and functions. Documents relating to this category of support were expressly excluded by the High Court in Kline v Official Secretary to the Governor General of Australia & Anor from those documents relating to the management and administration of office resources for which a valid request could be made under the FOI Act. 15

I am satisfied that these documents are not matters of an administrative nature pursuant to subsection 5(1) of the FOI Act. They are not accessible under the FOI Act and your request to access those documents is therefore refused.

3. Documents evidencing communications between the Attorney-General's office (including OLSC) and/or the Attorney-General and the Federal Court about the appointment of Justice Jackson or the allocation of cases to Justice Jackson

Judges of the Federal Court are appointed by the Governor-General pursuant to section 6 of the *Federal Court of Australia Act 1976* (Cth) and the power conferred by section 72 of the Constitution. The appointment of a Federal Court judge is therefore a matter for the executive government alone and one in which the Federal Court has no role.

The exhaustive searches undertaken following your FOI request identified no documents falling within the scope of this part of your request. This outcome is consistent with the

15 at [41] and [13]

¹⁴ at [41] and [13]

appointment of Justice Jackson being a matter for executive government alone and one in which the Federal Court had no role.

I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no documents within the scope of your request exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, that any documents evidencing communications between the Attorney-General or the Attorney-General's office and the Federal Court about the appointment of Justice Jackson, or the allocation of cases to Justice Jackson, would not be documents of an administrative nature. In my view, these documents would not be accessible under the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

Dear FOI Officer of the Federal Court of Australia,

I hereby make a formal request for access to the following documents under the Freedom of Information Act (Cth) 1982:

1. The CCTV footage of any part of the FCA building at 305 William Street, Melbourne Vic, 3000 on 02 August 2018, in so far as said CCTV footage captures

This footage is likely to be between 2 and 4 PM on 02 August 2018.

Yours Sincerely,



Telephone: (02) 9230 8567 DX 613 SYDNEY

Your Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

18 July 2019

Our Ref:



Request under Freedom of Information Act

I refer to your email of 20 June 2019 to the Federal Court of Australia in which you have sought access to a document under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 2 July 2019 acknowledging receipt of your request.

In your email of 20 June 2019, you make the following request (FOI request):

I hereby make a formal request for access to the following documents under the Freedom of Information Act (Cth) 1982:

1. The CCTV footage of any part of the FCA building at 305 William Street, Melbourne, Vic, 3000 on 02 August 2018, in so far as said CCTV footage captures This footage is likely to be between 2 and 4 PM on 02 August 2018. An edited copy of this CCTV footage is acceptable in case this is necessary to protect the personal information of other individuals.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse access to the document sought pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to CCTV imagery which does not exist.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving consultation with the appropriate security officers employed by MSS Security within the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne (the **Owen Dixon Commonwealth Law Courts Building**).

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the document requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" (section 5).

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". 6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁷

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology. The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

 $^{^{1}}$ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

⁸ at 13]

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevant provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

CCTV imagery

CCTV imagery may constitute a document for which a request may be made under the FOI Act. ¹⁴ Whilst it is not clear, following *Kline*, that CCTV imagery is a document of an administrative nature, being a document which concerns the management and administration of the office resources of a Federal Court registry, I am prepared to assume for the purposes of this decision that it is an administrative document for which the FOI Act applies.

In response to your request, the appropriate security officers employed by MSS Security within the Owen Dixon Commonwealth Law Courts Building were contacted to determine if CCTV imagery within the scope of your request could be identified.

It was found that no CCTV imagery dating from 2 August 2018 had been retained. All imagery relating to these dates has been erased consistent with the Court's standard practices for the management of information associated with CCTV imagery captured in the Owen Dixon Commonwealth Law Courts Building and other Commonwealth Law Court Buildings around the country.

I am satisfied that all reasonable steps were taken to try to identify a document or documents falling within the scope of your request. Consultation was undertaken with the appropriate officers and staff within the Owen Dixon Commonwealth Law Court Building to determine whether CCTV imagery within the scope of the request existed. I am satisfied that no CCTV imagery within the scope of your request exists.

Your FOI request is refused pursuant to section 24A(1)(b)(ii) of the FOI Act in that it seeks access to CCTV imagery which does not exist

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

¹⁴ see s 4 FOI Act definition of document and 2.30 OAIC FOI Guidelines

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

From:
To: External FOI

Subject: Request for access to CCTV

Date: Wednesday, 31 July 2019 12:31:23 PM

Dear Freedom of Information Officer,

I hereby request access to the CCTV footage of the level 7 Registry area at 305 William Street, Melbourne, Victoria 3000 as follows -

1. On 29 July 2019 in so far as that CCTV footage captures by voice image or otherwise.

2. On 31 July 2019 in so far as that CCTV footage captures by voice image or otherwise.

Best Regards.

Sent from my iPhone



Telephone: (02) 9230 8567 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

29 August 2019



Request under Freedom of Information Act

I refer to your email of 31 July 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 12 August 2019 acknowledging receipt of your request.

In your email of 31 July 2019, you make the following request (FOI request):

I hereby request access to the CCTV footage of the level 7 Registry area at 305 William Street, Melbourne, Victoria 3000 as follows -

1. On 29 July 2019 in so far as that CCTV footage captures

2. On 31 July 2019 in so far as that CCTV footage captures by voice image or otherwise.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

As relevant, subsection 23(2) of the FOI Act provides that a decision in respect of a request made to a court may be made on behalf of that court by the principal officer of that court or, subject to regulations, by an officer of that court acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the principal officer of that court.

In an email of 30 July 2019, in respect of a separate FOI request, you requested that both Deputy Principal Registrar Mathieson and I be recused from handling this request. You did so on the basis that both Deputy Principal Registrar Mathieson and I had purportedly engaged in dishonest shams. The alleged 'dishonest shams' referred to are referenced in two of your

four emails to the Court between 3pm and 4pm on 30 July 2019, and relate to the internal review decision made by Deputy Principal Registrar Mathieson on 23 July 2019 and my FOI decision on 27 May 2019.

The FOI Guidelines issued by the Office of the Australian Information Commissioner (the FOI Guidelines) require that a decision maker is required to follow a fair decision-making process, complying with the 'bias rule' and the 'hearing rule'. The bias rule requires a decision maker to be impartial and have no personal stake in the decision to be made. A decision maker must also be free of both actual and apparent bias, that is, of conduct that might appear to a fair-minded observer to affect their impartiality in reaching a decision.

The FOI Guidelines further provide in respect of the bias rule, that generally, a decision maker is not prevented from making a decision by reason only of former contact with an FOI applicant, or by reason of having dealt previously with a similar issue or applicant, or having expressed a view about FOI Act principles or requirements.⁴

I am lawfully able to make a decision in respect of your request. I have had no other dealings with you, save for my FOI decisions dated 24 April 2019, 27 May 2019, 18 July 2019 and a response to a follow up query provided to you on 30 July 2019. There is no evidence to suggest that I have an actual bias. In addition, there is nothing to suggest that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial mind to the making of a decision in response to your FOI request.⁵ Your request for my recusal is therefore refused.

Decision

I have decided to refuse access to a copy of the CCTV imagery of at the Victoria Registry of the Federal Court, on Level 7 of the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne on 29 July 2019 and 31 July 2019.

I am satisfied that the FOI Act does not apply due to the operation of section 5(1) of the FOI Act. Further, even if the documents sought were related to matters of an administrative nature under section 5(1) of the FOI Act, I am satisfied that the relevant imagery is conditionally exempt under s 47F of the FOI Act and its release against the public interest. Further, it would not be reasonably practicable for the Court to edit the imagery pursuant to section 22(2) of the FOI Act to enable access to be granted.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the content of the documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

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¹ FOI Guidelines paragraph 3.15

² FOI Guidelines paragraph 3.16

³ FOI Guidelines paragraph 3.16

⁴ FOI Guidelines paragraph 3.18

⁵ see Burgess v Minister for Immigration and Border Protection [2018] FCA 69 at [34]; Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337 at [6]

Reasons for Decision

Searches undertaken

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving consultation with the appropriate security officers employed by MSS Security within the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne (the **Owen Dixon Commonwealth Law Courts Building**).

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested, and that all documents within the scope of your FOI request have been identified.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.⁶ It does not apply to Judicial Officers⁷ or to any documents relating to the handling of complaints about Judicial Officers⁸. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁹ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"¹⁰.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". 11

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative". 12

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology. 13 The first category, which was thereby

 $^{^6}$ paragraphs 2.6 – 2.8 of the FOI Guidelines

⁷ paragraph 5(1)(b) of the FOI Act

⁸ subsections 5(1A) to (1C) of the FOI Act

⁹ paragraph 5(1)(a)

¹⁰ section 5

¹¹ at [19] ¹² at [41]

excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.¹⁴

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁵, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. ¹⁶

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹⁷

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹⁸

CCTV imagery

CCTV imagery may constitute a document for which a request may be made under the FOI Act. 19

In response to your request, the appropriate security officers employed by MSS Security within the Owen Dixon Commonwealth Law Courts Building were contacted to determine if CCTV imagery within the scope of your request could be identified. The Court identified CCTV imagery of the reception desk of the Victoria District Registry of the Federal Court falling within the scope of this FOI request. The specific imagery covered a period of

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¹⁴ at [47]

^{15 (2008) 170} FCR 382

¹⁶ at [51]

¹⁷ at [51]

¹⁸ at [75] and [76]

¹⁹ see s 4 FOI Act definition of document and 2.30 OAIC FOI Guidelines

approximately 13 minutes from 4:20 pm local time on 29 July 2019 and approximately 38 minutes from 12:10 pm on 31 July 2019.

Documents relating to the Management and Administration of Registry and Office Resources

The CCTV imagery requested is captured solely for the purposes of the protective security of the public and staff within the Victoria Registry of the Federal Court and the Commonwealth Law Courts Building in Melbourne more generally. As such, the CCTV imagery is not, following Kline v Official Secretary to the Governor General of Australia & Anor, a document relating to the management and administration of registry and office resources, and has no connection with the management and administration of registry and office resources.

I am satisfied that the CCTV imagery is not a document related to matters of an administrative nature pursuant to section 5(1) of the Act. The CCTV imagery is not accessible under the FOI Act and your FOI request is refused.

Personal Information of Third Parties

I have viewed the CCTV imagery. That imagery contains, in addition to images of third parties who were also present at the reception desk of the Victoria District Registry of the Federal Court during the relevant periods. The faces of the third parties are in focus and are clearly visible. Those third parties could be easily identified by any person familiar with them who viewed that imagery.

Section 4 of the FOI Act provides that 'personal information' has the same meaning as in the *Privacy Act 1988* (Cth) (the Privacy Act). Section 6 of the Privacy Act provides:

Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not: and
- (b) whether the information or opinion is recorded in a material form or not.

The FOI Guidelines provide that:

what constitutes personal information will vary, depending on whether an individual can be identified or is reasonably identifiable in particular circumstances. For particular information to be personal information, an individual must be identified or reasonably identifiable.²⁰

There is clear authority that third parties will be readily identifiable where their faces are in focus and clearly visible, and in such circumstances the imagery contains personal information of those third parties.²¹

If I am incorrect in my finding that the CCTV imagery is not, following *Kline v Official Secretary to the Governor General of Australia & Anor*, a document relating to the management and administration of registry and office resources, the individuals in the CCTV imagery were not able to be identified for the purposes of consultation, and have not consented to the release of these images.

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²⁰ OAIC FOI Guidelines paragraph 6.131

²¹ See Kelvin Bissett and Department of Human Services [2015] AICmr 10; and 'BZ' and Department of Immigration and Border Protection [2014] AICmr 55

Conditional Exemption under s 47F FOI Act

As relevant, section 47F of the FOI Act provides as follows:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.

In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 stated that:

...whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

I am satisfied that the identified CCTV imagery is conditionally exempt pursuant to s 47F of the FOI Act because its disclosure would involve the unreasonable disclosure of the personal information for each of those third parties who can be identified or who are reasonably identifiable in that imagery. In reaching that conclusion I have taken into consideration that:

- the presence of the individuals in the registry of the Federal Court on 29 July 2019 and and 31 July 2019 is not well known;
- those individuals are not known to be associated with the matters dealt with in the CCTV imagery;
- the information is not available from publicly accessible sources, being captured only on CCTV imagery that is created privately and solely for the purposes of the security of the public and staff within the Victoria Registry of the Federal Court in Melbourne;
- it is unlikely that those third parties whose personal information is captured on the imagery would wish to have that information disclosed without their consent, and in the circumstances in which the information has been captured the Court has no ability to determine whether consent might be granted; and
- the public interest in protecting the privacy of individuals captured on the Court's CCTV security imagery.

Public Interest Test

Where a document is conditionally exempt, access must be given unless in the circumstances giving access would, on balance, be contrary to the public interest.²²

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²² section 11A(5) FOI Act

I am satisfied, having reviewed the CCTV imagery, that there are two factors favouring access being granted to the CCTV imagery, namely:

- the promotion of the objects of the FOI Act; and
- allowing access to his personal information.

I am not satisfied that disclosure of the relevant imagery will inform debate on a matter of public importance; nor will it promote effective oversight of public expenditure. Further, it will not contribute to the administration of justice generally, including procedural fairness, or advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.

The public interest factors against disclosure include the prejudice that such access would cause to the protection of the individual rights to privacy of persons who attend the Victoria Registry of the Federal Court in exercising their rights to access justice.

In weighing the public interest factors for and against disclosure, I am satisfied that the public interest in protecting the rights to privacy of persons who attend a Court to exercise their rights to access justice, outweigh the promotion of the objects of the FOI Act and allowing an individual to access their personal information captured on the Court's CCTV imagery. The protection of the right to privacy and access to justice are significant cornerstones upon which the administration of Australian society relies.

Edited Copy

Section 22(2) of the FOI Act requires an agency to give an applicant access to an edited copy of an exempt document, with the exempt matter deleted, if reasonably practicable.

In responding to your previous FOI request of 25 March 2019, in which you also sought access to CCTV imagery, significant efforts were undertaken by the Court to edit the identified CCTV imagery to remove the personal information of third parties whilst maintaining the information subject to the FOI request. Unfortunately, those efforts, involving several Court employees and contracted providers of Court security services, over several days, were unable to successfully edit the relevant imagery. The Court's capability to edit the CCTV imagery now sought remains unchanged.

In responding to your request of 25 March 2019, the Court sought assistance from external professionals. A quote was obtained to perform the required editing work, on 30 minutes of CCTV imagery, which indicated that the work could be performed at a cost of \$900 for 5 hours of professional video editing services. The cost of editing the approximately 51 minutes of CCTV imagery the subject of your current FOI request would increase proportionally.

I am satisfied that it is therefore not reasonably practicable for the Court to edit the identified CCTV imagery to remove the personal information of third parties whilst maintaining the information subject to the FOI request.

I am satisfied for the reasons identified above that, even if the CCTV imagery could be considered a document that relates to matters of an administrative nature, it contains the personal information of third parties that is conditionally exempt under s 47F of the FOI Act. Further, it would be contrary to the public interest to provide access to that imagery in

circumstances where it is not reasonably practicable to edit the CCTV imagery to remove the personal information of third parties whilst maintaining the information subject to the FOI request.

Access to the requested CCTV imagery, were it accessible under the FOI Act, would be refused.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

From:
To: External FOI

Subject: Re: Request for access to CCTV

Date: Thursday, 1 August 2019 3:48:06 PM

Dear Freedom of Information Officer,

I hereby request access to the CCTV footage of the level 7 Registry area, or any other area, at 305 William Street, Melbourne, Victoria 3000 as follows -

- 1. On 01 2019 in so far as that CCTV footage captures by voice image or otherwise.
- 2. On 01 August 2019 in so far as that CCTV footage captures areas within 10-20 meters of any area in which is present.

Do note that I was sitting quietly in Registry when came by simply to threaten that I must leave in 10 minutes. This is intimidation and, accordingly, contempt of court. as it interferes with both the court's processes and the administration of justice. Under all circumstances, I should be able to attend the court and lawfully engage the processes of the court, like all other litigants, without fear or favor. This threat, and failure to process my documents for in excess of six months, breaches my rights of equality under the law and equal access to the courts and tribunals.

Best Regards,



Telephone: (02) 9230 8567

DX 613 SYDNEY

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

29 August 2019



Request under Freedom of Information Act

I refer to your email of 1 August 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the Freedom of Information Act 1982 (Cth) (FOI Act). I also refer to my letter of 12 August 2019 acknowledging receipt of your request.

In your email of 1 August 2019, you make the following request (FOI request):

I hereby request access to the CCTV footage of the level 7 Registry area, or any other area, at 305 William Street, Melbourne, Victoria 3000 as follows -

- 1. On 01 August 2019 in so far as that CCTV footage captures by voice image or otherwise:
- 2. On 01 August 2019 in so far as that CCTV footage captures areas within 10-20 meters of any area in is present.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

As relevant, subsection 23(2) of the FOI Act provides that a decision in respect of a request made to a court may be made on behalf of that court by the principal officer of that court or, subject to regulations, by an officer of that court acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the principal officer of that court.

In an email of 30 July 2019, in respect of a separate FOI request, you requested that both Deputy Principal Registrar Mathieson and I be recused from handling that request. You did so on the basis that both Deputy Principal Registrar Mathieson and I had purportedly engaged in dishonest shams. The alleged 'dishonest shams' referred to are referenced in two of your four emails to the Court between 3pm and 4pm on 30 July 2019, and relate to the internal review decision made by Deputy Principal Registrar Mathieson on 23 July 2019 and my FOI decision on 27 May 2019.

The FOI Guidelines issued by the Office of the Australian Information Commissioner (the FOI Guidelines) require that a decision maker is required to follow a fair decision-making process, complying with the 'bias rule' and the 'hearing rule'. The bias rule requires a decision maker to be impartial and have no personal stake in the decision to be made.² A decision maker must also be free of both actual and apparent bias, that is, of conduct that might appear to a fair-minded observer to affect their impartiality in reaching a decision.³

The FOI Guidelines further provide in respect of the bias rule, that generally, a decision maker is not prevented from making a decision by reason only of former contact with an FOI applicant, or by reason of having dealt previously with a similar issue or applicant, or having expressed a view about FOI Act principles or requirements.⁴

I am lawfully able to make a decision in respect of your request. I have had no other dealings with you, save for my FOI decisions dated 24 April 2019, 27 May 2019, 18 July 2019 and a response to a follow up query provided to you on 30 July 2019. There is no evidence to suggest that I have an actual bias. In addition, there is nothing to suggest that a fair-minded lay observer might reasonably apprehend that I might not bring an impartial mind to the making of a decision in response to your FOI request.⁵ Your request for my recusal is therefore refused.

Decision

I have decided to refuse access to a copy of the CCTV imagery of at the Victoria Registry, or any other area, of the Federal Court, on Level 7 of the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne on 1 August 2019.

I am satisfied that the FOI Act does not apply due to the operation of section 5(1) of the FOI Act. Further, even if the documents sought were related to matters of an administrative nature under section 5(1) of the FOI Act, I am satisfied that the relevant imagery is conditionally exempt under s 47F of the FOI Act and its release against the public interest. Further, it would not be reasonably practicable for the Court to edit the imagery pursuant to section 22(2) of the FOI Act to enable access to be granted.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the content of the documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

² FOI Guidelines paragraph 3.16

¹ FOI Guidelines paragraph 3.15

³ FOI Guidelines paragraph 3.16

⁴ FOI Guidelines paragraph 3.18

⁵ see Burgess v Minister for Immigration and Border Protection [2018] FCA 69 at [34]; Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337 at [6]

Reasons for Decision

Searches undertaken

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving consultation with the appropriate security officers employed by MSS Security within the Owen Dixon Commonwealth Law Courts Building, 305 William Street, Melbourne (the **Owen Dixon Commonwealth Law Courts Building**).

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested, and that all documents within the scope of your FOI request have been identified.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.⁶ It does not apply to Judicial Officers⁷ or to any documents relating to the handling of complaints about Judicial Officers⁸. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁹ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"¹⁰.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". 11

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative". ¹²

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.¹³ The first category, which was thereby

¹¹ at [19]

⁶ paragraphs 2.6 – 2.8 of the FOI Guidelines

⁷ paragraph 5(1)(b) of the FOI Act

⁸ subsections 5(1A) to (1C) of the FOI Act

⁹ paragraph 5(1)(a)

¹⁰ section 5

¹² at [41]

¹³ at 13]

excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.¹⁴

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁵, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. ¹⁶

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹⁷

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. ¹⁸

CCTV imagery

CCTV imagery may constitute a document for which a request may be made under the FOI Act. 19

In response to your request, the appropriate security officers employed by MSS Security within the Owen Dixon Commonwealth Law Courts Building were contacted to determine if CCTV imagery within the scope of your request could be identified. The Court identified CCTV imagery of the reception desk of the Victoria District Registry of the Federal Court

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¹⁴ at [47]

^{15 (2008) 170} FCR 382

¹⁶ at [51]

¹⁷ at [51]

¹⁸ at [75] and [76]

¹⁹ see s 4 FOI Act definition of document and 2.30 OAIC FOI Guidelines

falling within the scope of this FOI request. The specific imagery covered a period spanning approximately 5 hours and 40 minutes from 10:40 am to 4:17 pm.

Documents relating to the Management and Administration of Registry and Office Resources

The CCTV imagery requested is captured solely for the purposes of the protective security of the public and staff within the Victoria Registry of the Federal Court and the Commonwealth Law Courts Building in Melbourne more generally. As such, the CCTV imagery is not, following Kline v Official Secretary to the Governor General of Australia & Anor, a document relating to the management and administration of registry and office resources, and has no connection with the management and administration of registry and office resources.

I am satisfied that the CCTV imagery is not a document related to matters of an administrative nature pursuant to section 5(1) of the Act. The CCTV imagery is not accessible under the FOI Act and your FOI request is refused.

Personal Information of Third Parties

I have viewed the CCTV imagery. That imagery contains, in addition to images of third parties who were also present at the reception desk of the Victoria District Registry of the Federal Court during the relevant periods. The faces of the third parties are in focus and are clearly visible. Those third parties could be easily identified by any person familiar with them who viewed that imagery.

Section 4 of the FOI Act provides that 'personal information' has the same meaning as in the *Privacy Act 1988* (Cth) (the Privacy Act). Section 6 of the Privacy Act provides:

Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable:

- (a) whether the information or opinion is true or not; and
- (b) whether the information or opinion is recorded in a material form or not.

The FOI Guidelines provide that:

or ourdernies provide that.

what constitutes personal information will vary, depending on whether an individual can be identified or is reasonably identifiable in particular circumstances. For particular information to be personal information, an individual must be identified or reasonably identifiable.²⁰

There is clear authority that third parties will be readily identifiable where their faces are in focus and clearly visible, and in such circumstances the imagery contains personal information of those third parties.²¹

If I am incorrect in my finding that the CCTV imagery is not, following *Kline v Official Secretary to the Governor General of Australia & Anor*, a document relating to the management and administration of registry and office resources, the individuals in the CCTV imagery were not able to be identified for the purposes of consultation, and have not consented to the release of these images.

²⁰ OAIC FOI Guidelines paragraph 6.131

²¹ See Kelvin Bissett and Department of Human Services [2015] AICmr 10; and 'BZ' and Department of Immigration and Border Protection [2014] AICmr 55

Conditional Exemption under s 47F FOI Act

As relevant, section 47F of the FOI Act provides as follows:

- (1) A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).
- (2) In determining whether the disclosure of the document would involve the unreasonable disclosure of personal information, an agency or Minister must have regard to the following matters:
 - (a) the extent to which the information is well known;
 - (b) whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;
 - (c) the availability of the information from publicly accessible sources;
 - (d) any other matters that the agency or Minister considers relevant.

In considering what is unreasonable, the AAT in Re Chandra and Minister for Immigration and Ethnic Affairs [1984] AATA 437 at 259 stated that:

...whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance ... it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party ...

I am satisfied that the identified CCTV imagery is conditionally exempt pursuant to s 47F of the FOI Act because its disclosure would involve the unreasonable disclosure of the personal information for each of those third parties who can be identified or who are reasonably identifiable in that imagery. In reaching that conclusion I have taken into consideration that:

- the presence of the individuals in the registry of the Federal Court on 1 August 2019 is not well known:
- those individuals are not known to be associated with the matters dealt with in the CCTV imagery;
- the information is not available from publicly accessible sources, being captured only on CCTV imagery that is created privately and solely for the purposes of the security of the public and staff within the Victoria Registry of the Federal Court in Melbourne;
- it is unlikely that those third parties whose personal information is captured on the imagery would wish to have that information disclosed without their consent, and in the circumstances in which the information has been captured the Court has no ability to determine whether consent might be granted; and
- the public interest in protecting the privacy of individuals captured on the Court's CCTV security imagery.

Public Interest Test

Where a document is conditionally exempt, access must be given unless in the circumstances giving access would, on balance, be contrary to the public interest.²²

²² section 11A(5) FOI Act

I am satisfied, having reviewed the CCTV imagery, that there are two factors favouring access being granted to the CCTV imagery, namely:

- the promotion of the objects of the FOI Act; and
- allowing access to his personal information.

I am not satisfied that disclosure of the relevant imagery will inform debate on a matter of public importance; nor will it promote effective oversight of public expenditure. Further, it will not contribute to the administration of justice generally, including procedural fairness, or advance the fair treatment of individuals and other entities in accordance with the law in their dealings with agencies.

The public interest factors against disclosure include the prejudice that such access would cause to the protection of the individual rights to privacy of persons who attend the Victoria Registry of the Federal Court in exercising their rights to access justice.

In weighing the public interest factors for and against disclosure, I am satisfied that the public interest in protecting the rights to privacy of persons who attend a Court to exercise their rights to access justice, outweigh the promotion of the objects of the FOI Act and allowing an individual to access their personal information captured on the Court's CCTV imagery. The protection of the right to privacy and access to justice are significant cornerstones upon which the administration of Australian society relies.

Edited Copy

Section 22(2) of the FOI Act requires an agency to give an applicant access to an edited copy of an exempt document, with the exempt matter deleted, if reasonably practicable.

In responding to your previous FOI request of 25 March 2019, in which you also sought access to CCTV imagery, significant efforts were undertaken by the Court to edit the identified CCTV imagery to remove the personal information of third parties whilst maintaining the information subject to the FOI request. Unfortunately, those efforts, involving several Court employees and contracted providers of Court security services, over several days, were unable to successfully edit the relevant imagery. The Court's capability to edit the CCTV imagery now sought remains unchanged.

In responding to your request of 25 March 2019, the Court sought assistance from external professionals. A quote was obtained to perform the required editing work, on 30 minutes of CCTV imagery, which indicated that the work could be performed at a cost of \$900 for 5 hours of professional video editing services. The cost of editing the approximately 115 minutes of CCTV imagery the subject of your current FOI request would increase proportionally.

I am satisfied that it is therefore not reasonably practicable for the Court to edit the identified CCTV imagery to remove the personal information of third parties whilst maintaining the information subject to the FOI request.

I am satisfied for the reasons identified above that, even if the CCTV imagery could be considered a document that relates to matters of an administrative nature, it contains the personal information of third parties that is conditionally exempt under s 47F of the FOI Act.

Further, it would be contrary to the public interest to provide access to that imagery in circumstances where it is not reasonably practicable to edit the CCTV imagery to remove the personal information of third parties whilst maintaining the information subject to the FOI request.

Access to the requested CCTV imagery, were it accessible under the FOI Act, would be refused.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

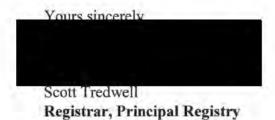
Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.



From:
To: External FOI

Subject: Freedom of Information request - Documents Related to the Registration of Affidavits for

Date: Friday, 20 September 2019 6:08:40 PM

Dear Federal Court of Australia,

I am not seeking copies of any affidavits filed or otherwise.

I am seeking copies of any correspondence related to affidavits affirmed by to or from the Registrar (other than correspondence with

This includes any correspondence related to the removal or attempted removal of these affidavits from the Case File

Yours faithfully,





Telephone: (02) 9230 8567 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

18 October 2019				
	Ву	email:		
Dear				

Request under Freedom of Information Act

I refer to your email of 20 September 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 27 September 2019 acknowledging receipt of your request.

In your email of 20 September 2019, you make the following request (FOI request) relating to

I am seeking copies of any correspondence related to affidavits affirmed by	
to or from the Registrar (other than correspondence with	

This includes any correspondence related to the removal or attempted removal of these affidavits from the Case File.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to copies of any correspondence, to or from a Registrar, related to affidavits affirmed by you and lodged with the Court in respect of Australian Securities & Investments Commission v MLC Nominees Pty Ltd & Anor, NSD1654/2018. The reason for this is that I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no such documents exist.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"5.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".7

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of

⁷ at [41]

¹ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.9

The High Court, in considering the decision of Bienstein v Family Court of Australia¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.11

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters. 12

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. 13

⁸ at 13]

⁹ at [47]

^{10 (2008) 170} FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Correspondence to or from a Registrar

The exhaustive searches undertaken following your FOI request identified no documents falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no documents within the scope of your request exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, that any correspondence to or from a Registrar, related to affidavits affirmed by you and lodged with the Court in respect of Australian Securities & Investments Commission v MLC Nominees Pty Ltd & Anor, NSD1654/2018, would not be documents of an administrative nature. In my view, these documents would not be accessible under the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Treawell

Registrar, Principal Registry

From: To:	External FOI
Subject: Date:	Freedom of Information request - Storage of Documents removed from the Court file Thursday, 26 September 2019 12:32:19 PM
Dear Federal Cou	urt of Australia,
	t 2019, an Affidavit was affirmed by electronic copy was filed on the Court File of
the Federal Cour	Affidavit was a copy of an undertaking given by ASIC before the Honourable Justice Kenny of the ting where ASIC undertook to investigate allegations of maladministration of the cocupational pension scheme which has been administered by one of the since 1 July 2016.
The copy of the ι	, being an extract from the c
A failure to hono	our an undertaking is a Contempt of Court.
	be removed le pursuant to Federal Court Rule 2.28(1)(b)(i).
would no longer Contempt of the	tion as to whether ASIC had honoured the undertaking given to the Honourable Justice Kenny be a subject for as would the question as to whether was now in Federal Court and whether proceedings in as an outcome of such a Contempt of Court.
has not sou	ight to have the undertaking given before the Honourable Justice Kenny discharged.
	made in the Order by Justice Yates as to a specified way as to how this document should be gremoved from the Court file.
Therefore, the Di 2.28(3)(b).	istrict Registrar must direct how this document must be stored pursuant to Federal Court Rule
I do not seek a co	opy of the Affidavit nor
original affirmed	I seek are copies of any email, phone log or other documents that would reveal how the paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3) from the Court File on 19 September 2019.
undertaking give where is th not be stayed unt	(s) will assist in obtaining advice as to how ASIC may be held accountable to honour the n before the Honourable Justice Kenny in and so that current proceedings are Applicant/Plaintiff cannot be impugned as an "Abuse of Process" should these proceedings or the Court has discharged this n before the Honourable Justice Kenny by Counsel for , Mr Christopher Horan QC.
Yours faithfully,	





Telephone: (02) 9230 8567 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

18 October 2019			
	Dr. am alla		
	By email:		
Dear			

Request under Freedom of Information Act

I refer to your email of 26 September 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 27 September 2019 acknowledging receipt of your request.

In your request of 26 September 2019, you seek the following documents related to an affidavit affirmed by yourself on 26 August 2019, and lodged with the Court on 29 August 2019, in respect of

The document(s) I seek are copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court File on 19 September 2019.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court file on 19 September 2019. The reason for this is that I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no such documents exist.

In making my decision I have had regard to:

- a. the terms of your request:
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"5.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

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Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".7

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of

¹ paragraphs 2.6 – 2.8 of the FOI Guidelines

paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

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⁸ at 13]

⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
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The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Correspondence to or from a Registrar

The exhaustive searches undertaken following your FOI request identified no documents falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no documents within the scope of your request exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, any email, phone log or other documents that would specifically reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court file on 19 September 2019, would not be documents of an administrative nature. In my view, these documents would not be accessible under the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

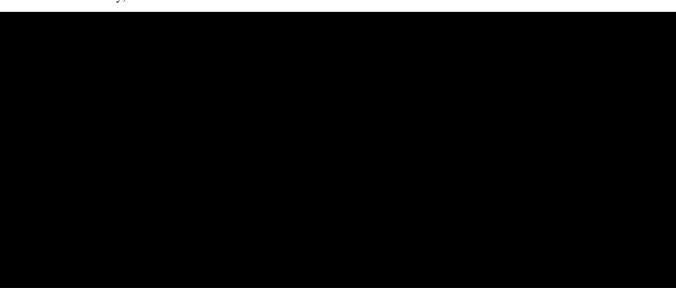
More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

From: To: External FOI Subject: Internal review of Freedom of Information request - Storage of Documents removed from the Court file Date: Friday, 25 October 2019 9:30:06 AM Dear Federal Court of Australia, Please pass this on to the person who conducts Freedom of Information reviews. I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Storage of Documents removed from the Court file'. The matter before the Federal Court in is now of much public interest and I will be appealing this and other FOI responses to the Administrative Appeals Tribunal on the basis that there must be some record of compliance with Federal Court Rule 2.28(3)(b). Otherwise, the inference to be drawn is that five affidavits by the were removed from the Court File in response to a Contempt in the face of the Court by reporter James Frost who disparaged a Whistleblower with an article titled " Serial Pest hijacks case against over fees scandal" and put through the Federal Court office shredder. These affidavits confirmed that ASIC had given an undertaking to the Federal Court in investigate allegation of fraud (or more correctly a fraudulent breach of trust) that had been instigated by a , and where had become a party to a conspiracy to defraud several hundred widows out of their survivorship pensions in their time of need and distress. The Attorney-General's Department of South Australia and the Parliament of South Australia has been able to provide a wealth of supporting evidence that confirms the widows' entitlement to a survivorship pension which refuse to pay from at least 1 July 2016 when the directors of gained control of the Trust Estate of this occupational pension scheme established by a Trust Deed made on the 23 December 1913. The removal of evidence of fraud and a conspiracy to defraud hundreds of vulnerable widows from the Court File with no record of where this evidence ended up is now very much a subject of public interests and on this basis I am requesting an Internal Review before lodging an appeal with the Administrative Appeals Tribunal. I have previously successfully appealed FIO related matters to the Administrative Appeals Tribunal. A full history of my FOI request and all correspondence is available on the Internet at this address: Yours faithfully,





Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

13 November 2019

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

By email:	
by chian.	

Internal Review Decision under Subsection 54C of the Freedom of Information Act 1982

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 26 September 2019.

Authority

Dear

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

Background

In an email which	ou sent to the Federal Court on 26 September 2019 regarding a proceeding
numbered	, which the Federal Court titled
), 7	ou requested (access request):

The document(s) I seek are copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court File on 19 September 2019.

On 18 October 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request as he was satisfied that all reasonable steps had been taken to find documents within the scope of your request and no such documents existed (access refusal decision).

You sent an email to the Federal Court regarding that decision later on 18 October 2019 requesting an internal review (internal review request). In that email you said:

I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Storage of Documents removed from the Court file'.

The matter before the Federal Court in section is now of much public interest and I will be appealing this and other FOI responses to the Administrative Appeals Tribunal on the basis that there mus
be some record of compliance with Federal Court Rule 2.28(3)(b).
Otherwise, the inference to be drawn is that five affidavits by the Court File in response to a Contempt in the face of the Court by reporter who disparaged a Whistleblower with an article titled "Serial Pest hijacks case against over fees scandal" and put through the Federal Court office shredder.
These affidavits confirmed that ASIC had given an undertaking to the Federal Court in investigate allegation of fraud (or more correctly a fraudulent breach of trust) that had been instigated by a convicted fraudster, and where and where and where a party to a conspiracy to defraud several hundred widows out of their survivorship pensions in their time of need and distress.
The Attorney-General's Department of South Australia and the Parliament of South Australia has been able to provide a wealth of supporting evidence that confirms the widows' entitlement to a survivorship pension which the directors of perfuse to pay from at least 1 July 2016 when gained control of the Trust Estate of this occupational pension scheme established by a Trust Deed made on the 23 December 1913.
The removal of evidence of fraud and a conspiracy to defraud hundreds of vulnerable widows from the Cour. File with no record of where this evidence ended up is now very much a subject of public interests and or

I have previously successfully appealed FIO related matters to the Administrative Appeals Tribunal.

A full history of my FOI request and all correspondence is available on the Internet at this address:

this basis I am requesting an Internal Review before lodging an appeal with the Administrative Appeals

Decision

Tribunal.

Having considered your access request afresh; taking further steps to find copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court's electronic file for proceeding on 19

September 2019; and taking into account the reasons and other information you advanced in your internal review request, I have decided, under subsection 24A(1) of the FOI Act, to refuse your access request. This is because I am satisfied that all reasonable steps to find documents that are within scope of your access request have been taken and no such documents exist.

Material taken into account

I have taken the following material into account in making my decision:

- your access request
- the access refusal decision
- your internal review request
- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- relevant caselaw.

Reasons for decision

Limited application of the FOI Act to the Federal Court

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers¹ or any documents relating to the handling of complaints about Judicial Officers² and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to "matters of an administrative nature". He also explained that the High Court of Australia (High Court) has considered the meaning of "matters of an administrative nature" in Kline v Official Secretary to the Governor-General Of Australian & Anor⁴ (Kline) and held that the phrase refers to documents "relating to the management and administration of registry and office resources".

I agree with and adopt Registrar Tredwell's more detailed explanation of this limited application of the FOI Act to the Federal Court. As this is set out in the access refusal decision included on the Right to Know webpage for your relevant access request which you reference as above, I will not repeat that detailed explanation in this letter.

Searches and enquiries undertaken

Registrar Tredwell explains in the access refusal decision the enquiries and searches he undertook in an attempt to find any documents that were within the scope of your request.

On 5 November 2019, over half an hour, I searched the Federal Court's electronic file for Proceeding for the period from 19 September 2019, when Justice Yates ordered that, amongst other things, the affidavit which you affirmed on 26 August 2019 be removed from the court file, up to and including the time of that search. I was familiar with that file having searched it comprehensively on 21 October 2019 in undertaking an internal review of another access refusal decision in relation to an earlier access request from you and was thus able to focus quickly and specifically on searching for any document within scope of your access request under internal review here. I found no email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court's electronic court file.

Later that day, I spoke to all staff in the Federal Court's NSW District Registry who I identified from my searching of the electronic file as having been involved in the processing of the removal of that affidavit from the Court's electronic file. I had them undertake searches of all email accounts and other repositories (electronic or otherwise) in which any such email, phone log or other document, if it existed, could have been stored or placed. I was subsequently informed by those staff that no such email, phone log or other document was found.

I am satisfied that all reasonable steps have been undertaken to find any such documents, if they existed, but that no document within the scope of your access request exists.

Documents that do not exist - subsection 24A FOI Act

As Registrar Tredwell explained in his access refusal decision, section 11 of the FOI Act provides:

¹ Paragraph 5(1)(b) FOI Act

² Subsection 5(1A) FOI Act

³ Section 5(1) FOI Act – see also paragraph 2.8 FOI Guidelines

^{4 [2013]} HCA 52

⁵ At [47] - see also paragraph 2.9 FOI Guidelines

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

As Registrar Tredwell also noted in that decision, as a result of the operation of this section the FOI Act provides a legally enforceable right to obtain access to various documents. This entitlement is, as section 11 makes clear, "subject to the Act" and as I (and Registrar Tredwell in his access refusal decision) have explained, in the case of the Federal Court, it applies only to a document that relates to "matters of an administrative nature" as narrowly interpreted by the High Court in *Kline*.

However, as also explained in the access refusal decision, subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

As detailed above, the searches and enquiries that I have made in attempting to find any documents that are within the scope of your access request have been comprehensive (as were those undertaken by Registrar Tredwell before making his access refusal decision). I am not aware of any further step that could be taken to locate any such document, if it existed, or any other Court staff who may be able to assist in locating any such document.

I am satisfied that no document exists that is within the scope of your access request.

For these reasons, I decided under subsection 24A(1) of the FOI Act to refuse your access request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

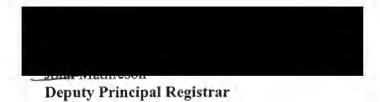
post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, you can contact me by email at foi@fedcourt.gov.au-

Yours sincerely



From: To:	External FOI
Subject:	Freedom of Information request - The Fate of Evidence of Contempt of Court by
Date:	Saturday, 28 September 2019 5:59:38 PM
Dear Federal	Court of Australia,
	ust 2019, an Affidavit was affirmed by an electronic copy was filed on the
	which was a copy of a letter dated 5 August 2019 that to the Chair of the House of Representatives Standing Committee on Economics, Mr Tim Wilson
_	was a copy of an email sent on 8 August 2018 by the previous Chair of the resentatives Standing Committee on Economics, the now Senator the Hon Sarah Henderson to n, the Chairman of ASIC.
	as sent after the appearance of Nicole Smith, the former Chair of fore the Hayne Royal Commission and the 'train wreck' testimony of Ms Smith.
is nov	w a Respondent/Defendant in .
The email rea	d:
"Dear	
Some years declined. While I do the fact this decades ago	s ago I asked ASIC to do so on behalf and it, in essence, ha't have a full understanding of the potential breaches of the law due to se case is extremely complex and involves a trust fund established many has raised what I believe are a number of serious issues re investigation.
I look forward	d to hearing from you
Kind regards	
	eviously given an undertaking before the Honourable Justice Kenny in gate allegations of maladministration of this trust fund.
	be removed by tember 2019, Justice Yates ordered that this Affidavit and be removed art file pursuant to Federal Court Rule 2.28(1)(b)(i).
would no long Contempt of t	had honoured the undertaking given to the Honourable Justice Kenny ger be a subject for as would the question as to whether ASIC was now in the Federal Court and whether proceedings in could be impugned as an "Abuse of well as possibly in other proceedings as well} as an outcome of such a Contempt of Court.
ASIC has not	sought to have the undertaking given before the Honourable Justice Kenny discharged.
_	nest of a Chair of the House of Representatives Standing Committee on Economics to the ASIC which is germane to proceedings has also be removed from the Court file.

No mention was made in the Order by Justice Yates as to a specified way as to how this document should be

stored after being removed from the Court file.

Therefore, the District Registrar must direct how this document must be stored pursuant to Federal Court Rule 2.28(3)(b).

I do not seek a copy of the Affidavit nor

The document(s) I seek are copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3) (b) after removal from the Court File on 19 September 2019.

These document(s) will assist in obtaining advice as to how may be held accountable to honour the undertaking given before the Honourable Justice Kenny in and so that current proceedings where is the Applicant/Plaintiff cannot be impugned as an "Abuse of Process" should these proceedings not be stayed until such time as the undertaking has been honoured by or the Court has discharged this undertaking given before the Honourable Justice Kenny by and its Counsel.

It is also a matter of public interest as to why a record of a request from a Chair of the House of Representatives Standing Committee on Economics should be removed from a Court file when the proceedings are a direct outcome of the Hayne Royal Commission.

Yours faithfully,





Telephone: (02) 9230 8567. DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

18 October 2019

By email:

Dear

Request under Freedom of Information Act

I refer to your email of 28 September 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 11 October 2019 acknowledging receipt of your request.

In your request of 26 September 2019, you seek the following documents related to an affidavit affirmed by yourself on 26 August 2019, and lodged with the Court on 7 August 2019, in respect of

The document(s) I seek are copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court File on 19 September 2019.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court file on 19 September 2019. The reason for this is that I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no such documents exist.

In making my decision I have had regard to:

- a. the terms of your request:
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"5.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".7

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of

6 at [19]

 $^{^{1}}$ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁷ at [41]

support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.

_

⁸ at 13]

⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Correspondence to or from a Registrar

The exhaustive searches undertaken following your FOI request identified no documents falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no documents within the scope of your request exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, any email, phone log or other documents that would specifically reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court file on 19 September 2019, would not be documents of an administrative nature. In my view, these documents would not be accessible under the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

DOUB HOUWER

Registrar, Principal Registry

From: To: External FOI Subject: Date:

Internal review of Freedom of Information request - Instructions to Return Contempt of Court Interlocutory

Friday, 25 October 2019 12:34:12 PM

Dear Federal Court of Australia,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Instructions to Return Contempt of Court Interlocutory Application'.

The responses from the Federal Court indicate that junior staff who only uses their first names such as "Megan" run the show as far as document and evidence management and administration is concerned at the Federal Court in Sydney.

On the 19 September 2019, Justice Yates ordered that 5 Affidavits affirmed on 1 May, 1 August, 5 August, 21 August and 26 August 2019 be removed from the Court file, following a classic example of disparaging the who labelled someone whom a Whistleblower by journalist of the Deputy President of the Administrative Appeals Tribunal described as a determined Whistleblower, as a "Serial Pest"!

No order was made with respect to an Interlocutory application and a Statement of Charge dated 16 September 2019 and supporting Affidavit affirmed on 16 September 2019 related to the Contempt in the face of the Court

Therefore junior staffer "Megan" cannot claim that she is acting on the Orders of Justice Yates.

Someone must have given an instruction to "Megan" to "get rid" of the evidence of the Contempt in the face of the Court and evidence of Scandalising the Court by included as that was not one of the five Affidavits covered by the Order of Justice Yates.

Therefore there must be a record of the instruction to junior staffer "Megan". This is not a routine case for the Federal Court by any means.

Otherwise, it would appear that "Megan" was off on a frolic of her own to dispose of evidence that relates to not just one case of Contempt of Court, but two two cases of Contempt of Court - one by James Frost and the other by ASIC.

It is now a matter of public interest that a Journalist can dictate how a supposed "independent" member of the Judiciary can run a case before him or her and to exclude evidence of a Contempt of Court by evidence of a Contempt of Court by that journalist.

Especially when that person is seeking to uphold a previous ruling from the Federal Court itself in and where the Applicant, is in contempt of the Federal Court for failing to honour the undertaking given before the Honourable Justice Kenny.

This application for an Internal review is a necessary step before I appeal this matter to the Administrative Appeals Tribunal.

The treatment of a Whistleblower by the Federal Court who is seeking to ensure the widows of his former work colleagues receive their lawful death benefits in the form of a survivorship pension is now a matter of public interest.

The failure to properly administer evidence and interlocutory applications lodged with the Federal Court unless properly explained will have a tendency to bring the administration of justice in the Federal Court into disrepute.

A full history of my FOI request and all correspondence is available on the Internet at this address:

Yours faithfully,





Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

14 November 2019

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

	By email:		
Dear			

Internal Review Decision under Subsection 54C of the Freedom of Information Act 1982

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 29 September 2019.

Authority

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

Background

In an email which	you sent to the Federal Court on 29 September 2019 regarding a proceeding
numbered	, which the Federal Court titled
(), :	you requested (access request):

The documents I seek are copies of any emails, phone logs, Orders or other documents related to the receival of these documents, the decision not to file the Affidavit affirmed on 16 September 2019 and the instructions to a junior staff member to return the Interlocutory Application and supporting documents when no Order had been made with respect to these documents.

On 18 October 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request as he was satisfied that all reasonable steps had been taken to find documents within the scope of your request and no such documents existed (access refusal decision).

You sent an email to the Federal Court regarding that decision on 25 October 2019 requesting an internal review (internal review request). In that email you said:

I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Instructions to Return Contempt of Court Interlocutory Application'.

The responses from the Federal Court indicate that junior staff who only uses their first names such as "Megan" run the show as far as document and evidence management and administration is concerned at the Federal Court in Sydney.

On the 19 September 2019, Justice Yates ordered that 5 Affidavits affirmed on 1 May, 1 August, 5 August, 21 August and 26 August 2019 be removed from the Court file, following a classic example of disparaging the Whistleblower by journalist of the Someone whom a Deputy President of the Administrative Appeals Tribunal described as a determined Whistleblower, as a "Serial Pest"!

No order was made with respect to an Interlocutory application and a Statement of Charge dated 16 September 2019 and supporting Affidavit affirmed on 16 September 2019 related to the Contempt in the face of the Court by

Therefore junior staffer "Megan" cannot claim that she is acting on the Orders of Justice Yates.

Someone must have given an instruction to "Megan" to "get rid" of the evidence of the Contempt in the face of the Court and evidence of Scandalising the Court by Mr Frost included as in the Affidavit affirmed on 16 September 2019 that was not one of the five Affidavits covered by the Order of Justice Yates.

Therefore there must be a record of the instruction to junior staffer "Megan". This is not a routine case for the Federal Court by any means.

Otherwise, it would appear that "Megan" was off on a frolic of her own to dispose of evidence that relates to not just one case of Contempt of Court, but two two cases of Contempt of Court - one by and the other by

It is now a matter of public interest that a Journalist can dictate how a supposed "independent" member of the Judiciary can run a case before him or her and to exclude evidence of a Contempt of Court by well as evidence of a Contempt of Court by that journalist.

Especially when that person is seeking to uphold a previous ruling from the Federal Court itself in and where the Applicant, is in contempt of the Federal Court for failing to honour the undertaking given before the Honourable Justice Kenny.

This application for an Internal review is a necessary step before I appeal this matter to the Administrative Appeals Tribunal.

The treatment of a Whistleblower by the Federal Court who is seeking to ensure the widows of his former work colleagues receive their lawful death benefits in the form of a survivorship pension is now a matter of public interest.

The failure to properly administer evidence and interlocutory applications lodged with the Federal Court unless properly explained will have a tendency to bring the administration of justice in the Federal Court into disrepute.

A full history of my FOI request and all correspondence is available on the Internet at this address:

Decision

Having considered your access request afresh; taking further steps to find copies of any emails, phone logs, orders or other documents related to the receipt by the Court of an Interlocutory Application by you dated 16 September 2019, accompanying Statement of Charge also dated 16 September 2019 and a supporting affidavit by you affirmed on 16 September 2019, any decision not to file the Affidavit and any instructions to a junior staff member to return the Interlocutory Application and supporting documents; and taking into

account the reasons and other information you advanced in your internal review request, I have decided, under subsection 24A(1) of the FOI Act, to refuse your access request. This is because I am satisfied that all reasonable steps to find documents that are within scope of your access request have been taken and no such documents exist.

Material taken into account

I have taken the following material into account in making my decision:

- your access request
- the access refusal decision
- your internal review request
- · the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- relevant caselaw.

Reasons for decision

Limited application of the FOI Act to the Federal Court

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers¹ or any documents relating to the handling of complaints about Judicial Officers² and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to "matters of an administrative nature". He also explained that the High Court of Australia (High Court) has considered the meaning of "matters of an administrative nature" in Kline v Official Secretary to the Governor-General Of Australian & Anor⁴ (Kline) and held that the phrase refers to documents "relating to the management and administration of registry and office resources".

I agree with and adopt Registrar Tredwell's more detailed explanation of this limited application of the FOI Act to the Federal Court. As this is set out in the access refusal decision included on the Right to Know webpage for your relevant access request which you reference as above, I will not repeat that detailed explanation in this letter.

Searches and enquiries undertaken

Registrar Tredwell explains in the access refusal decision the enquiries and searches he undertook in an attempt to find any documents that were within the scope of your request.

On 13 November 2019, over 45 minutes, I searched the Federal Court's electronic file for Proceeding for the period from 16 September 2019, when you prepared the relevant documents and affirmed the affidavit, up to and including the time of that search. I was familiar with that file having searched it comprehensively on 21 October 2019 and again, although less comprehensively, on 5 November 2019 in undertaking internal reviews of other access refusal decisions in relation to earlier access requests from you and was thus able to

¹ Paragraph 5(1)(b) FOI Act

² Subsection 5(1A) FOI Act

³ Section 5(1) FOI Act – see also paragraph 2.8 FOI Guidelines

^{4 [2013]} HCA 52

⁵ At [47] – see also paragraph 2.9 FOI Guidelines

focus quickly and specifically on searching for any document within scope of your access request under internal review here. I found no emails, phone logs, orders or other documents related to the receipt by the Court of an Interlocutory Application by you dated 16 September 2019, accompanying Statement of Charge also dated 16 September 2019 and a supporting affidavit by you affirmed on 16 September 2019, any decision not to file the Affidavit and any instructions to a junior staff member to return the Interlocutory Application and supporting documents.

Later that day, I spoke to all staff in the Federal Court's NSW District Registry who I identified from my searching of the electronic file as having, in the same period as above, been involved in dealing with correspondence, queries and documents received from you and in responding to such communications and queries. I had them undertake searches of all email accounts and other repositories (electronic or otherwise) in which any such document, if it existed, could have been stored and placed. I was subsequently informed by those staff that no relevant emails, phone logs, orders or other documents was found.

I am satisfied that all reasonable steps have been undertaken to find any such documents, if they existed, but that no document within the scope of your access request exists.

Documents that do not exist - subsection 24A FOI Act

As Registrar Tredwell explained in his access refusal decision, section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

As Registrar Tredwell also noted in that decision, as a result of the operation of this section the FOI Act provides a legally enforceable right to obtain access to various documents. This entitlement is, as section 11 makes clear, "subject to the Act" and as I (and Registrar Tredwell in his access refusal decision) have explained, in the case of the Federal Court, it applies only to a document that relates to "matters of an administrative nature" as narrowly interpreted by the High Court in *Kline*.

However, as also explained in the access refusal decision, subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

As detailed above, the searches and enquiries that I have made in attempting to find any documents that are within the scope of your access request have been comprehensive (as were those undertaken by Registrar Tredwell before making his access refusal decision). I am not aware of any further step that could be taken to locate any such document, if it existed, or any other Court staff who may be able to assist in locating any such document.

I am satisfied that no document exists that is within the scope of your access request.

For these reasons, I decided under subsection 24A(1) of the FOI Act to refuse your access request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, you can contact me by email at foi@fedcourt.gov.au.

Yours sincerely

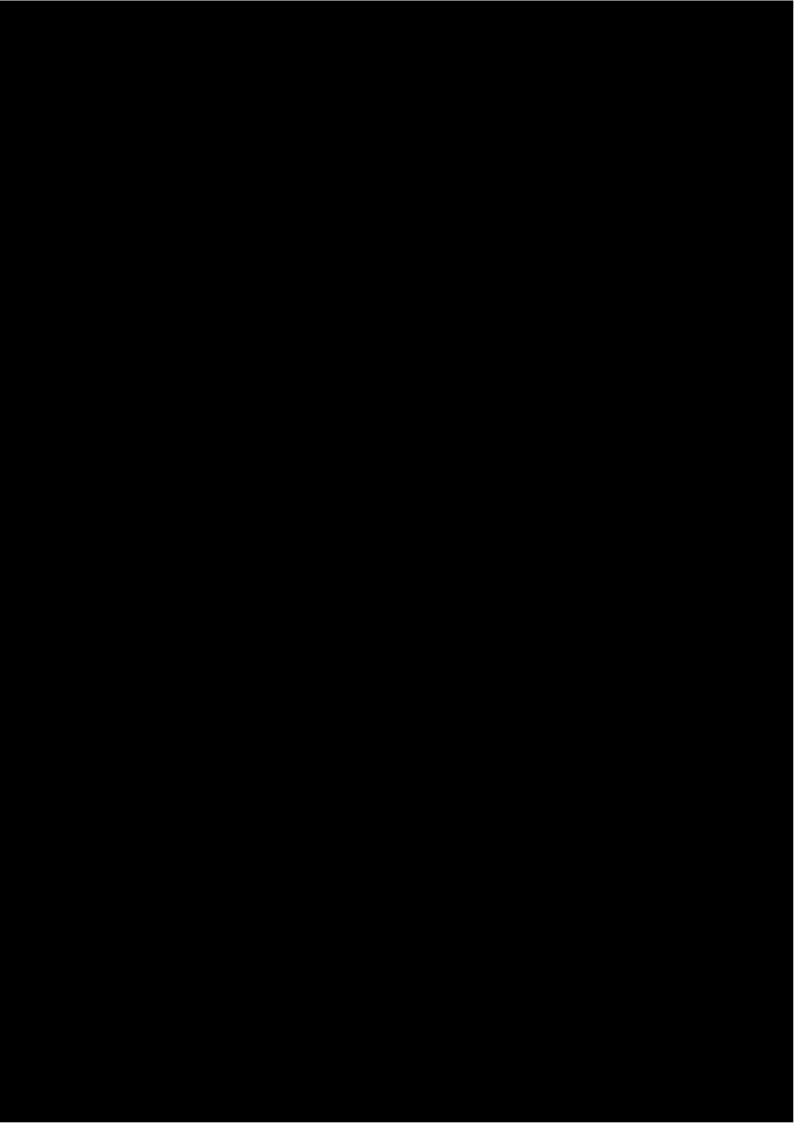
John Mathieson

Deputy Principal Registrar

External FOI

External FOI	
From: Sent: To: Subject:	Sunday, 29 September 2019 3:52 PM External FOI Freedom of Information request - Instructions to Return Contempt of Court Interlocutory Application
Dear Federal Court of Aust	ralia,
	ustralian Financial Review published an article of proceedings afoot in the Federal Court not a fair and accurate reporting of these proceedings or on an affidavit lodged by one of edings.
	onalist title of "Serial pest hijacks ASIC's case against NAB over fees scandal". This on 36A of the Crimes Act 1914 (Cth) and is clearly a contempt before the face of the Court.
An even more scandalous article.	and completely untrue statement was published on Twitter to promote the printed
and Contempt Practice No	on dated 16 September 2019 was drafted in accordance with Enforcement, Endorsement te (GPN-ENE) along with a Statement of Charge dated 16 September 2019 and a ed on 16 September 2019 which contained Exhibits of the offending publications.
On the 19 September 2019	, no Order was made with respect to the Interlocutory Application by the presiding Judge
to the removal of five earli	were returned attached to a letter dated 20 September 2019 which only made reference er Affidavits that had been removed from the Court file by an Order pursuant to Rule ponse to the articles published in contempt in the face of the Court.
	e first name of a Senior Coordinator, Service Centre, Federal Court of Australia was titled ion and supporting documents".
However, as mentioned ab	ove no Order had been made with respect to any of these documents.
This junior member of the "get rid of these document	District Registry was clearly acting under the instructions of others to as it would seem to s".
these documents, the decis	copies of any emails, phone logs, Orders or other documents related to the receival of sion not to file the Affidavit affirmed on 16 September 2019 and the instructions to a urn the Interlocutory Application and supporting documents when no Order had been edocuments.
contempt in the face of the 1914 (Cth) which must be b	interest as to why no action has been taken to date with respect to what is clearly a court by way of publication as well as a contravention of Section 36A of the Crimes Act prought to the attention of the Chief Justice of the Federal Court of Australia, James Leslie evidence has been gathered.
Yours faithfully,	

Please use this email address for all replies to this request:





Telephone: (02) 9230 8567 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref: LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

18 October 2019

By email:

Request under Freedom of Information Act

I refer to your email of 29 September 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 11 October 2019 acknowledging receipt of your request.

In your request of 29 September 2019, you seek the following documents related to an interlocutory application and supporting documents, lodged with the Court in respect of

and returned to you on 20 September 2019:

The documents I seek are copies of ay emails, phone logs, Orders or other documents related to the receival of these documents, the decision not to file the Affidavit affirmed on 16 September 2019 and the instructions to a junior staff member to return the Interlocutory Application and supporting documents when no Order had been made with respect to these documents.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to copies of any email, phone logs, Orders or other documents related to the receival of these documents, the decision not to file the Affidavit affirmed on 16 September 2019 and any instructions to return the interlocutory application and supporting documents. The reason for this is that I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no such documents exist.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"5.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of

¹ paragraphs 2.6 – 2.8 of the FOI Guidelines

paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

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⁸ at 13]

⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Correspondence to or from a Registrar

The exhaustive searches undertaken following your FOI request identified no documents falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no documents within the scope of your request exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, any email, phone log, Order or other documents related to the receipt of these documents, the decision not to accept the relevant affidavit for filing and any instructions to return the interlocutory application and supporting documents, would not be documents of an administrative nature. In my view, these documents would not be accessible under the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

From: To: External FOI Subject: Internal review of Freedom of Information request - Documents Related to the Registration of Affidavits for Date: Friday, 18 October 2019 5:37:11 PM Dear Federal Court of Australia, Please pass this on to the person who conducts Freedom of Information reviews. I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Documents Related to the Registration of Affidavits for Justice Yates made an order on the 19 September 2019 to remove five affidavits from the Court File that had given an undertaking to the Honourable Justice Kenny in which relates to a Defined Benefit occupational pension scheme now administered by - one of the respondents in These affidavits were affirmed (and not sworn) on: (a) 1 May 2019; (b) 1 August 2019; (c) 5 August 2019; (d) 21 August 2019; and (e) 26 August 2019 There was no order made with respect to an affidavit affirmed on 16 September 2019 which included case against which was a copy of the article titled "Serial pest hijacks which was a copy of a post on social media promoting the article in the Australian and Financial Review which read: "ICYMI Serial pest who bombarded with hundreds of request signed Pussy Galore and Goldfinger hijacks landmark fees-for-no-service case against There was no order made with respect to an identical affidavit affirmed on 7 October 2019 which contained copies of the same articles. Yet these affidavits were returned to the could avoid being called to so that account for his clear Contempt in the fact of the Court by way of two publications that were not fair and accurate reporting of proceedings afoot in the Federal Court in No other order was made with respect to other documents lodged by the including an interlocutory application relating to a Contempt in the face of the Court by a publication by reporter for the Australian Financial Review who published an article titled "Serial pest hijacks case against NAB over fees scandal" which references

Even though no order was made by Justice Yates with respect to the interlocutory application and related Affidavit containing a copy of this defamatory and intimidatory article these documents were returned to me TWICE.

The only covering letter was from a junior employee named "Megan" who would not be acting without instruction from more senior administrative personal.

Therefore such an administrative instruction outside of the ruling of Justice Yates would fall within the scope of the Freedom of Information Act 1982 (Cth) as it applies to the Federal Court of Australia.

This is clearly now a matter of some public interest with respect to the administration of justice in the Federal Court of Australia.

A full history of my FOI request and all correspondence is available on the Internet at this address:





Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

24 October 2019

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

	Ву	email:	
Dear			

Internal Review Decision under Subsection 54C of the Freedom of Information Act 1982

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 20 September 2019.

Authority

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

Background

	you sent to the Federal Court on 20 September 2019 reg	arding a proceeding
numbered	which the Federal Court titled	
	you requested (access request):	
I am seeking cop	es of any correspondence related to affidavits affirmed by I	
	to or from the Registrar (other than correspondence with).

This includes any correspondence related to the removal or attempted removal of these affidavits from the Case File.

On 18 October 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request as he was satisfied that all reasonable steps had been taken to find documents within the scope of your request and no such documents existed (access refusal decision).

You sent an email to the Federal Court regarding that decision later on 18 October 2019 requesting an internal review (internal review request). In that email you said:

Justice Yates made an order on the 19 September 2019 to remove five affidavits from the Court File that confirmed that had given an undertaking to the Honourable Justice Kenny in

relates to a Defined Benefit occupational pension scheme now administered by one of the respondents in
These affidavits were affirmed (and not sworn) on:
(a) 1 May 2019; (b) 1 August 2019; (c) 5 August 2019; (d) 21 August 2019; and (e) 26 August 2019
There was no order made with respect to an affidavit affirmed on 16 September 2019 which included which was a copy of the article titled "Serial pest hijacks" case against NAB over fees scandal" and which was a copy of a post on social media promoting the article in the Australian Financial Review which read:
"ICYMI Serial pest who bombarded with hundreds of request (sic) signed Pussy Galore and Goldfinger hijacks landmark fees-for-no-service case against
There was no order made with respect to an identical affidavit affirmed on 7 October 2019 which contained copies of the same articles.
Yet these affidavits were returned to the account for his clear Contempt in the fact (sic) of the Court by way of two publications that were not fair and accurate reporting of proceedings afoot in the Federal Court in
No other order was made with respect to other documents lodged by the including an interlocutory application relating to a Contempt in the face of the Court by a publication by reporter for the Australian Financial Review who published an article titled "Serial pest hijacks against NAB over fees scandal" which references
Even though no order was made by Justice Yates with respect to the interlocutory application and related Affidavit containing a copy of this defamatory and intimidatory article these documents were returned to me TWICE.
The only covering letter was from a junior employee named "Megan" who would not be acting without instruction from more senior administrative personal.
Therefore such an administrative instruction outside of the ruling of Justice Yates would fall within the scope of the Freedom of Information Act 1982 (Cth) as it applies to the Federal Court of Australia.

Decision

Court of Australia.

Having considered your access request afresh; taking further steps to find copies of any correspondence, to or from a Registrar (other than with you), relating to affidavits affirmed by you (particularly those affirmed on 1 May 2019, 1 August 2019, 5 August 2019, 21 August 2019 and 26 August 2019) and lodged with the Court, including any correspondence relating to the removal or attempted removal of these affidavits from the Federal Court file, and taking into account the reasons and other information you advanced in your internal review request, I have decided, under subsection 24A(1) of the FOI Act, to refuse your access request. This is because I am satisfied that all reasonable steps to find documents that are within scope of your access request have been taken and no such documents exist.

This is clearly now a matter of some public interest with respect to the administration of justice in the Federal

A full history of my FOI request and all correspondence is available on the Internet at this address:

Material taken into account

I have taken the following material into account in making my decision:

- your access request
- the access refusal decision
- your internal review request
- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- · relevant caselaw.

Reasons for decision

Limited application of the FOI Act to the Federal Court

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers¹ or any documents relating to the handling of complaints about Judicial Officers² and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to "matters of an administrative nature". He also explained that the High Court of Australia (High Court) has considered the meaning of "matters of an administrative nature" in Kline v Official Secretary to the Governor-General Of Australian & Anor⁴ (Kline) and held that the phrase refers to documents "relating to the management and administration of registry and office resources"⁵.

I agree with and adopt Registrar Tredwell's more detailed explanation of this limited application of the FOI Act to the Federal Court. As this is set out in the access refusal decision included on the Right to Know webpage for your relevant access request which you reference as above, I will not repeat that detailed explanation in this letter.

Searches and enquiries undertaken

Registrar Tredwell explains in the access refusal decision the enquiries and searches he undertook in an attempt to find any documents that were within the scope of your request.

On 21 October 2019 over two hours, I searched the Federal Court's electronic file for Proceeding comprehensively. I found no correspondence relating to any affidavits affirmed by you in relation to that proceeding (including those affirmed on 1 May 2019, 1 August 2019, 5 August 2019, 21 August 2019 and 26 August 2019) to or from the Registrar (other than correspondence with you), including any correspondence relating to the removal or attempted removal of these affidavits from the Federal Court's electronic file for that proceeding.

Later that day, I spoke to all staff in the Federal Court's NSW District Registry who I identified from my searching of the electronic file as having been involved in the processing in the Court of any of the affidavits that were affirmed by you and lodged with the Federal

Paragraph 5(1)(b) FOI Act

² Subsection 5(1A) FOI Act

³ Section 5(1) FOI Act - see also paragraph 2.8 FOI Guidelines

^{4 [2013]} HCA 52

⁵ At [47] – see also paragraph 2.9 FOI Guidelines

Court. I had them undertake searches of all email accounts and other repositories (electronic or otherwise) in which any such correspondence, if it existed, could have been stored and placed. I was subsequently informed by those staff that no such correspondence was found.

I am satisfied that all reasonable steps have been undertaken to find any such documents, if they existed, but that no document within the scope of your access request exists.

Documents that do not exist - subsection 24A FOI Act

As Registrar Tredwell explained in his access refusal decision, section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

As Registrar Tredwell also noted in that decision, as a result of the operation of this section the FOI Act provides a legally enforceable right to obtain access to various documents. This entitlement is, as section 11 makes clear, "subject to the Act" and as I (and Registrar Tredwell in his access refusal decision) have explained, in the case of the Federal Court, it applies only to a document that relates to "matters of an administrative nature" as narrowly interpreted by the High Court in *Kline*.

However, as also explained in the access refusal decision, subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

As detailed above, the searches and enquiries that I have made in attempting to find any documents that are within the scope of your access request have been comprehensive (as were those undertaken by Registrar Tredwell before making his access refusal decision). I am not aware of any further step that could be taken to locate any such document, if it existed, or any other Court staff who may be able to assist in locating any such document.

I am satisfied that no document exists that is within the scope of your access request.

For these reasons, I decided under subsection 24A(1) of the FOI Act to refuse your access request.

Could an administrative instructions relate to matters of an administrative nature?

In your internal review request, you suggest that an administrative instruction given to a junior employee of the Court outside of the ruling of Justice Yates in Proceeding would be within the scope of the FOI Act as it applies to the Federal Court.

As I am satisfied that no document exists that is within the scope of your access request, I have not given any consideration to this hypothetical contention. I observe, however, that the High Court is very clear in its findings in *Kline* that, in the case of courts and selected

tribunals (including the Federal Court), the FOI Act applies only to documents which concern the management and administration of office resources⁶, such as financial and human resources and information technology⁷, or "logistical support⁸.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, you can contact me by email at foi@fedcourt.gov.au.

Yours sincerely

John Mathieson

Deputy Principal Registrar

⁶ At [41] and [47]

⁷ At [13]

⁸ At [74] and [76]

To: Subject: Date:	External FOI Freedom of Information request - Affidavit related to Sunday, 29 September 2019 2:16:02 PM
Dear Federal	Court of Australia,
	gust 2019, an Affidavit was affirmed by (not sworn) and was ne Federal Court on 19 August 2019, however, an electronic copy was NOT filed on the Court File
that had been	which was a copy of a letter dated 15 August 2019 sent to the Widows". which was a copy of a letter dated 15 August 2019 and the company of the was titled "Should be a copy of a letter dated 15 August 2019 and the copy of a letter dated 2019 and
a consolidatio	s also made to a previous letter to dated 26 September 2014 attached to which was on Deed of Variation dated 6 May 1958 for a superannuation scheme now administered by en criminally concealed from APRA in order to obtain fund registration.
recently befor	uld have ensured that a construction summons was filed with the Federal Court similar to that the Federal Court - Such a summons would have confirmed (or not confirmed) the entitlement of the estion to be paid survivorship pensions by superannuation trustee,
	n opined when testifying before Royal Commissioner Hayne of the importance of proceedings when appropriate.
Royal Commi	issioner Hayne in his final report stated:
Overall, n	d from the , and the , I am not as I would wish to be that the lessons of the past have been learned any fear – that there may be a wide gap between the public face seeks and what it does in practice – remains"
So why had August 2019?	not be placed on the Court file when it had been received on the 19
	vas made in the Order by Justice Yates as to a specified way as to how this document which had on the Court file should be dealt with.
	e District Registrar must direct how this document must be stored pursuant to Federal Court Rule his is now a document of public interest.
I do not seek	a copy of the Affidavit nor .
original affirn	t(s) I seek are copies of any email, phone log or other documents that would reveal how the ned paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3) wal from the Court File on 19 September 2019 of other filed Affidavits.
undertaking g where i not be stayed	ent(s) will assist in obtaining advice as to how may be held accountable to honour the iven before the Honourable Justice Kenny in and so that current proceedings is the Applicant/Plaintiff cannot be impugned as an "Abuse of Process" should these proceedings until such time as the undertaking has been honoured by or the Court has discharged this iven before the Honourable Justice Kenny by ASIC and its Counsel.
Yours faithful	lly,





Telephone: (02) 9230 8567 DX 613 SYDNEY

Your Ref:

Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

18 October 2019

By email:

Dear

Request under Freedom of Information Act

I refer to your email of 29 September 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 11 October 2019 acknowledging receipt of your request.

In your request of 29 September 2019, you seek the following documents related to an affidavit affirmed by yourself on 15 August 2019, and lodged with the Court on 19 August 2019, in respect of

The document(s) I seek are copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court File on 19 September 2019 of other filed Affidavits.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court file on 19 September 2019. The reason for this is that I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no such documents exist.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"5.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".7

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of

 $^{^{1}}$ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. 11

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

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⁸ at 13]

⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Correspondence to or from a Registrar

The exhaustive searches undertaken following your FOI request identified no documents falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no documents within the scope of your request exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, any email, phone log or other documents that would specifically reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court file on 19 September 2019, would not be documents of an administrative nature. In my view, these documents would not be accessible under the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

Dear Federal Court of Australia, Please pass this on to the person who conducts Freedom of Information reviews. I am writing to request an internal review of Federal Court of Australia's handling of my FOI request Clearly any Affidavit which confirms that was privy to evidence of superannuation trustee well before the Hayne Royal Commission would be key evidence for to bring to the attention of Justice Yates. Adele Ferguson in her book "Banking Bad" on page 372 writes: "The most startling part of the report was Hayne's dressing-down of executives and have a singling them out for public shaming. Hayne noted that, with regard to the behaviour of most senior executives stands apart from the other major banks'. Now it will be a matter of public interest if and its counsel of matter of	Please pass this or	t of Australia,
Please pass this on to the person who conducts Freedom of Information reviews. I am writing to request an internal review of Federal Court of Australia's handling of my FOI request Clearly any Affidavit which confirms that superannuation trustee well before the Hayne Royal Commission would be key evidence for to bring to the attention of Justice Yates. Addele Ferguson in her book "Banking Bad" on page 372 writes: "The most startling part of the report was Hayne's dressing-down of As well as singling them out for public shaming. Hayne noted that, with regard to the behaviour of most senior executives and stands apart from the other major banks'. Now it will be a matter of public interest if and its counsel of in a case of breach of trust by its at the same time in Contempt of the Federal Court in failing to honour the undertaking given to the Honourable Justice Kenny in was privy to a fraud involving a superannuation trustee has been put through the shredder in the Federal Court office. It that is not the case then what happened to this evidence is of considerable public interest, especially after the comments of Royal Commissioner Hayne as reported by Adele Ferguson in her book "Banking Bad"?	Please pass this or	
Please pass this on to the person who conducts Freedom of Information reviews. I am writing to request an internal review of Federal Court of Australia's handling of my FOI request Clearly any Affidavit which confirms that superannuation trustee well before the Hayne Royal Commission would be key evidence for to bring to the attention of Justice Yates. Addele Ferguson in her book "Banking Bad" on page 372 writes: "The most startling part of the report was Hayne's dressing-down of As well as singling them out for public shaming. Hayne noted that, with regard to the behaviour of most senior executives and stands apart from the other major banks'. Now it will be a matter of public interest if and its counsel of in a case of breach of trust by its at the same time in Contempt of the Federal Court in failing to honour the undertaking given to the Honourable Justice Kenny in was privy to a fraud involving a superannuation trustee has been put through the shredder in the Federal Court office. It that is not the case then what happened to this evidence is of considerable public interest, especially after the comments of Royal Commissioner Hayne as reported by Adele Ferguson in her book "Banking Bad"?	Please pass this or	
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comments of Royal Commissioner Hayne as reported by Adele Ferguson in her book "Banking Bad"?	Federal Court con	firming that was privy to a fraud involving a superannuation trustee has been
An internal review may answer that question.		11
	An internal review	may answer that question.
Otherwise, the Administrative Appeals Tribunal may be able to provide an answer.	Otherwise, the Ad	ministrative Appeals Tribunal may be able to provide an answer.
A full history of my FOI request and all correspondence is available on the Internet at this address:	A full history of m	y FOI request and all correspondence is available on the Internet at this address:
	Yours faithfully,	
Yours faithfully,		
Yours faithfully,		
Yours faithfully,		



Telephone: (02) 9230 8567 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

22 November 2019

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

-				
Rv	email:			
1	CIMALI.			

Dear

Internal Review Decision under Subsection 54C of the Freedom of Information Act 1982

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 29 September 2019.

Authority

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

Background

In an email which you sent to the Federal Court on 29 September 2019 regarding a proceeding numbered which the Federal Court titled

you requested (access request):

The document(s) I seek are copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy (of my affidavit affirmed on 15 August 2019 and received by the Court on 19 August 2019) were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court File on 19 September 2019 of other filed Affidavits.

On 18 October 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request as he was satisfied that all reasonable steps had been taken to find documents within the scope of your request and no such documents existed (access refusal decision).

You sent an email to the Federal Court regarding that decision later on 25 October 2019 requesting an internal review (internal review request). In that email you said:

I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Affidavit related to

Clearly any Affidavit which confirms that evidence of fraud involving a superannuation trustee well before the Hay would be key evidence for so bring to the attention of Justice Yates.	was privy to one Royal Commission
Adele Ferguson in her book "Banking Bad" on page 372 writes:	
"The most startling part of the report was Hayne's dressing-down of As well as singling them out for public shaming. Hayne not the behaviour of its most senior executives stands apart from the other n	
Now it will be a matter of public interest if and its counsel second its counsel second in a case of breach of trust by when is at the same time in Contempt of the Federal Court in failing undertaking given to the Honourable Justice Kenny in	conceals the
The default position to be assumed from the response to this FOI request is the to the Federal Court confirming that was privy to a fraud involving trustee has been put through the shredder in the Federal Court office.	
It that is not the case then what happened to this evidence is of considerable parties after the comments of Royal Commissioner Hayne as reported by Adele Fergus "Banking Bad"?	
An internal review may answer that question.	
Otherwise, the Administrative Appeals Tribunal may be able to provide an ans	wer.
A full history of my FOI request and all correspondence is available on the Int	ernet at this address:

Decision

Having considered your access request afresh; taking further steps to find copies of any email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court File on 19 September 2019 of other filed Affidavits; and taking into account the reasons and other information you advanced in your internal review request, I have decided, under subsection 24A(1) of the FOI Act, to refuse your access request. This is because I am satisfied that all reasonable steps to find documents that are within scope of your access request have been taken and no such documents exist.

Material taken into account

I have taken the following material into account in making my decision:

- your access request
- the access refusal decision
- your internal review request
- · the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- relevant case law.

Reasons for decision

Limited application of the FOI Act to the Federal Court

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers¹ or any documents relating to the handling of complaints about Judicial Officers² and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to "matters of an administrative nature". He also explained that the High Court of Australia (High Court) has considered the meaning of "matters of an administrative nature" in Kline v Official Secretary to the Governor-General Of Australian & Anor⁴ (Kline) and held that the phrase refers to documents "relating to the management and administration of registry and office resources"⁵.

I agree with and adopt Registrar Tredwell's more detailed explanation of this limited application of the FOI Act to the Federal Court. As this is set out in the access refusal decision included on the Right to Know webpage for your relevant access request which you reference as above, I will not repeat that detailed explanation in this letter.

Searches and enquiries undertaken

Registrar Tredwell explains in the access refusal decision the enquiries and searches he undertook in an attempt to find any documents that were within the scope of your request.

On 14 November 2019, over 40 minutes, I searched the Federal Court's electronic file for Proceeding for the period from 19 August 2019, when the Court received from you the affidavit which you affirmed on 15 August 2019 to which was annexed, up to and including the time of that search. I was familiar with that file having searched it comprehensively on 21 October 2019 and again, although less comprehensively, on 5 and 13 November 2019 in undertaking internal reviews of other access refusal decisions in relation to earlier access requests from you and was thus able to focus quickly and specifically on searching for any document within scope of your access request under internal review here. I found no email, phone log or other documents that would reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court File on 19 September 2019 of other filed Affidavits.

On 20 November 2019, I spoke to the staff in the Federal Court's NSW District Registry who I identified from my searching of the electronic file as having been involved in the processing in the Court of any of the affidavits that were affirmed by you and lodged with the Federal Court. I had them undertake searches of all email accounts and other repositories (electronic or otherwise) in which any such correspondence and documents, if they existed, could have been stored and placed. I was subsequently informed by those staff that no relevant email, phone log or other documents were found.

I am satisfied that all reasonable steps have been undertaken to find any such documents, if they existed, but that no document within the scope of your access request exists.

Documents that do not exist - subsection 24A FOI Act

Paragraph 5(1)(b) FOI Act

² Subsection 5(1A) FOI Act

³ Subsection 5(1) FOI Act – see also paragraph 2.8 FOI Guidelines

^{4 [2013]} HCA 52

⁵ At [47] - see also paragraph 2.9 FOI Guidelines

As Registrar Tredwell explained in his access refusal decision, section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

As Registrar Tredwell also noted in that decision, as a result of the operation of this section the FOI Act provides a legally enforceable right to obtain access to various documents. This entitlement is, as section 11 makes clear, "subject to the Act" and as I (and Registrar Tredwell in his access refusal decision) have explained, in the case of the Federal Court, it applies only to a document that relates to "matters of an administrative nature" as narrowly interpreted by the High Court in *Kline*.

However, as also explained in the access refusal decision, subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

As detailed above, the searches and enquiries that I have made in attempting to find any documents that are within the scope of your access request have been comprehensive (as were those undertaken by Registrar Tredwell before making his access refusal decision). I am not aware of any further step that could be taken to locate any such document, if it existed, or any other Court staff who may be able to assist in locating any such document.

I am satisfied that no document exists that is within the scope of your access request.

For these reasons, I decided under subsection 24A(1) of the FOI Act to refuse your access request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, you can contact me by email at foi@fedcourt.gov.au.

Yours sincerely

John Mathieson
Deputy Principal Registrar

From:	External FOI					
To: Subject:	External FOI Freedom of Information request - Concealing Material Evidence - Supreme Court of Victoria Case Study					
Date:	Monday, 30 September 2019 1:59:15 PM					
Dear Federal (Court of Australia,					
	Affidavit affirmed on 7 August 2019 was which was a letter dated 7 to Senator Rex Patrick titled "Re: Serious Disparagement of a Whistleblower."					
Senator Patricl	k has been a champion for improving protections for Whistleblowers.					
Reference was of Victoria.	s made to proceedings initiated by a whistleblower in the Supreme Court					
•	ated to a Defined Benefit occupational pension scheme established by a Trust Deed made on the 1913 in the State of South Australia which were material evidence were concealed in these					
This concealm	ent led to a case of perverting the cause of justice.					
	e offences of perverting the course of justice or attempting to pervert the course of justice are offences and the penalties applicable to them are codified in Section 320 of the Crimes Act 1958					
	is now seeking to conceal these same Deeds erial evidence from the Federal Court in .					
of this Defined	has been since 1 July 2016 the legal entity responsible for the administration dispension scheme.					
is the pla	aintiff and is one of the defendants in .					
	affirmed on 7 August 2019 was sent by Express Mail and received by the Federal Court on 8 is confirmed by Australia Post.					
This Affidavit file.	was not filed on the Court file and so there was no Order to remove this Affidavit from the Court					
I do not seek a	copy of the Affidavit or a copy of					
Affidavit was	opies of any emails, letters, memorandum or other correspondence that would reveal why this not filed (while other Affidavits from the had been filed) and what has now a Affidavit and associated Exhibits.					
This evidence to that involving	will assist in establishing if there has been another attempt to pervert the course of justice, similar in the Supreme Court of Victoria.					
Yours faithful	ly,					





Telephone: (02) 9230 8567 DX 613 SYDNEY FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

28 October 2019

By email:

Request under Freedom of Information Act

I refer to your email of 30 September 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 11 October 2019 acknowledging receipt of your request.

In your request of 30 September 2019, you seek the following documents related to an affidavit affirmed by you on 7 August 2019, and lodged with the Court, in respect of

I am seeking are copies of any emails, letters, memorandum or other correspondence that would reveal why this Affidavit was not filed (while other Affidavits from the had been filed) and what has now become of this Affidavit and associated Exhibits.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access. The reason for this is that I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no such documents exist.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"⁵.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".⁶

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁷

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

¹ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

⁸ at 131

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. 11

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. ¹³

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

¹⁰ (2008) 170 FCR 382

⁹ at [47]

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Non-filing of affidavit and its whereabouts

The exhaustive searches undertaken following your FOI request identified no documents falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no documents within the scope of your request exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, any email, phone log or other documents that would specifically reveal how the original affirmed paper document and electronic copy were to be stored pursuant to Federal Court Rule 2.28(3)(b) after removal from the Court file on 19 September 2019, would not be documents of an administrative nature. In my view, these documents would not be accessible under the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries(a)oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

From:
To: External FOI

Subject: Internal review of Freedom of Information request - Concealing Material Evidence - Supreme Court of

Victoria Case Study

Date: Thursday, 7 November 2019 12:55:23 PM

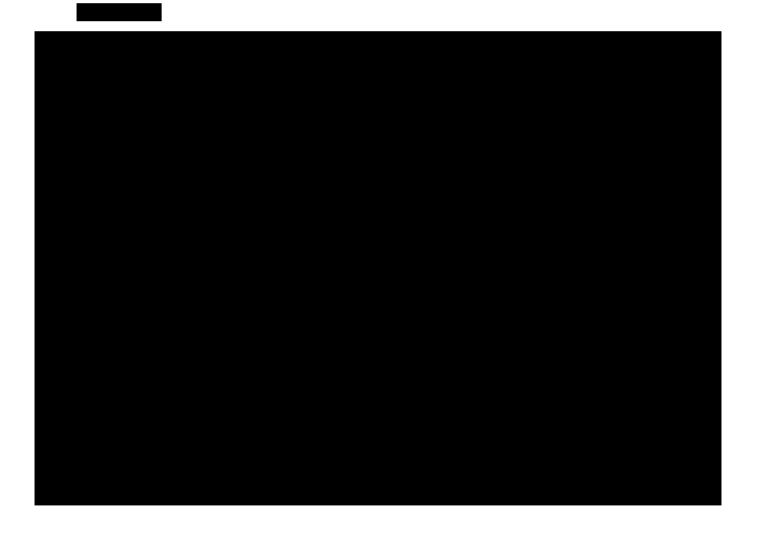
Dear External FOI,

I am seeking an internal review. Some affidavits that I sent to the Registrar were placed on the Court file, while others were not.

The management of documents and their safekeeping is the hallmark of "administration". How can a court function if there is no integrity in document management and important documents such as affidavits "go missing" and there is no record of when the documents were received when they were placed on the Court file and what happened to the affidavits and other documents when they were removed from the Court file or were never placed on the Court file in the first place for no apparent reason.

It is a matter of public interest if the Federal Court does not have a robust document handling system which will need to brought to the attention of the Attorney-General, the Hon Christian Porter MP.

Yours sincerely,





Telephone: (02) 9230 8567 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

29 November 2019

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

	By email:		
Dear			

Internal Review Decision under Subsection 54C of the Freedom of Information Act 1982

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 30 September 2019.

Authority

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

Background

In an email which you sent	to the Federal Court on 30 September 2019 regarding a proceeding
numbered ,	which the Federal Court titled

you requested (access request):

I am seeking copies of any emails, letters, memorandum or other correspondence that would reveal why (my) Affidavit (affirmed on 7 August 2019) was not filed (while other Affidavits from the been filed) and what has now become of this Affidavit and associated Exhibits.

On 28 October 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request as he was satisfied that all reasonable steps had been taken to find documents within the scope of your request and no such documents existed (access refusal decision).

You sent an email to the Federal Court regarding that decision later on 7 November 2019 requesting an internal review (internal review request). In that email you said:

I am seeking an internal review. Some affidavits that I sent to the Registrar were placed on the Court file, while others were not.

The management of documents and their safekeeping is the hallmark of "administration". How can a court function if there is no integrity in document management and important documents such as affidavits "go missing" and there is no record of when the documents were received when they were placed on the Court

file and what happened to the affidavits and other documents when they were removed from the Court file or were never placed on the Court file in the first place for no apparent reason.

It is a matter of public interest if the Federal Court does not have a robust document handling system which will need to brought to the attention of the Attorney-General, the Hon Christian Porter MP.

Decision

Having considered your access request afresh; taking further steps to find copies of any emails, letters, memoranda or other correspondence that would reveal why your affidavit affirmed on 7 August 2019 was not filed (while other affidavits from the you had been filed) and what had become of that affidavit and its associated exhibits; and taking into account the reasons and other information you advanced in your internal review request, I have decided, under subsection 24A(1) of the FOI Act, to refuse your access request. This is because I am satisfied that all reasonable steps to find documents that are within scope of your access request have been taken and no such documents exist.

Material taken into account

I have taken the following material into account in making my decision:

- your access request
- the access refusal decision
- your internal review request
- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- relevant case law.

Reasons for decision

Limited application of the FOI Act to the Federal Court

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers¹ or any documents relating to the handling of complaints about Judicial Officers² and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to "matters of an administrative nature"³. He also explained that the High Court of Australia (High Court) has considered the meaning of "matters of an administrative nature" in Kline v Official Secretary to the Governor-General Of Australian & Anor⁴ (Kline) and held that the phrase refers to documents "relating to the management and administration of registry and office resources"⁵.

I agree with and adopt Registrar Tredwell's more detailed explanation of this limited application of the FOI Act to the Federal Court. As this is set out in the access refusal decision included on the webpage for your relevant access request which you reference as above, I will not repeat that detailed explanation in this letter.

Paragraph 5(1)(b) FOI Act

² Subsection 5(1A) FOI Act

Subsection 5(1) FOI Act – see also paragraph 2.8 FOI Guidelines

^{4 [2013]} HCA 52

⁵ At [47] - see also paragraph 2.9 FOI Guidelines

Searches and enquiries undertaken

Registrar Tredwell explains in the access refusal decision the enquiries and searches he undertook in an attempt to find any documents that were within the scope of your request.

On 20 November 2019, over 30 minutes, I searched the Federal Court's electronic file for Proceeding for the period from 8 August 2019, when you advised you sent the relevant affidavit to the Court by Express Mail, up to and including the time of that search. I found no emails, letters, memoranda or other correspondence that would reveal why that affidavit was not filed and what had become of that affidavit and its associated exhibits.

On 20 and 26 November 2019, I spoke to all staff in the Federal Court's NSW District Registry who I identified from my searching of the electronic file as having been involved in the processing in the Court of any of the affidavits that were affirmed by you and lodged with the Federal Court in the same period. I had them undertake searches of all email accounts and other repositories (electronic or otherwise) in which any such emails, letters, memoranda or other correspondence, if it existed, could have been stored and placed. I was subsequently informed by those staff that no such emails, letters, memoranda or other correspondence were found.

I am satisfied that all reasonable steps have been undertaken to find any such documents, if they existed, but that no documents within the scope of your access request exists.

Documents that do not exist - subsection 24A FOI Act

As Registrar Tredwell explained in his access refusal decision, section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

As Registrar Tredwell also noted in that decision, as a result of the operation of this section the FOI Act provides a legally enforceable right to obtain access to various documents. This entitlement is, as section 11 makes clear, "subject to the Act" and as I (and Registrar Tredwell in his access refusal decision) have explained, in the case of the Federal Court, it applies only to a document that relates to "matters of an administrative nature", as narrowly interpreted by the High Court in *Kline*.

However, as also explained in the access refusal decision, subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

As detailed above, the searches and enquiries that I have made in attempting to find any documents that are within the scope of your access request have been comprehensive (as were those undertaken by Registrar Tredwell before making his access refusal decision). I

am not aware of any further step that could be taken to locate any such document, if it existed, or any other Court staff who may be able to assist in locating any such document.

I am satisfied that no document exists that is within the scope of your access request.

For these reasons, I decided under subsection 24A(1) of the FOI Act, to refuse your access request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, you can contact me by email at foi@fedcourt.gov.au.

Yours sincerely

John Mathieson

Deputy Principal Registrar

From:
To: External FOI

Subject: Freedom of Information request - Return of Interlocutory Application Wrongly Returned -

Date: Thursday, 3 October 2019 6:20:49 PM

Dear Federal Court of Australia,

The Federal Court Enforcement, Endorsement and Contempt Practice Note (GPN-ENF) provides guidance as to how a Contempt in the Face of the Court by Publication can be brought to the attention of the Court.

On the 31 July 2019 the Australian Financial Review published an article titled "Serial pest hijacks against over fees scandal".

This sensationalist and intimidatory article was promoted by a Twitter post which was a complete fabrication which stated:

"ICYMI Serial pest who bombarded with hundreds of requests signed Pussy Galore and Goldfinger hijacks landmark fees-for-no-service case against "

In response to these publications which were not a "fair and accurate" report of proceedings afoot in the Federal Court, an Interlocutory Application dated 16 September 2019, together with a Statement of Charge and a supporting Affidavit was lodged with the Court.

No order was made by the presiding Judge with respect to this interlocutory Application.

However, these documents were wrongly returned attached to a letter dated 20 September 2019 signed by a junior staff member of the District Registry.

These documents were then sent back to the District Registrar attached to a letter dated 25 September 2019.

The document I seek is a copy of the covering letter dated 25 September 2019 addressed to the District Registrar titled "Re: Interlocutory Application Wrongly Returned"

The case reference number is

Yours faithfully,



Telephone: (02) 9230 8567 DX 613 SYDNEY

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

28 October 2019			
	By email	:	
Dear			

Request under Freedom of Information Act

I refer to your email of 3 October 2019 to the Federal Court of Australia in which you have sought access to a document under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 11 October 2019 acknowledging receipt of your request.

In your request of 3 October 2019 you seek the following in respect of

The document I seek is a copy of the covering letter dated 25 September 2019 addressed to the District Registrar titled "Re: Interlocutory Application Wrongly Returned".

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to a copy of the covering letter dated 25 September 2019, addressed to the District Registrar, and titled "Re: Interlocutory Application Wrongly Returned". The reason for this is that I am satisfied that all reasonable steps were taken to find the document within the scope of your request and that no such document exists, at least, not in the possession of the Court.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"5.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal, the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.8 The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

¹ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

⁸ at 13]

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

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⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Letter and interlocutory application returned

The exhaustive searches undertaken following your FOI request did not identify the document falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find the document within the scope of your request and that no document within the scope of your request exists, at least, not in the possession of the Court. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, that this correspondence would not be a document of an administrative nature. In my view, this document would not be accessible under the FOI Act. However, had the document been in the possession of the Court, I would have considered it appropriate to provide outside the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Vours sincerely

Scou Heawen

Registrar, Principal Registry

From:
To: External FOI

Subject: Internal review of Freedom of Information request - Return of Interlocutory Application Wrongly Returned -

Date: Sunday, 3 November 2019 3:58:43 PM

Dear Federal Court of Australia,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Return of Interlocutory Application Wrongly Returned -

This matter is clearly one of public interest, since a journalist has been able to dictate to a justice of the Federal Court what evidence should and should not be presented to the Federal Court that would expose a very serious fraud in Australia's compulsory superannuation system.

A fraud where hundreds of widows have had their survivorship pensions stolen!

How is it be possible that no record has been kept relating to the administration of documents and evidence of a contempt in the face of the court, where a party to the proceedings was disparaged as a "Serial Pest" who had "hijacked" proceedings afoot in the Federal Court.

It was in fact the journalist James Frost from the Australian Financial Review who "hijacked" proceedings by getting evidence of a major superannuation fraud involving one of the Respondents in free from the Court File.

Such an interference with the course of justice cannot be simply ignored by making the evidence of the contempt of court "disappear".

Such an interference amounts to an attempt to pervert the course of justice an enlivens Section 43 of the Crimes Act 1914 (Cth).

CRIMES ACT 1914 - SECT 43

Attempting to pervert justice

- (1) A person commits an offence if:
- (a) the person attempts to obstruct, to prevent, to pervert or to defeat the course of justice in relation to a judicial power; and
- (b) the judicial power is the judicial power of the Commonwealth.

Penalty: Imprisonment for 10 years.

A full history of my FOI request and all correspondence is available on the Internet at this address:

Yours faithfully,





Telephone: (02) 9230 8567 DX 613 SYDNEY FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

A.B.N. 49 110 847 399

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

Your Ref: Our Ref:

22 November 2019

	By email:	
Dear		

Internal Review Decision under Subsection 54C of the Freedom of Information Act 1982

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 3 October 2019.

Authority

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

Background

In an email	which you sen	t to the Federal	Court on 3	October	2019	regarding	ар	proceeding
numbered	,	which the Feder	al Court title	ed .				
	you reque	sted (access requ	uest):					

The document I seek is a copy of the covering letter dated 25 September 2019 addressed to the District Registrar titled "Re: Interlocutory Application Wrongly Returned".

On 28 October 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request as he was satisfied that all reasonable steps had been taken to find documents within the scope of your request and no such documents existed (access refusal decision).

You sent an email to the Federal Court regarding that decision on 3 November 2019 requesting an internal review (internal review request). In that email you said:

I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Return of Interlocutory Application Wrongly Returned - '.

This matter is clearly one of public interest, since a journalist has been able to dictate to a justice of the Federal Court what evidence should and should not be presented to the Federal Court that would expose a very serious fraud in Australia's compulsory superannuation system.

A fraud where hundreds of widows have had their survivorship pensions stolen!

How is it be possible that no record has been kept relating to the administration of documents and evidence of a contempt in the face of the court, where a party to the proceedings was disparaged as a "Serial Pest" who had "hijacked" proceedings afoot in the Federal Court.

It was in fact the journalist James Frost from the Australian Financial Review who "hijacked" proceedings by getting evidence of a major superannuation fraud involving one of the Respondents in removed from the Court File.

Such an interference with the course of justice cannot be simply ignored by making the evidence of the contempt of court "disappear".

Such an interference amounts to an attempt to pervert the course of justice an enlivens Section 43 of the Crimes Act 1914 (Cth).

CRIMES ACT 1914 - SECT 43

Attempting to pervert justice

- (1) A person commits an offence if:
 - (a) the person attempts to obstruct, to prevent, to pervert or to defeat the course of justice in relation to a judicial power; and
 - (b) the judicial power is the judicial power of the Commonwealth.

Penalty: Imprisonment for 10 years.

A full history of my FOI request and all correspondence is available on the Internet at this address:

Decision

Having considered your access request afresh; taking further steps to find the covering letter dated 25 September 2019 addressed to the District Registrar of the Court's NSW District Registry titled "Re: Interlocutory Application Wrongly Returned" or a copy of it; and taking into account the reasons and other information you advanced in your internal review request, I have decided, under subsection 24A(1) of the FOI Act, to refuse your access request. This is because I am satisfied that all reasonable steps to find the document or a copy have been taken and no such document exist.

Material taken into account

I have taken the following material into account in making my decision:

- your access request
- the access refusal decision
- your internal review request
- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- relevant case law.

Reasons for decision

Limited application of the FOI Act to the Federal Court

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers¹ or any documents relating to the handling of complaints about Judicial

Paragraph 5(1)(b) FOI Act

Officers² and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to "matters of an administrative nature"³. He also explained that the High Court of Australia (High Court) has considered the meaning of "matters of an administrative nature" in Kline v Official Secretary to the Governor-General Of Australian & Anor⁴ (Kline) and held that the phrase refers to documents "relating to the management and administration of registry and office resources"⁵.

I agree with and adopt Registrar Tredwell's more detailed explanation of this limited application of the FOI Act to the Federal Court. As this is set out in the access refusal decision included on the webpage for your relevant access request which you reference as above, I will not repeat that detailed explanation in this letter.

Searches and enquiries undertaken

Registrar Tredwell explains in the access refusal decision the enquiries and searches he undertook in an attempt to find any documents that were within the scope of your request.

On 19 November 2019 over 25 minutes, I searched the Federal Court's electronic file for Proceeding for the period from 25 September 2019, when you apparently prepared and sent the letter you are seeking, up to and including the time of that search. I was familiar with that file having searched in comprehensively on 21 October 2019, and again, although less comprehensively, on 5, 13 and 14 November 2019 in undertaking internal review of other access refusal decisions in relation to earlier access requests from you and was thus able to focus quickly and specifically on searching for the requested document. I did not find the requested letter or any copy of it.

On 20 November 2019, I spoke to all staff in the Federal Court's NSW District Registry who I identified from my searching of the electronic file as having been involved in the processing in the Court of correspondence from you in relation to the relevant proceeding in the same period. I had them undertake searches of all email accounts and other repositories (electronic or otherwise) in which that letter or any copy of it, if it existed, could have been stored and placed. I was subsequently informed by those staff that the letter or any copy of it was not found.

I am satisfied that all reasonable steps have been undertaken to find the requested letter or any copy of it, if either or both existed, but that neither the letter nor a copy of it exists.

Documents that do not exist - subsection 24A FOI Act

As Registrar Tredwell explained in his access refusal decision, section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

² Subsection 5(1A) FOI Act

³ Section 5(1) FOI Act - see also paragraph 2.8 FOI Guidelines

^{4 [2013]} HCA 52

⁵ At [47] - see also paragraph 2.9 FOI Guidelines

As Registrar Tredwell also noted in that decision, as a result of the operation of this section the FOI Act provides a legally enforceable right to obtain access to various documents. This entitlement is, as section 11 makes clear, "subject to the Act" and as I (and Registrar Tredwell in his access refusal decision) have explained, in the case of the Federal Court, it applies only to a document that relates to "matters of an administrative nature" as narrowly interpreted by the High Court in *Kline*.

However, as also explained in the access refusal decision, subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist

As detailed above, the searches and enquiries that I have made in attempting to find the requested letter or any copy of it have been comprehensive (as were those undertaken by Registrar Tredwell before making his access refusal decision). I am not aware of any further step that could be taken to locate the document or a copy, if it existed, or any other Court staff who may be able to assist in locating any such document.

I am satisfied that the requested document does not exist.

For these reasons, I decided under subsection 24A(1) of the FOI Act to refuse your access request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, you can contact me by email at foi@fedcourt.gov.au.

John Mathieson

Deputy Principal Registrar

From:
To: External FOI

Subject: Freedom of Information request - Confirmation that the Federal Court has evidence of a Contempt of Court

Date: Thursday, 10 October 2019 7:51:52 PM

This occurred after a classic example of "disparaging the whistleblower" by

Dear Federal Court of Australia,

somewhat unusual!}.

Registrar.

An order was made by Justice Yates on 19 September 2019 to remove five filed Affidavits from the Court File by the Interested Person dated 1 May 19, 1 August 19, 5 August 19, 21 August 19 and 26 August 19.

using false information provided by
The Affidavit affirmed on 1 May 2019 confirmed that had failed to honour an undertaking given before the Honourable Justice Kenny in and also confirmed that was in contempt of the Federal Court.
This would mean that proceedings were an abuse of process and should be stayed until such time as ASIC honoured the undertaking given to Honourable Justice Kenny
However, no order was made by Justice Yates with respect to an Affidavit affirmed on 16 September 2019 that included which were copies of defamatory and intimidating publications by from the on 31 July 2019.
The main publication was titled "Serial pest hijacks case against over fees scandal".
A post on Twitter by on 31 July 2019 stated:
"ICYMI Serial pest who bombarded with hundreds of requests signed Pussy Galore and Goldfinger hijacks landmark fees-for-bo service case against "."
This was completely "fake news" provided by
{Evidence of this "fake news" will be provided to the Federal Court}
The AFR article also contained false information that could only have obtained from Applicant in proceedings before Justice Yates.
No order was made with respect to an Interlocutory Application and Statement of Charge dated 16 September that related to this Contempt in the face of the Court.
That is the second Contempt of Court in addition to ASIC's Contempt of Court as described above.
However, these documents were returned to the the next day!!!
The then returned these documents related to the Contempt in the face of the Court to the District Registrar by on 25 September 2019.

Hopefully, this evidence of a Contempt in the face of the Court by Review has at last been received by the District Registrar.

However, Australia Post has confirmed that the District Registrar never received these documents {Which is

Therefore the Affidavit containing evidence of the Contempt in the face of the Court was reaffirmed on the 7 October 2019 and the interlocutory Application and Statement of Charge sent by Express Mail to the District

The document I seek is a copy of the covering letter dated 7 October 2019 titled "RE: Interlocutory Application

Wrongly Returned {2nd Attempt to Return Interlocutory Application}"

This will confirm that Justice Yates is again privy to the publications by Contempt in the face of the Court by publication.

This is now a matter of public interest.

Yours faithfully,





FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING **OUEENS SOUARE** SYDNEY NSW 2000

29 October 2019 By email: Dear

Request under Freedom of Information Act

I refer to your email of 10 October 2019 to the Federal Court of Australia in which you have sought access to a document under the Freedom of Information Act 1982 (Cth) (FOI Act). I also refer to my letter of 11 October 2019 acknowledging receipt of your request.

In your request of 3 October 2019 you seek the following in respect of

The document I seek is a copy of the covering letter dated 7 October 2019 titled "RE: Interlocutory Application Wrongly Returned {2nd Attempt to Return Interlocutory Application}".

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to a copy of the covering letter dated 7 October 2019 titled "RE: Interlocutory Application Wrongly Returned {2nd Attempt to Return Interlocutory Application}". The reason for this is that I am satisfied that all reasonable steps were taken to find the document within the scope of your request and that no such document exists, at least, not in the possession of the Court.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"⁵.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal, the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

¹ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

⁸ at 13]

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. ¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

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⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Covering letter dated 7 October 2019

The exhaustive searches undertaken following your FOI request did not identify the document falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find the document within the scope of your request and that no document within the scope of your request exists, at least, not in the possession of the Court. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As your request was refused pursuant to subsection 24A(1) of the FOI Act, it is not necessary for me to consider whether such correspondence would be of an administrative nature, relating to the administration of Court registry and office resources, for the purposes of the FOI Act.

Nonetheless, had I been required to so decide, I would have been satisfied that pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor*, that this correspondence would not be a document of an administrative nature. In my view, this document would not be accessible under the FOI Act. However, had the document been in the possession of the Court, I would have considered it appropriate to provide outside the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell Registrar, Principal Registry From:
To: External FOI

Subject: Internal review of Freedom of Information request - Confirmation that the Federal Court has evidence of a

Contempt of Court

Date: Sunday, 3 November 2019 3:37:54 PM

Dear Federal Court of Australia,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Confirmation that the Federal Court has evidence of a Contempt of Court'.

The hallmark of office "administration" is the management of documents whether paper documents or electronic documents such as email records.

Documents after a certain time are often archived so that they can be recovered at a later date. This is especially important for documents of a legal nature.

It is a serious matter when a journalist commits a contempt in the face of the Court by failing to report proceedings current afoot in an accurate and fair manner - to describe a party to a proceedings as a "Serial Pest" is clearly a contempt, especially when that party has been an Applicant who has obtained an undertaking from the Federal Court that is relevant to the current proceedings.

An interlocutory application and an associated affidavit containing copies of the published articles have been returned to the victim THREE times by junior clerks when no Order has been made by Justice Yeates with respect to this contempt of court by James Frost.

Clearly these junior clerks have been following instructions from someone higher in the chain of command at the Federal Court.

There must be an email chain or a paper memorandum instructing these junior clerks to "get rid" of evidence of this contempt of court by returning the evidence to the victim and hoping that the victim "just goes away" so that the administration of justice is not brought into disrepute by turning a blind eye to such a blatant contempt in the face of the court.

This conduct with respect to document administration may need to be appealed to the Administrative Appeals Tribunal and so I am seeking an Internal Review so that such an appeal might be avoided.

A full history of my FOI request and all correspondence is available on the Internet at this address:

Yours faithfully,



A.B.N. 49 110 847 399

Your Ref: Our Ref:

22 November 2019

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

	By email:	
Dear		

Internal Review Decision under Subsection 54C of the Freedom of Information Act 1982

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 10 October 2019.

Authority

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

Background

In an email which you sent to the Federal Court on 10 October 2019 regarding a proceeding numbered NSD 1654/2018, which the Federal Court titled

you requested (access request):

The document I seek is a copy of the covering letter dated 7 October 2019 titled "RE: Interlocutory Application Wrongly Returned $\{2^{nd} A t tempt \ to \ Return \ Interlocutory \ Application\}$ ".

On 29 October 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request as he was satisfied that all reasonable steps had been taken to find documents within the scope of your request and no such documents existed (access refusal decision).

You sent an email to the Federal Court regarding that decision on 3 November 2019 requesting an internal review (internal review request). In that email you said:

I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Confirmation that the Federal Court has evidence of a Contempt of Court'.

The hallmark of office "administration" is the management of documents whether paper documents or electronic documents such as email records.

Documents after a certain time are often archived so that they can be recovered at a later date. This is especially important for documents of a legal nature.

It is a serious matter when a journalist commits a contempt in the face of the Court by failing to report proceedings current afoot in an accurate and fair manner - to describe a party to a proceedings as a "Serial Pest" is clearly a contempt, especially when that party has been an Applicant who has obtained an undertaking from the Federal Court that is relevant to the current proceedings.

An interlocutory application and an associated affidavit containing copies of the published articles have been returned to the victim THREE times by junior clerks when no Order has been made by Justice Yeates with respect to this contempt of court by James Frost.

Clearly these junior clerks have been following instructions from someone higher in the chain of command at the Federal Court.

There must be an email chain or a paper memorandum instructing these junior clerks to "get rid" of evidence of this contempt of court by returning the evidence to the victim and hoping that the victim "just goes away" so that the administration of justice is not brought into disrepute by turning a blind eye to such a blatant contempt in the face of the court.

This conduct with respect to document administration may need to be appealed to the Administrative Appeals Tribunal and so I am seeking an Internal Review so that such an appeal might be avoided.

A full history of my FOI request and all correspondence is available on the Internet at this address:

Decision

Having considered your access request afresh; taking further steps to find the covering letter dated 7 October 2019 titled "Re: Interlocutory Application Wrongly Returned (2nd Attempt to Return Interlocutory Application)" or a copy of it; and taking into account the reasons and other information you advanced in your internal review request I have decided, under subsection 24A(1) of the FOI Act, to refuse your access request. This is because I am satisfied that all reasonable steps to find the document or a copy have been taken and no such document exist.

Material taken into account

I have taken the following material into account in making my decision:

- your access request
- the access refusal decision
- your internal review request
- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- relevant case law.

Reasons for decision

Limited application of the FOI Act to the Federal Court

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers¹ or any documents relating to the handling of complaints about Judicial Officers² and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to "matters of an administrative nature"³. He

Paragraph 5(1)(b) FOI Act

² Subsection 5(1A) FOI Act

³ Subsection 5(1) FOI Act – see also paragraph 2.8 FOI Guidelines

also explained that the High Court of Australia (High Court) has considered the meaning of "matters of an administrative nature" in *Kline v Official Secretary to the Governor-General Of Australian & Anor*⁴ (Kline) and held that the phrase refers to documents "relating to the management and administration of registry and office resources".

I agree with and adopt Registrar Tredwell's more detailed explanation of this limited application of the FOI Act to the Federal Court. As this is set out in the access refusal decision included on the Right to Know webpage for your relevant access request which you reference as above, I will not repeat that detailed explanation in this letter.

Searches and enquiries undertaken

Registrar Tredwell explains in the access refusal decision the enquiries and searches he undertook in an attempt to find any documents that were within the scope of your request.

On 19 November 2019 over 15 minutes, I searched the Federal Court's electronic file for Proceeding NSD 1654/2018 for the period from 7 October 2019, when you apparently prepared and sent the letter you are seeking, up to and including the time of that search. I was familiar with that file having searched in comprehensively on 21 October 2019, and again, although less comprehensively, on 5, 13, 14 and 19 November 2019 in undertaking internal review of other access refusal decisions in relation to earlier access requests from you and was thus able to focus quickly and specifically on searching for the requested document. I did not find the requested letter or any copy of it.

On 20 November 2019, I spoke to all staff in the Federal Court's NSW District Registry whom I identified from my searching of the electronic file as having been involved in the processing in the Court of correspondence from you in relation to the relevant proceeding in the same period. I had them undertake searches of all email accounts and other repositories (electronic or otherwise) in which that letter or any copy of it, if it existed, could have been stored and placed. I was subsequently informed by those staff that the letter or any copy of it was not found.

I am satisfied that all reasonable steps have been undertaken to find the requested letter or any copy of it, if either or both existed, but that neither the letter nor a copy of it exists.

Documents that do not exist - subsection 24A FOI Act

As Registrar Tredwell explained in his access refusal decision, section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

As Registrar Tredwell also noted in that decision, as a result of the operation of this section the FOI Act provides a legally enforceable right to obtain access to various documents. This entitlement is, as section 11 makes clear, "subject to the Act" and as I (and Registrar Tredwell in his access refusal decision) have explained, in the case of the Federal Court, it applies only

^{4 [2013]} HCA 52

^[2013] HCA 32

⁵ At [47] – see also paragraph 2.9 FOI Guidelines

to a document that relates to "matters of an administrative nature" as narrowly interpreted by the High Court in Kline.

However, as also explained in the access refusal decision, subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

As detailed above, the searches and enquiries that I have made in attempting to find the requested letter or any copy of it have been comprehensive (as were those undertaken by Registrar Tredwell before making his access refusal decision). I am not aware of any further step that could be taken to locate the document or a copy, if it existed, or any other Court staff who may be able to assist in locating any such document.

I am satisfied that the requested document does not exist.

For these reasons, I decided under subsection 24A(1) of the FOI Act to refuse your access request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

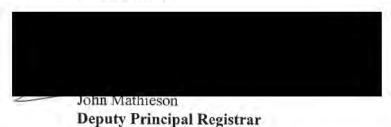
post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Questions about this decision

If you wish to discuss this decision, you can contact me by email at foi@fedcourt.gov.au.

Yours sincerely



From: To: External FOI

Subject: Freedom of Information request - Serial Pest or well-know Whistleblower

Date: Monday, 14 October 2019 12:51:25 PM

Dear Federal Court of Australia,

Following the publication of a defamatory and intimidatory article by journalist James Frost in the Australian Financial Review (31 July 2019) titled "Serial Pest hijacks case against over fees scandal", on 19 September 2019 Justice Yates made an order to remove the following Affidavits from the Court File:

(a)Affidavit of sworn on 1 May 2019; (b)Affidavit of sworn on 1 August 2019; (c)Affidavit of sworn on 5 August 2019; (d)Affidavit of sworn on 21 August 2019; (e)Affidavit of sworn on 26 August 2019;

On the 13 August 2019, an Affidavit was affirmed by (not sworn) and was received by the Federal Court on 14 August 2019, however, an electronic copy was NOT filed on the Court File

There was no Order made with respect to this Affidavit by Justice Yeates.

persevered. Notwithstanding the many obstacles he had to overcome."

Included in this Affidavit at Paragraph 5 was the following:

fraud has been committed. It may transpire that

On 6 August 2014 Deputy President J W Constance in the Administrative Appeals Tribunal stated: has been seeking to expose what he believes is fraudulent conduct [3] Over the past seven years involving the administration of a trust established in 1913 for the benefit of the employees of a major Australian company and their dependents. He has been dogged in his pursuit of documents which may establish that such a becomes well-known as a whistleblower who

Documents confirming the widows' death benefits were obtained a year later and have been provided to as confirmed in the Affidavit affirmed on 1 May 2019 (which was removed from the Court file).

Evidence was also provided in the Annexures to this Affidavit confirming that and misleading information to Senator John Williams in contravention of Section 13(9) of the Public Service Act 1999, the purpose being to protect white-collar criminals who refuse to pay widows their death benefits in the form of a survivorship pension from a Defined Benefit superannuation fund.

This is an extension of stealing money out of the superannuation accounts of deceased fund members exposed by the Hayne Royal Commission.

So why had the Affidavit affirmed on 13 August 2019 not be placed on the Court file when it had been received by the Federal Court of the 14 August 2019?

No mention was made in the Order by Justice Yates as to a specified way as to how this document which had not been filed on the Court file should be dealt with.

Therefore, the District Registrar must direct how this document must be stored pursuant to Federal Court Rule 2.28(3)(b). This is now a document of public interest.

The document I seek is a copy (but not the original) of the Affidavit affirmed on 13 August 2019 that was received by the Federal Court of the 14 August 2019 that was not placed on the Court file in an electronic

format. This includes	. The
Annexures confirm serious misconduct by a number of	
This document will assist in obtaining advice as to how may be held accountable to honour the undertaking given before the Honourable Justice Kenny in and so that current process where is the Applicant/Plaintiff cannot be impugned as an "Abuse of Process" should these pronot be stayed until such time as the undertaking has been honoured by undertaking given before the Honourable Justice Kenny by	edings ceedings
The case reference number is	
Yours faithfully,	



FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref:

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

29 October 2019		
	By email:	
Dear		

Request under Freedom of Information Act

I refer to your email of 14 October 2019 to the Federal Court of Australia in which you have sought access to a document under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 22 October 2019 acknowledging receipt of your request.

In your request of 14 October 2019 you seek the following in respect of

The document I seek is a copy (but not the original) of the Affidavit affirmed on 13 August 2019 that was received by the Federal Court of (sic) the 14 August 2019 that was not placed on the Court file in an electronic format. This includes

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided that the document you seek is not a document relating to matters of an administrative nature pursuant to subsection 5(1) of the FOI Act. It is therefore, not a document that is accessible under the FOI Act. I am nonetheless satisfied that it would be appropriate to grant access to the document outside the FOI Act.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the nature and content of the requested document;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify the document within the scope of your FOI request involved discussions with relevant staff within the New South Wales District Registry and a search of correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the document requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court.¹ It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"⁵.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal, the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁷

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁸ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

 $^{^{1}}$ paragraphs 2.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

^{0 177}

⁸ at 13]

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. ¹³

Affidavit affirmed 13 August 2019

0,
scope of your request, namely an affidavit affirmed 13 August 2019, including
and provided under cover of a
letter dated 13 August 2019. This affidavit, together with an affidavit affirmed 8 August
2019 and including annexures , was received by the Court on 15
August 2019.
These affidavits, together with the covering letter, were clearly provided in respect of
Consequently, pursuant to subsection 5(1) of the FOI Act and following the
decision of the High Court in Kline v Official Secretary to the Governor General of Australia
& Anor, I am satisfied that this document is not a document which relates to the management

The searches undertaken following your FOI request identified a document falling within the

¹⁰ (2008) 170 FCR 382

12 at [51]

⁹ at [47]

¹¹ at [51]

¹³ at [75] and [76]

and administration of registry or office resources, and hence cannot be accessed under the FOI Act.

I am nonetheless satisfied that it would be appropriate, in this instance, to grant access to the requested affidavit, together with the coving letter and accompanying affidavit, outside the FOI Act. A copy of your letter of 13 August 2019, complete with affidavits, is attached.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

External FOI	
From: Sent: To: Subject:	Thursday, 17 October 2019 12:30 PM External FOI Freedom of Information request - Letter to HR Committee on Economics - Appendix B
Dear Federal Court of Austra	alia,
of an undertaking given by would investigate allegation	before the Honourable Justice Kenny in VID 323 of 2011 to the effect that on misconduct (namely a fraudulent breach of trust) associated with one of Australia's schemes established by a Trust Deed made on the 23 December 1913 in the State of
A copy of the undertaking w	as provided in Appendix B in this letter.
Evidence provided by the At itself confirms the frauduler	torney-General's Department of South Australia and the Parliament of South Australia at breach of trust.
Since 1 July 2016, the legal entity responsible	, has been for the administration of this Defined Benefit occupational pension scheme.
member-elected trustee dire	tional pension scheme was closed to NEW members on 30 November 1997 after a ector commenced proceedings in the Supreme Court of Victoria after he was sacked he administration of this occupational pension scheme.
ASIC is currently taking proc	eedings against in the Federal Court
	by of the letter to the House of Representatives Standing Committee on Economic dated cludes the undertaking given by ASIC in Appendix B.
Yours faithfully,	



FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref: LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

1 November 2019

By email

Dear

Request under Freedom of Information Act

I refer to your email of 17 October 2019 to the Federal Court of Australia in which you have sought access to a document under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 22 October 2019 acknowledging receipt of your request and seeking additional information to assist the Court in locating the document. Further, I refer to your emailed response of 22 October 2019.

In your request of 17 October 2019 you seek access to a copy of a letter, dated 23 September 2019, to the House of Representatives Standing Committee on Economics.

Searches conducted following receiving your request revealed a copy of the requested letter was sent, unsolicited, to the Court by **you** on 15 October 2019.

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to grant access in full to the document requested.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the nature and content of the requested document;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

Original Massacra
Original Message From: Sent: Friday, 25 October 2019 1:02 PM
To: External FOI <external.foi@fedcourt.gov.au> Subject: Freedom of Information request - Conflict of Interest by Daniel Crennan - ASIC's Chief Prosecutor</external.foi@fedcourt.gov.au>
Dear Federal Court of Australia,
Attached to an affidavit affirmed on 25 September 2019 as was a copy of a document titled
This document was not duty stamped as a Deed nor as an Agreement as required by the Trustee Act 1932 (SA).
This document bears the signature of twice - once as a twice - once as a fine twice and again as one of five natural person trustees of this Defined Benefit occupational pension scheme.
Two of the natural person trustees had been elected by the fund members and one by the fund pensioners.
Purported Rule 1.2.2 in this document purported to allow natural person trustees from office and replace them by a corporate trustee where all the directors would be nominated by and none by the members and pensioners.
These five natural person trustees resident in South Australia were in fact unlawfully removed from office by as soon as the ink was dry on this purported "Resolution' which then exposed this superannuation fund to the fraudulent breach of trust that then befell the widows of qualifying fund members
and his colleagues were the subject of a major investigation by the former National Crime Authority (Operation Albert).
In Paragraph 10 of the affidavit affirmed on 25 September 2019 the following was stated:

In fact, this conflict of interest may result in and its concealing this "Resolution" signed by
The affidavit affirmed on 25 September 2019 and the document bearing the signature of were sent to the Federal Court by Registered mail
I do not seek a copy of this affidavit and document.
The documents I seek are any documents that would confirm that the document bearing the signature of was not put through the Federal Court shredder so as not to cause embarrassment to both
This document signed by is also relevant to the undertaking given before the Honourable Justice Kenny in which shall also in future be brought to the attention of the Federal Court when I seek to again uphold my rights as the Applicant in which are being denied in disparagement of a whistleblower by reporter which is a Contempt in the face of the Court.
The Federal Court cannot sweep the fact that is currently also in Contempt of Court for failing to honour the undertaking given before the Honourable Justice Kenny "under the carpet".
Yours faithfully,



FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

Your Ref: Our Ref: LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000
14 November 2019
By email:
Dear
Request under Freedom of Information Act
I refer to your email of 25 October 2019 to the Federal Court of Australia in which you have sought access to a document under the <i>Freedom of Information Act 1982</i> (Cth) (FOI Act). I also refer to my letter of 31 October 2019 acknowledging receipt of your request.
In your request of 25 October 2019 you seek the following documents related to
namely any documents that would confirm that an to an affidavit affirmed on 25 September 2019, was not put through the Federal Court shredder.
Authorised decision-maker
I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.
Decision
I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for any documents that would confirm that an to an affidavit affirmed on 25 September 2019, was not put through the Federal Court shredder. The reason for this is that I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no such documents exist.
In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request have been exhaustive, involving discussions with all relevant staff within the New South Wales District Registry and a search of all correspondence related to

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"5.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal, the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".7

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.8 The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

6 at [19]

¹ paragraphs 2.6 – 2.8 of the FOI Guidelines

paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁷ at [41]

⁸ at 131

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. 11

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

⁹ at [47]

¹⁰ (2008) 170 FCR 382

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Requested documents

The exhaustive searches undertaken following your FOI request did not identify any documents falling within the scope of your request.

I am satisfied that all reasonable steps were taken to find documents within the scope of your request and that no documents within the scope of your request exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

As no documents within the scope of your request exist pursuant to subsection 24A(1) of the FOI Act, it has not been necessary to consider whether any documents within the scope of your request relate to the management and administration of registry or office resources, and hence accessible under the FOI Act.

Charges

You have not been charged for the processing of your request

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely-

Scott Tredwell

Registrar, Principal Registry

31 October 2019 Deputy Principal Registrar Principal Registry Federal Court of Australia Level 16 Law Courts Building Queens Square SYDNEY NSW 2000 BY EMAIL: foi@fedcourt.gov.au Dear Sir/Madam We act on behalf of in relation to a claim for personal injury, brought by , arising out of a motor vehicle accident that occurred on 22 January 2014. We confirm this request is an application for the purposes of the Freedom of Information Act 1982. filed for Bankruptcy in 2017, which was the subject of a Debtor's Petition in the Federal Court We confirm has also particularised a claim for economic loss in the subject claim. which allegedly arose out of injuries sustained in the motor vehicle accident. To assist us in quantifying his entitlement to past and future economic loss, we kindly request a copy of your entire court file pertaining to the abovenamed Bankruptcy proceedings including but not limited to initiating proceedings, applications and/or interim applications, Creditor's Petitions, Debtor's Petitions, affidavit and supporting evidence, notices of opposition and any other material held in respect of proceedings. We confirm we will endeavour to meet your reasonable fees and charges incurred in the production of that material. We look forward to hearing from you.



Sent: Friday, 1 November 2019 4:57 PM

To: John Mathieson < John. Mathieson@fedcourt.gov.au>

Subject: RE: FOI Request -

Dear Mr Mathieson

We confirm the FOI request is withdrawn.

Kind regards.

From: John Mathieson [mailto:John.Mathieson@fedcourt.gov.au]

Sent: Thursday, 31 October 2019 5:45 PM

To:

Cc:

Subject: FOI Request - Findlater v Monaco Your Ref.: JMC:LYS:387512

UNCLASSIFIED

Dear

As discussed on the phone shortly ago, the Freedom of Information Act 1982 (Cth) (FOI Act) has very limited application to the Federal Court. It applies only to documents relating to matters of an administrative nature. In Kline v Official Secretary to the Governor General [2013] HCA 52, the High Court found that this refers only to documents that concern the management and administration of office resources, such as financial and human resources and information technology and not to documents relating, directly or indirectly, to the discharge of substantive powers and functions or adjudication or tasks that are referable to the exercise of judicial, rather than administrative, powers and functions. The latter would not include a court file. These limitations are discussed by the Australian Information Commissioner in the guidelines provided under section 93A of the FOI Act at paragraphs 2.8 – 2.10. The guidelines are available on the Commissioner's website at https://www.oaic.gov.au/freedom-of-information/foi-guidelines/ The Court also provides information on its website on the limitations of the FOI Act in regard to court files at https://www.fedcourt.gov.au/about/freedom-of-information and how access to a court file can be obtained at https://www.fedcourt.gov.au/services/access-to-files-andtranscripts/court-documents.

However, as also discussed on the phone, I can find no record of John Findlater being a party to any proceeding in the Federal Court (or the Federal Circuit Court which has concurrent

jurisdiction with the Federal Court at first instance in bankruptcy). If, as you suggest, Mr Findlater's bankruptcy was on a Debtor's Petition this would have been an administrative process through the Australian Financial Security Authority (AFSA). You can find information about accessing documents in AFSA's possession under the FOI Act on its website at https://www.afsa.gov.au/about-us/corporate-information/freedom-information. AFSA also maintains a bankruptcy register (National Personal Insolvency Index) which can be searched—for information see https://www.afsa.gov.au/online-services/bankruptcy-register-search. Please consider withdrawing the FOI request to the Court made in your letter sent today. I am authorised to make FOI decisions on behalf of the Federal Court under subsection 23(2) of the FOI Act. Any withdrawal can be directed to me. Regards,

John Mathieson | Deputy Principal Registrar

Principal Registry | Federal Court of Australia Law Courts Building, Queens Square, Sydney NSW p. 02 9230 8336 | e. john.mathieson@fedcourt.gov.au www.fedcourt.gov.au

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External FOI

From:

Sent: Saturday, 2 November 2019 6:41 PM

To: External FOI Subject: Re FOI request

Good morning

Earlier this year I was an initiating party in a human rights complaint regarding a medical disability from an osteoarthritis illness that ended in a workplace dismissal. The employers had refused to attend a mediation with the HRC. I then took it to the FCC. The FCC judge never telephoned me on the first hearing date despite my being interstate, my application for telephone attendance and despite his associate ringing me to set up a link on the first hearing date. In my absence the FCC judge accepted consent orders by the employers of which I had no knowledge nor given any consent. Those orders were prejudicial if not dishonest. The next attendance in person was too hurried with insufficient time or interest granted to deal with any issue. I then appealed to the FC. In this time I both attended by telephone as I was in northern Australia and later made an effort to travel in person to attend court, this after having been hospitalised with microplasma pneumonia which took months of recovery. I ensured I filed documents on time DESPITE not having received Orders from the previous court date. I also queried the location of the Orders and it's contents for information as I was relocating to northern Australia but had not yet received those Orders at all for my reference. I was later informed the Orders had been sent to an incorrect email. I informed court staff I needed the Orders to be sent to my correct email for my information asap. This included I believe informing the judge's associate via email. The Orders never arrived in any timely manner at all for accessing as an attachment (because I have no laptop where I am now only a mobile) and a result I missed a court date attendance which I had believed was late in a month not earlier (this being recollection only because I had not received the Orders in a timely manner before my relocation). I am concerned that (a) FCC's failure to assure procedure fairness in the first and second hearing dates; and (b) FC's failure to send Orders to a correct email address in a timely manner for my knowledge and travel plans to attend court, are deliberate undermining of my rights and entitlements, such undermining being deliberate by court staff.

Accordingly pursuant to FOI then I am now seeking a copy of all data including metadata, all documents, administrative notes, file notes, memorandums, emails or other communications in relation to this matter of McCardle v Lyons & Or's in a discrimination workplace claim before Wheelalan J in the FC in Vic.

Regards



Your Ref:

Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

14 November 2019



Request under Freedom of Information Act

I refer to your email of 2 November 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). I also refer to my letter of 5 November 2019 acknowledging receipt of your request.

In your request of 14 October 2019 you seek access to the following documents in relation to the matter of

...all data including metadata, all documents, administrative notes, file notes, memorandums, emails or other communications in relation to this matter....

Authorised decision-maker

I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request.

Decision

I have decided to refuse your request as the documents you seek are not documents relating to matters of an administrative nature pursuant to subsection 5(1) of the FOI Act. In addition, a range of documents within the scope of your request will also be held by Judicial Officers. These documents are not documents to which the FOI Act applies due to the operation of paragraph 5(1)(b) of the FOI Act.

The requested documents are therefore, not documents that are accessible under the FOI Act.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers² or to any documents relating to the handling of complaints about Judicial Officers³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act⁴ the only request that can validly be made to it under the FOI Act is to access a document that relates to matters of an administrative nature"⁵.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal, the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".6

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".7

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.8 The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.9

The High Court, in considering the decision of Bienstein v Family Court of Australia¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an

 $^{^{1}}$ paragraphs 2.6 – 2.8 of the FOI Guidelines

paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

⁷ at [41]

⁸ at 13]

⁹ at [47]

¹⁰ (2008) 170 FCR 382

administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

Documents in relation to

Explicit within your request, is that the requested documents relate specifically to the matter of as presently before the Court. Consequently, it is clear that all of the requested documents relate to specific litigation before the Court and none relate to the management and administration of registry or office resources. Pursuant to subsection 5(1) of the FOI Act and following the decision of the High Court in Kline v Official Secretary to the Governor General of Australia & Anor, I am satisfied that these documents do not relate to the management and administration of registry or office resources, and hence cannot be accessed under the FOI Act.

It is also clear that a range of documents within the scope of your request will be held by Judicial Officers. These documents are not documents to which the FOI Act applies due to the operation of paragraph 5(1)(b) of the FOI Act.

I have decided, for the reasons outlined above, to refuse your request.

Charges

You have not been charged for the processing of your request

-

¹¹ at [51]

¹² at [51]

¹³ at [75] and [76]

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry

 From:
 External FOI

 Subject:
 Re: Re FOI request

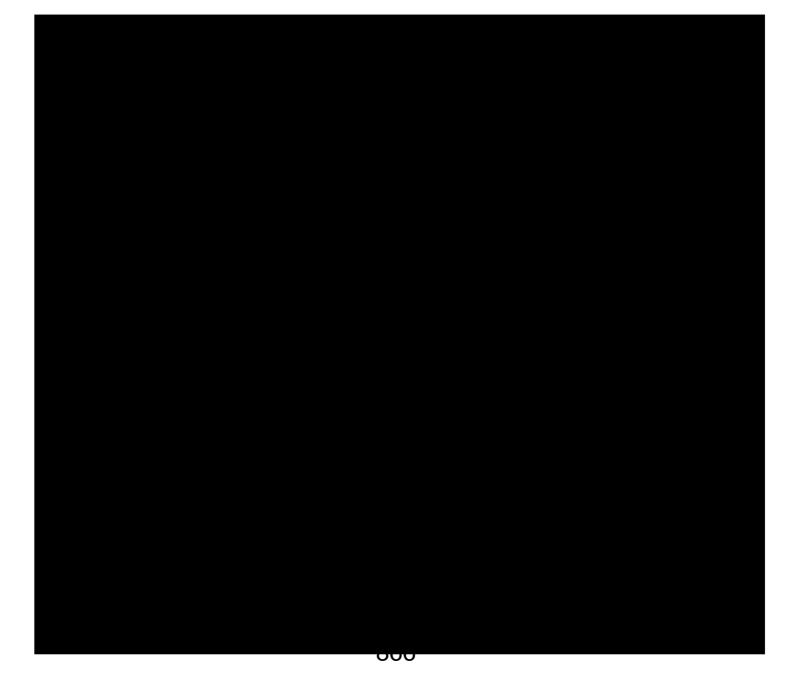
Date: Thursday, 14 November 2019 6:23:53 PM

Dear Madam

RE: Review

Please refer my request for an internal review because (a) administrative documents are included in my request which are Freedom of Information compliance requests; and (b) other documents such as wanting copies of files etc can be produced by another registrar as opposed to an FOI request specifically. However, for those documents including notes, emails etc which are not court documents as such but are administrative in nature and internal documents or not otherwise are documents filed in court by either party, are included in my FOI request. For these latter documents, then I do seek an internal review of my request because they are relevant and appropriate pursuant to FOI.

Regards







Telephone: (02) 9230 8567 DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

17 November 2019

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

	.	
	By email:	
Dear		

Internal Review Decision under Subsection 54C of the Freedom of Information Act 1982

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 2 November 2019.

Authority

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

Background

In	an	email	which	you	sent	to	the	Federal	Court	on :	2	November	2019	in	regard	to a	appeal
pr	oce	eding								70	ou	requested	access	s u	nder the	e FC	I Act
(a	ces	s requ	est) to:														

all data including metadata, all documents, administrative notes, file notes, memorandums, emails or other communications in relation to this matter of the second process of th

On 14 November 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request (access refusal decision). This was because the documents sought were either not documents relating to matters of an administrative nature or were documents held by Judicial Officers and hence, by virtue of section 5 of the FOI Act, were not accessible under the FOI Act. I attach a copy of Registrar Tredwell's access refusal decision letter for your ease of reference.

You sent an email to the Federal Court regarding that decision later on 14 November 2019 requesting an internal review (internal review request). In that email you said:

Please refer my request for an internal review because (a) administrative documents are included in my request which are Freedom of Information compliance requests; and (b) other documents such as wanting copies of files etc can be produced by another registrar as opposed to an FOI request specifically. However, for those documents including notes, emails etc which are not court documents

as such but are administrative in nature and internal documents or not otherwise are documents filed in court by either party, are included in my FOI request. For these latter documents, then I do seek an internal review of my request because they are relevant and appropriate pursuant to FOI.

Decision

Having considered your access request afresh, I have decided to again refuse it. This is because the FOI Act does not apply to any of the documents that you seeking access to and, as a result, no valid request for access to these documents can be made under the FOI Act.

Material taken into account

I have taken the following material into account in making my decision:

- · your access request
- · the access refusal decision
- · your internal review request
- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- · relevant case law.

Reasons for decision

Limited application of the FOI Act to the Federal Court

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers¹ or any documents relating to the handling of complaints about Judicial Officers² and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to "matters of an administrative nature"³. He also explained that the High Court of Australia (High Court) has considered the meaning of "matters of an administrative nature" in Kline v Official Secretary to the Governor-General Of Australian & Anor⁴ (Kline) and held that the phrase refers to documents "relating to the management and administration of registry and office resources"⁵.

I agree with and adopt Registrar Tredwell's more detailed explanation of this limited application of the FOI Act to the Federal Court. As I have attached a copy of Registrar Tredwell's access refusal decision letter for your reference, I will not repeat that detailed explanation here.

In its findings in *Kline* the High Court makes it very clear that, in the case of courts and selected tribunals (including the Federal Court), the FOI Act applies only to documents which concern the management and administration of office resources⁶, such as financial and human

Paragraph 5(1)(b) FOI Act

² Subsection 5(1A) FOI Act

³ Section 5(1) FOI Act – see also paragraph 2.8 FOI Guidelines

^{4 [2013]} HCA 52

⁵ At [47] - see also paragraph 2.9 FOI Guidelines

⁶ At [41] and [47]

resources and information technology⁷, or "logistical support⁸ and that a valid request under the FOI Act can only be made in relation to documents in that limited class⁹.

Documents Covered by Your Access Request

In your access request, you seek access to all documents, including administrative notes, file notes, memoranda, emails or other communications, which relate to the relevant appeal proceeding. As Registrar Tredwell noted in his access refusal decision, all of the requested documents relate specifically to the appeal that is pending before the Court.

In your internal review request, I understand you to be suggesting that the requested documents include administrative and internal documents in relation to that appeal (including notes and emails) and that these are accessible under the FOI Act. As Registrar Tredwell pointed out in his access refusal decision, such a contention (which was adopted by the Federal Court in *Bienstein v Family Court of Australia*¹⁰) was found by the High Court in *Kline* to be erroneous¹¹.

All of the requested documents relate to the relevant appeal proceeding and do not relate to the management and administration of registry and office resources. As a result they are not documents of an administrative nature and, because of the exclusion in section 5 of the FOI Act, no valid request to access them can be made under that Act.

Some of the requested documents will be held by Judicial Officers. Because of paragraph 5(1)(b) of the FOI Act, these too are excluded from the operation of that Act and no valid request to access them may be made under the FOI Act.

There may, of course, be some overlap between documents in the two different classes but this has no impact.

For these reasons, I decided to refuse your access request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Inspecting and Copying Court Documents under Federal Court Rules 2011

Although access is not available to the requested documents under the FOI Act, as you are a party to the appeal proceeding you are entitled to inspect and obtain a copy of any document

⁷ At [13]

⁸ At [74] and [76]

⁹ At [36]

^{10 [2008]} FCA 1138

¹¹ At [51] and [72]

in that proceeding, subject to claims of privilege or any suppression or non-publication order which may have been made, under rule 2.32 of the Federal Court Rules 2011. More information about this is available on the Court's website at https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

You can also access information about the appeal proceeding, including orders made and judgment delivered, online through the Commonwealth Courts Portal at https://www.comcourts.gov.au/file/Federal/P/VID284/2019/actions.

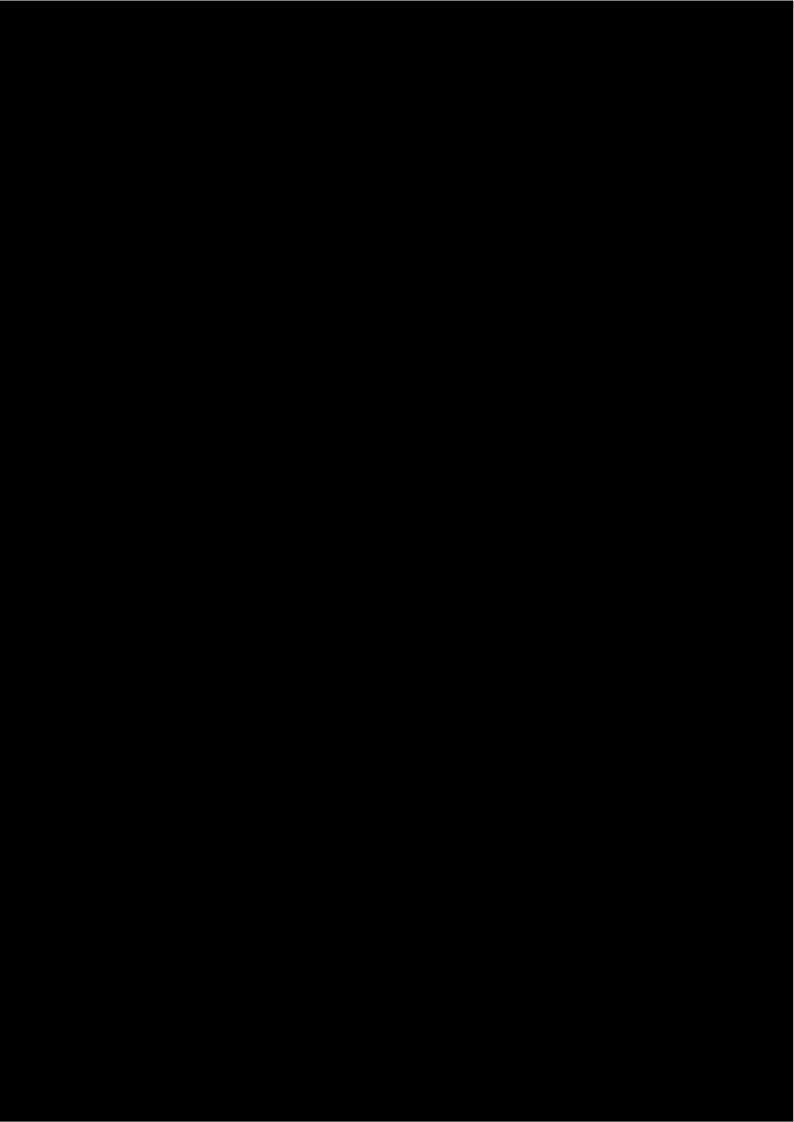
Questions about this decision

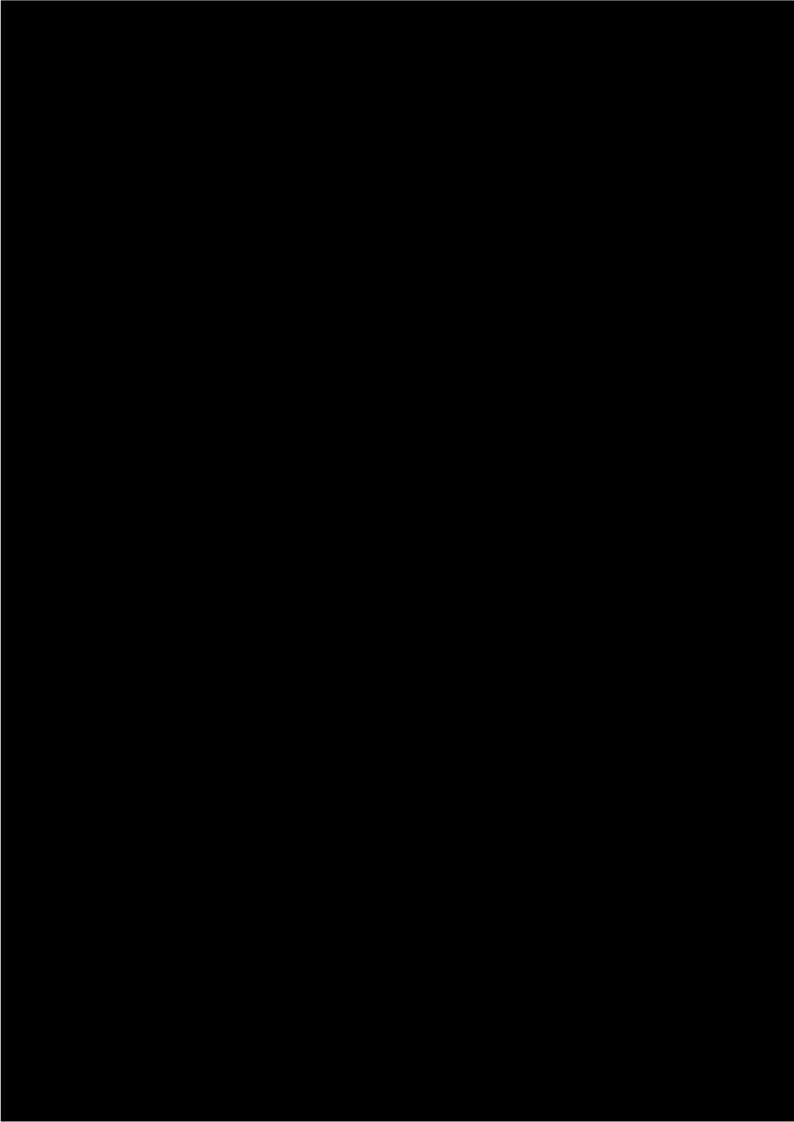
If you wish to discuss this decision, you can contact me by email at foi@fedcourt.gov.au.

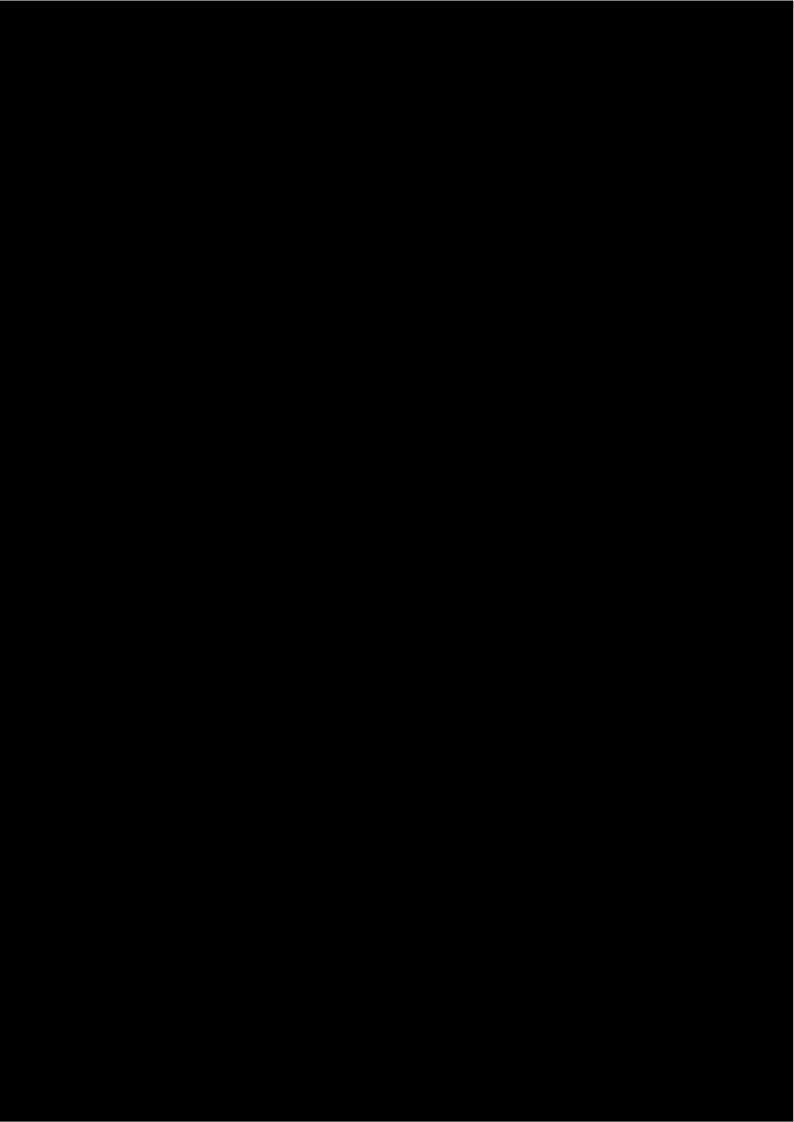
Yours sincerely

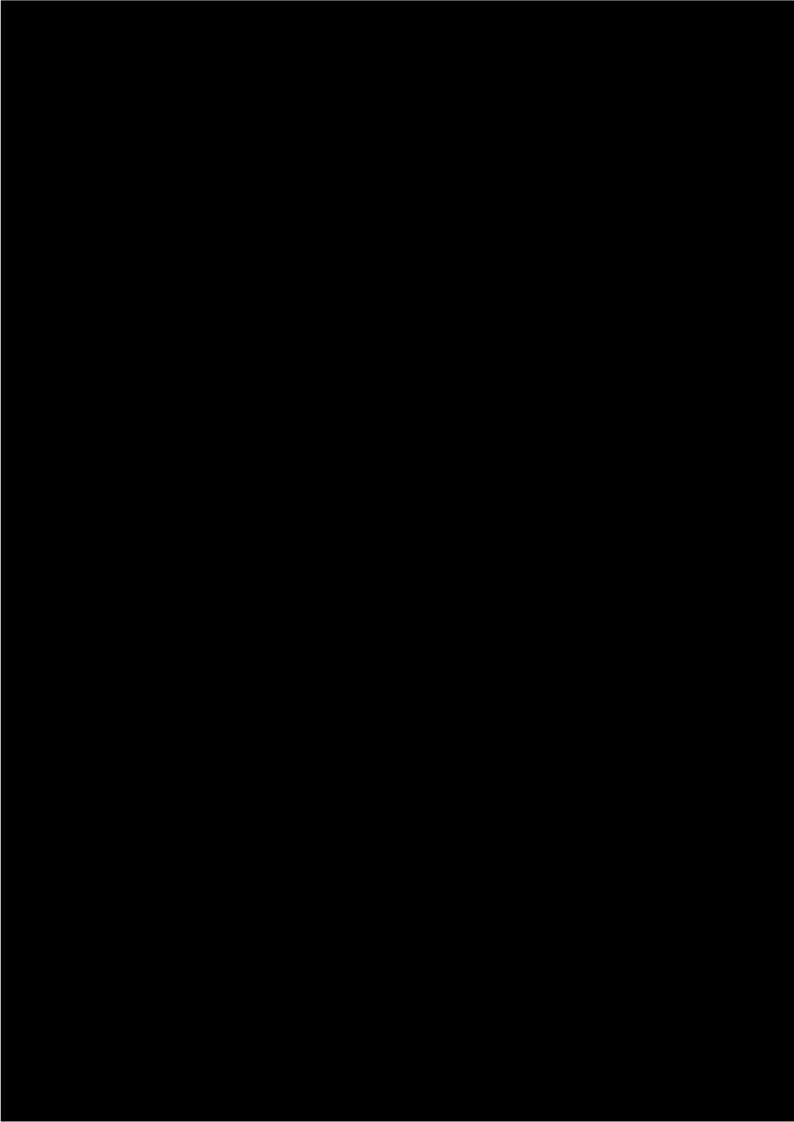
John Mathieson

Deputy Principal Registrar









From: External FOI

To: Subject:

RE: FOI - Internal Review Request to Federal Court of Australia

Date: Friday, 10 January 2020 1:40:59 PM

UNCLASSIFIED

Dear

I refer to your email of 9 December 2019, in which you raise a number of issues and ask a number of queries about your proceedings in both the Federal Court, Family Court, and Federal Circuit Court of Australia.

As previously advised, matters specific to court proceedings cannot be dealt with through the Freedom of Information process. Although the Court is a 'prescribed authority', the *Freedom of Information Act 1982* (Cth) can only apply 'matters of an administrative nature' (subsection 5(1)). Any matters relating to an individual cases cannot be characterised as relating to 'matters of an administrative nature'.

I confirm that the matters you have raised and queries you have asked can only be dealt with through the Court process, and not through the Freedom of Information process. You may wish to seek legal advice about your options.

Kind regards

FOI Officer

From:

Sent: Monday, 9 December 2019 2:22 AM

To: External FOI <External.FOI@fedcourt.gov.au>

Subject: Re: FOI - Internal Review Request to Federal Court of Australia

Good morning

I refer to my FOI requests in the FCC, FCA and Family Court.

Please include why an application for telephone linkup in was not filed on the Cth portal and why the associate rang to test the link then never rang back. Please also include why in the appeal the orders were sent to an incorrect email, which email, and why staff were so late getting the orders to my correct email for me. It looks to me like someone in the registry is undermining me on purpose.

Also in the FCC in in a family law matter, the judge, J Kelly, was to send me a transcript ages ago but I don't seem to have received it. A recent email query has no response yet. This is another case where the court has eg rung the wrong number on one occasion, and on another it's not rung or appeared blocked as it never rang my end despite being next to me and not on mute etc. This is all no possible coincidence and I want to know who is behind all this at that court. Hence my FOI request is in the public interest if this is occurring to me and/or others as well.

I am also after FOI information in the family court involving J Strickland. I want to know who disconnected the phone call in late 2015 as it was not me as I had passed out from an illness. There are currently missing emails too between that court and a QC which were never copied to me plus I'm curious as to how a judge gets case managed/listed to hear an appeal from which involved numerous discrepancies about the appeal judge himself previously in my family law matters and which was included in the dispute on costs in the FCC before J Kelly. That is where I was not phoned by the FCC in Then it goes on appeal for a judge to basically hear an appeal on his conduct in the appeal cases including decisions which are not factually correct. The judge refused

in the appeal cases including decisions which are not factually correct. The judge refused to recuse himself yet again this year so I've let him carry on and he then never even followed the law on security for costs. Law which he knows well as there are case precedents decided by him ie by Strickland J. This FOI on family courts too is all in the

public interest as its contrary to certain Cth laws in my view and is now required for an inquiry so is urgent. I want a police investigation as was suggested to me by a former CJ. I am aware there was a plan to cause me problems, injustice and costs etc from 2013/14. I was informed of it in 2014. J Peter Cole is aware of it yet had nothing to do with me. I believe there is corruption involved as well as networking to incite these difficulties for me. Therefore FOI must be provided to me urgently. I expect complete honesty in the disclosures not an attempt to cover-up any wrongdoing or misconduct. This is forwarded on a confidential, private and without prejudice basis for the purpose of

ensuring integrity within the administration of justice. Regards



From:
To: External FOI

Subject: Re: FOI - Internal Review Request to Federal Court of Australia

Date: Sunday, 5 April 2020 9:47:26 PM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Good morning Sir

I refer to your email of previously regarding my request for FOI documents such as notes and emails etc which were not documents filed or subpoenaed in my family law matters. These are therefore documents which do form a part of an administrative nature and not otherwise available to the parties. I am aware eg of emails which were sent from the court but to which I was not copied. Those do not form part of the case file to which I have access. That is the first issue.

The second issue is that I have experienced gross unfairness and miscarriages of justice by a hostile judge in my personal matters at times when I've been affected by ongoing family violence and or ill health due to same etc. I have lodged complaints to the chief justices, to the attorney generals and on advice from the former lodged complaints to the police for their investigating. I am awaiting a report from the latter. There were disclosures made from another judge and lawyer that it (the undermining to cause me detriment) was planned from around 2013/14 to cause me much harm, damage and loss etc. That is collusion and corruption by those involved in participating and encouraging same against me by a perverting the course of justice.

The third issue is the fact the court's functioning body is a corporation. As such I require the information sought being not only a user but also a service provider as officer of a court with duties to ensure and oblige by.

The fourth issue is if the court is also a corporation and I am an officer with specific duties to the court then my allegations of misconduct by others and including wrong incorrect facts within decisions ie of deliberate intentional dishonesty, or refusals to file affidavits then later holding I had provided no evidence, or stating I had inspected subpoena documents without permission when permission was granted at my request and noted on the Cth portal, and many other discrepancies, which is aided by court staff assisting a decision maker, ie a judge, then I consider my disclosures will call for an investigation and release of all the FOI documents.

Accordingly, in the interest of public disclosure of any dishonesty, corruption or collusion to cause harm, damage and loss (to me), I seek you fully disclose and provide copies of, or access to, all documents held on file and also of all documents held off the file within or for any administrative purpose/s and or for internal directions, howsoever stored, including of all telephone notes, emails and all other communications forwarded to any person, corporation, body, agency, commission, court, registry, authority, firm, chamber or department of any kind whatsoever. I request this immediately to be provided to me without further delay.

Without prejudice

Regards









On Tuesday, 5 May 2020, External FOI < <u>External.FOI@fedcourt.gov.au</u>> wrote:

UNCLASSIFIED

Dear

I refer to your email of 5 April 2020 regarding matters that relate to proceedings that have been heard before the Family Court, Federal Circuit Court and Federal Court.

Some of the matters raised in your email relate to requests you had previously made under the *Freedom of Information Act 1982* (Cth) with respect to those proceedings. In relation to each of those FOI requests, you have been notified and provided with a copy of the relevant court's decision to refuse access to the documents requested, including reasons for the decision. You also previously requested an internal review in relation to the decision of each relevant court to refuse access to the documents requested. In relation to each request for an internal review, the reviewer decided to again refuse access to the documents requested and provided you with a copy of the reasons for the decision. As part of that internal review, you were also notified by the reviewer that, if you were dissatisfied with the decision of the internal reviewer, you could apply to the Australian Information Commissioner for an external review. You were also provided with information about inspecting and copying documents under the relevant court rules.

To the extent that the matters raised in your email do not relate to your previous FOI requests, those matters are outside the scope of the FOI process. Information about making a complaint to the court or providing feedback, can be found on the website of each relevant court. If you wish to obtain advice about appealing a court decision, you should consult a qualified legal practitioner.

Kind regards,

FOI Officer

Federal Court of Australia











From:

To: External FOI

Subject: Re: FOI - Internal Review Request to Federal Court of Australia

Date: Monday, 1 June 2020 2:38:41 AM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir

Re FOI requests on FCC and FCA admin documents

I request, for efficiency and all resources purposes, you reconsider your decisions urgently and provide to me all documents requested. If you are in any doubt then I refer you to the recent case of Hocking v National Archives, a decision by the High Court (specifically paragraph 84).

Regards





From: External FOI

Subject: RE: Regarding ATO department issue

Date: Thursday, 21 November 2019 1:08:10 PM

UNCLASSIFIED

Dear

I am authorised to make decisions on behalf of the Federal Court of Australia (Federal Court) under the *Freedom of Information Act 1982* (FOI Act).

Your email below was received by the Federal Court on 15 November 2019. It is, however, not a valid request under the FOI Act (FOI request).

Section 11 of the FOI Act gives every person a right to request access to a <u>document</u> of an agency. For the purpose of that section, the Federal Court is an "agency" although (because of exemptions in section 5 of the FOI Act that apply to all federal courts) it is only documents that concern the management and administration of office resources, such as financial and human resources and information technology, in the Court that can be accessed under the FOI Act. Documents which relate to proceedings which have been or which have been sought to be commenced in the Court are not available under the FOI Act but can be inspected and, mostly, copied under the *Federal Court Rules 2011*.

In your email, you do not seek access to any document but rather you raise concerns about decisions made by a Registrar, lack of legal assistance and financial aid.

The Court and its staff cannot provide you with legal advice or assist you to obtain legal representation. You might best be able to seek that advice and assistance from a Community Legal Centre. You can find information about contacting Community Legal Centres in Victoria on the website of the Federation of Community Legal Centres at https://www.fclc.org.au/find a community legal centre.

As you have not sought access to a document which is available under the FOI Act, no further action can be taken in regard to your email.

Yours sincerely,

John Mathieson | Deputy Principal Registrar

Principal Registry | Federal Court of Australia Law Courts Building, Queens Square, Sydney NSW

From:

Sent: Friday, 15 November 2019 1:31 PM

To: External FOI < External. FOI@fedcourt.gov.au>

Subject: Regarding ATO department issue

Dear Fedcourt Senior staff members,

I have made four different applications in General Federal Law division court which is located at Level 7, 305 William street, Melbourne VIC around 2-3 weeks ago regarding AAT,ATO office, Centerlink and for Immigration department .I am the applicant . I do not have my own lawyer and no body is ready to helping me in my case due to its complexity if I am seeking my own lawyer who can run my case basically. I have submitted all relevant documents to the court already and receive the first decision from the Principle registrar from which I am not satisfied. As I am seeking a legal letter for ATO officer who is responsible for my finance in Australia.

I want to make an appeal to the senior members in order to review my case specially for ATO and centerlink department. I need some financial aid and wanted to resolve about my rented and dispute house in which I was living since Jan 2014. I hope you will have my all supporting documents and please suggest me accordingly.

Thanks and Regards,

Deputy Principal Registrar Principal Registry Federal Court of Australia Level 16 Law Courts Building Queens Square Sydney NSW 2000



email: foi@fedcourt.gov.au

Information Request re: Signature waiver for Federal Court Orders and Judgements

Dear Officer,

I write for the purpose of requesting information with regard to orders and judgements made by registrars and judges of the Federal Court of Australia or Federal Circuit Court of Australia.

It is my understanding that orders and judgements are valid and enforceable once the orders or judgements are issued as signed by the decision maker. It is also my observance that some recent orders or judgements are issued without signature of the respective registrars or judges. It is not understood how or why this is the case.

Request:

I request the instrument, that may be relied on, that provides waiver of the requirement of a judge or registrar to sign a judgement or order so that it may, without signature, be effective and enforceable when issued out of the registry of the Federal Court of Australia or the Federal Circuit Court of Australia.





Telephone: (02) 9230 8567 DX 613 SYDNEY

DX 613 SYDNEY

Your Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

28 January 2020

Our Ref:



Freedom of Information Act 1982 (FOI Act) - Request for Access

I refer to your email of 30 December 2019 sent to the External FOI mailbox of the Federal Court of Australia (Federal Court) requesting a document or documents (FOI request) under the *Freedom of Information Act* 1982 (FOI Act). I also refer to my email of 10 January 2020 acknowledging receipt of your email.

Specifically, in your email of 30 December 2019, you have stated that:

It is my understanding that orders and judgements are valid and enforceable once the orders or judgements are issued as signed by the decision maker. It is also my observance that some recent orders or judgements are issued without signature of the respective registrars or judges. It is not understood how or why this is the case.

Then, your request provides as follows:

I request the instrument, that may be relied on, that provides waiver of the requirement of a judge or registrar to sign a judgement or order so that it may, without signature, be effective and enforceable when issued out of the registry of the Federal Court of Australia or the Federal Circuit Court of Australia.

Authorised decision maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of each of these Courts in relation to requests under the FOI Act.

Decision

Your request is refused on the basis that each of the Federal Court and Federal Circuit Court are satisfied that:

- a) there is no statutory or other legal requirement that the relevant decision maker must sign an order or judgment before it is valid and enforceable, therefore there is no instrument or document that waives this purported requirement in either Court – that is, no such document exists;
- b) there is also no statutory or other legal requirement that, indeed, any judge or registrar must sign a judgment, therefore there is no instrument or document that waives any such purported requirement in either Court that is, no such document exists;
- c) there are requirements that Court orders which:
 - i. are entered and authenticated under Rule 39.35(1) of the Federal Court Rules 2011 (noting that not all orders are entered and authenticated) must be signed by the Court or a registrar (including by electronic signature¹);
 - ii. are entered under Rule 16.08(1)(b) of the Federal Circuit Court Rules 2001 (noting that not all orders are entered) must be signed (including by electronic signature²) by a judge, a registrar or an officer of the Court acting with the authority of the Chief Executive Officer,

and, there is no instrument or document which waives these requirements in either Court – that is, no such document exists;

d) there are no requirements under Rules 39.31 to 39.35 of the Federal Court Rules and Rules 16.07 to 16.08 of the Federal Circuit Court Rules stating that orders which are not entered and authenticated under Rule 39.35(1) of the Federal Court Rules and entered under Rule 16.08(1)(b) of the Federal Circuit Court Rules must be signed, and therefore there is no instrument or document that waives it – that is, no such document exists.

I have therefore decided, pursuant to subsection 24A(1) of the FOI Act, to refuse your request for access to an instrument that waives any requirement of a judge or a registrar of the Federal Court or the Federal Circuit Court to sign a judgment or order so that a judgment or order may, without signature, be effective and enforceable when issued out of the Registry of those Courts, as I am satisfied that no such documents exist.

Reasons for decision

Your understanding that orders and judgments are valid and enforceable once the orders or judgments are issued as signed by the relevant decision maker is, with respect, erroneous.

There is no statutory or other legal requirement that the relevant decision maker must sign an order or judgment before it is valid and enforceable.

Judgments - statutory provisions

¹ Rule 2.01(3) of the Federal Court Rules 2011

² Rule 16.08(1A) of the Federal Circuit Court Rules 2001

To the contrary, both the Federal Court of Australia Act 1976 (Cth) (Federal Court of Australia Act) and Federal Circuit Court of Australia Act 1999 (Cth) (Federal Circuit Court of Australia Act) provide that a judgment may be made public by a Judge, other than the Judge who heard the proceeding, if the Judge who heard the hearing prepares his or her reserved judgment but is not available to publish that judgment³.

In practice, the convention, rather than requirement, is for a judgment in both Court's to be certified or signed by the presiding judge's associate, before it is published.

Orders - statutory provisions

In terms of orders, there is a requirement under section 37 of the Federal Court of Australia Act that all writs, commissions and process issued from the Federal Court shall be signed (including by way of electronic signature) by the Chief Executive Officer, a District Registrar or an officer acting with the authority of the Chief Executive Officer or a District Registrar.

There is also a requirement that orders that are entered and authenticated under Rule 39.35(1) of the Federal Court Rules (noting that not all orders are entered and authenticated) must be signed by the Court or a Registrar (including by electronic signature⁴), however this Registrar may or may not have been the relevant decision maker.

Subsection 74(2) of the Federal Circuit Court of Australia Act permits an order of the Federal Circuit Court to be authenticated in a manner specified in that Court's rules of court. There is a requirement that, if a Federal Circuit Court order is entered (noting that not all orders are entered) under Rule 16.08(1)(b), that it must be signed (including by electronic signature⁵) by a Judge, Registrar or an officer of the Court acting with the authority of the Chief Executive Officer, who may or may not be the relevant decision maker.

In practice today, orders which are entered in the Federal Court are usually signed, by way of electronic signature, by Sia Lagos, Registrar, and entered orders in the General Law Division of the Federal Circuit Court are signed, by way of electronic signature, by David Pringle, Registrar.

Some examples of how these electronic signatures appear at the bottom of entered orders are reproduced below for ease of reference.

Date that entry is stamped: 20 January 2020



³ Section 49 of the Federal Court of Australia Act 1976 (Cth); section 75 of the Federal Circuit Court of Australia Act 1999 (Cth)

⁴ Rule 2.01(3) of the Federal Court Rules 2011

⁵ Rule 16.08(1A) of the Federal Circuit Court Rules 2001

DATE THAT ENTRY IS STAMPED: 13 DECEMBER 2019



There are no requirements under Rules 39.31 to 39.35 of the Federal Court Rules 2011 and Rules 16.07 to 16.08 of the Federal Circuit Court Rules 2001 stating that orders which are not entered and authenticated under Rule 39.35(1) of the Federal Court Rules and entered under Rule 16.08(b) of the Federal Circuit Court Rules must be signed by a judge or registrar, and therefore no instrument or document that waives it.

Documents that do not exist - paragraph 24A(1)(b)(ii)

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents.

Subsection 24A(1) of the FOI Act, however, relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

I am satisfied that the documents and instruments the subject of your FOI request do not exist. Your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely

John Mathieson

Deputy Principal Registrar

From:
To: External FOI

Subject: ADMINISTRATIVE ACCESS REQUEST Date: Friday, 10 January 2020 5:57:15 PM

Attachments: FCA FOI Plan 100120.pdf

Importance: High

10 January 2020

Freedom of Information Officer

Federal Court of Australia

Dear Sir/Madam,

I request that I be provided with administrative access to FCA's *operational information* e.g., the FCA's rules, guidelines, policies, practices and precedents relating to those decisions and recommendations to assist the FCA to perform or exercise the agency's functions or powers in making decisions or recommendations affecting members of the public (or any particular person or entity, or class of persons or entities) that **pertain to the receipt/acceptance or rejection in the eLodgment System, of specific case administration correspondence** from litigants, eLodged, and personally addressed to specific Officers within the FCA Registries, such as the District Registrar or National Appeals Registrar.

Such provision of published rules, guidelines, policies, practices and precedents is provided for by section 8, 8A - 8D of the Freedom of Information Act 1982 (which, incidentally, I cannot find published on the Federal Court Website or in its Information Publication Scheme (IPS) (copy attached).

I have been denied access to speak to you or another FOI Delegate on the telephone and was informed by one officer that there is no such person (as a delegated FOI Officer or Privacy Officer).

I understand from the IPS that the Website should provide contact details of the person one can **ask (I take that to mean orally)** about the FOI processes and where one can find such information as I seek. I was also denied that information, which must be published according to *Part II* of the *FOI Act*.

I would be grateful if you would respond by return email, as the subject matter is of great importance to me and I feel extremely offended and upset by the treatment I have received from some of the officers of the FCA.

Thank you for your assistance.

Yours sincerely,





Telephone: (02) 9230 8567 DX 613 SYDNEY

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

20 January 2020



Request for Access to Operational Information

I refer to your email of 10 January 2020 to the Federal Court of Australia (Federal Court) seeking access to operational information, including Federal Court Rules, guidelines, policies, practices and precedents, pertaining to the receipt, acceptance or rejection of correspondence in the eLodgment system.

It is my understanding that your request follows the rejection by a Federal Court staff member of correspondence you lodged in eLodgment on 5 January 2020. My enquiries into that matter have revealed that the electronic copy of your correspondence was rejected to enable:

- an early electronic acknowledgment and reply to be forwarded to you through the eLodgment system that would not have been otherwise available;
- that correspondence to be actioned quickly; and
- there to be no unnecessary duplication of the Court's electronic copy file in storing two copies of the same correspondence and attachments.

Registry staff in the Victoria Registry remain available to answer any queries you may have regarding administrative processes.

The request in your email is made under the Freedom of Information Act 1982 (Cth) (FOI Act). The FOI Act has a very limited application to the Federal Court due to the operation of section 5(1) of that Act and following the decision of the High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In essence, the FOI Act does not apply to the Federal Court in regard to its exercise of it exercising its substantive powers and functions, which includes case management and deciding applications and appeals. You can find information about this at paragraphs 2.9 to 2.10 of the Guidelines issued by the Australia Information Commissioner under section 93A of the FOI Act. Those guidelines are available for download at https://www.oaic.gov.au/freedom-of-information/foi-guidelines/

Notwithstanding, I have considered your request, and concluded that it would be appropriate to provide what little operational information the Court has published internally that links the performance of the powers and functions of Federal Court staff in accepting or rejecting documents related to a proceeding through the use of the eLodgment system. There are some minor redactions for business sensitive and personal information. These documents are provided outside the framework of the FOI Act.

Please find attached the following extracts from the Federal Court's *National Electronic Court File (ECF) Guide*:

- Chapter 2.2.1 Correspondence, internal documents and emails; and
- Chapter 2.2.7 Rejected documents library.

Yours sincerely

Scott Tredwell

Registrar, Principal Registry



Principal Registry
Federal Court of Australia
Level 16, Law Courts Building
Queens Square, Sydney NSW 2000

March 3, 2020

Dear Sir or Madam:

Re: Request under the Freedom of Information Act 1982

This is a formal request for information under the Freedom of Information Act 1982 (Cth) (FOI Act).

I am writing to you in your capacity as the Registry of the court under FOI Act section 5(1)(c) to request a copy of documents produced by the Federal Court Rules Committee (Rules Committee).

The Rules Committee meets regularly to monitor the operation of the court rules and make recommendations to judges about modifying the rules. The Rules Committee work directly affect the Court Rules Act and are of general significance to the operation of the court and are administrative in nature (FOI Act section 5(1)).

In relation to the work of the Rules Committee, I request a copy of all documents identified as:

- (a) Agenda papers for meetings of the Rules Committee from 1 January 2015;
- (b) Minutes for meetings of the Rules Committee from 1 January 2015;
- (c) Rules Committee reports from 1 January 2015;
- (d) Rules Committee recommendations from 1 January 2015 (if this is not included in the reports under section (c));
- (e) Consultant expenditure from 1 January 2015.

I look forward to your response within 30 days as required by FOI Act section 15(5)(b).



2 April 2020

	By email:	
	Dy chiant.	
Dear ,		

Request under Freedom of Information Act

I refer to your email of 3 March 2020 sent to the Federal Court of Australia (the **Court**) annexing a formal request for documents under the *Freedom of Information Act 1982* (Cth) (the **FOI Act**).

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to a Freedom of Information request.

Scope of request

Your request sought a copy of documents produced by the Federal Court Rules Committee (**Rules Committee**) under the FOI Act. Specifically, you requested a copy of all documents identified as the following:

- (a) Agenda papers for meetings of the Rules Committee from 1 January 2015;
- (b) Minutes for meetings of the Rules Committee from 1 January 2015;
- (c) Rules Committee reports from 1 January 2015;
- (d) Rules Committee recommendations from 1 January 2015 (if this is not included in the reports under section (c));
- (e) Consultant expenditure from 1 January 2015.

Decision

I have decided to refuse your request in relation to the documents requested as set out in (a), (b), (c), and (d) identified above, for the following reasons:

• the requested documents do not relate to matters of an administrative nature pursuant to section 5(1) of the FOI Act; and

• the requested documents are held by judicial officers and are therefore excluded from the operation of the FOI Act pursuant to subsection 5(1)(b).

Accordingly, I am satisfied that the documents in sections (a), (b), (c) and (d) of your request are not documents that are accessible under the FOI Act.

With respect to the requested documents set out in section (e), being "consultant expenditure from 1 January 2015" in relation to the Rules Committee, I am satisfied that reasonable steps have been taken to locate any and all documents that fall within the scope of your request. No documents identified as relating to consultant expenditure incurred in relation to the work of the Rules Committee were located and, as such, there is nothing to be provided to you pursuant to the FOI Act.

In making my decision I have had regard to:

- a. The terms of your request;
- b. The relevant provisions of the FOI Act and case law considering those provisions; and
- c. The FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Section 5(1) of the FOI Act and "matters of an administrative nature"

Section 5(1) sets out the limited degree to which the FOI Act applies to the Federal Court. While the Court is a "prescribed authority" for the purpose of the FOI Act, the only documents for which a request under the FOI Act can be validly made to the Court are those that relate to "matters of an administrative nature."

The phrase "matters of an administrative nature" in the context of the operation of section 5 of the FOI Act have been considered at length by the High Court in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52.

In the joint judgment of Chief Justice French and Justices Crennan, Kiefel and Bell, the High Court acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature." ¹

Further, the High Court held that:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative." ²

The examples of documents which the High Court considered related to "matters of an administrative nature" were those that constituted a "secondary" aspect of assistance and

¹ Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52 at [19]

² Ibid, at [41]

support provided to the authority making substantive decisions. That "secondary" aspect was concerned with the management and administration of office resources, such as financial and human resources and information technology.³

Relevantly, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁴

In a separate judgment, Justice Gageler held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of ... functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁵

I am satisfied that the documents sought in relation to the work of the Rules Committee in points (a), (b), (c) and (d) of your request are not "administrative" in nature, as they do not relate to the management and administration of registry and office resources of the Court.

Section 5(1)(b) of the FOI Act and judicial officers

In addition to the above, section 5(1)(b) of the Act provides that:

(1) For the purposes of this Act:

(b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department;

The High Court considered in *Kline* the exclusion of holders of judicial office from the application of the FOI Act, stating that:

Similarly, the federal Parliament and Justices of the High Court of Australia are not subject to the operation of the FOI Act. Further, holders of federal judicial office and holders of office in specified federal tribunals, authorities and bodies are expressly exempted from the operation of the provisions of the FOI Act. In summary, certain individuals, including the Governor General, who hold independent offices pursuant to the Australian Constitution or a federal enactment, requiring the impartial discharge of the powers and functions of such office, are not subject to the operation of the FOI Act.

⁴ Ibid, at [47]

³ Ibid, at [13]

⁵ Ibid, at [75] - [76]

Thus the processes and activities of government, which are opened to increased public scrutiny by the operation of the FOI Act, do not include those associated with the exercise of the Governor General's substantive powers and functions, many (even most) of which are exercised in public. Similarly, the FOI Act does not expose to public scrutiny the discharge of the substantive powers and functions of judicial officers or holders of quasi-judicial office to the extent that they have not been discharged in an open court or a public forum. Independence from government and the public is important in relation to the exercise of the various responsibilities of the Governor General, including, but not limited to, the making of decisions.

There is a long recognised public interest in the protection of judicial independence to enable holders of judicial office to exercise authority without fear or favour [...].

The Rules Committee consists solely of judges of the Court, with secretariat services provided by registrars.

Any agenda papers, minutes, reports and recommendations of the Rules Committee record the deliberations of the holders of judicial office within the Court in their capacity as holders of that office, in their assessment of the legal framework in which the Court operates and any issues arising from that framework.

I am satisfied accordingly that pursuant to the operation of section 5(1)(b), the documents sought at points (a), (b), (c) and (d) of your request are not documents to which the FOI Act applies.

Documents that do not exist - paragraph 24A(1)(b)(ii)

Subsection 24A(1) of the FOI Act also relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

Searches conducted for "consultant expenditures" relating to the Rules Committee

Searches were conducted of the Rules Committee's records.

No documents were found that relate to point (e) of your request.

I am satisfied that all reasonable steps were taken to find documents within the scope of point (e) of your request and that no document within the scope of your request exist. Your request for documents sought at point (e) of your request is therefore refused pursuant to subsection 24A(1) of the FOI Act.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely

Susan O'Connor

National Judicial Registrar







----Original Message-----

From:

Sent: Wednesday, 11 March 2020 6:30 PM

To: Customer Service < Customer.Service @federalcircuitcourt.gov.au >

Subject: Freedom of Information request - FOI REQUEST in accordance with the Freedom of Information Act 1982

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

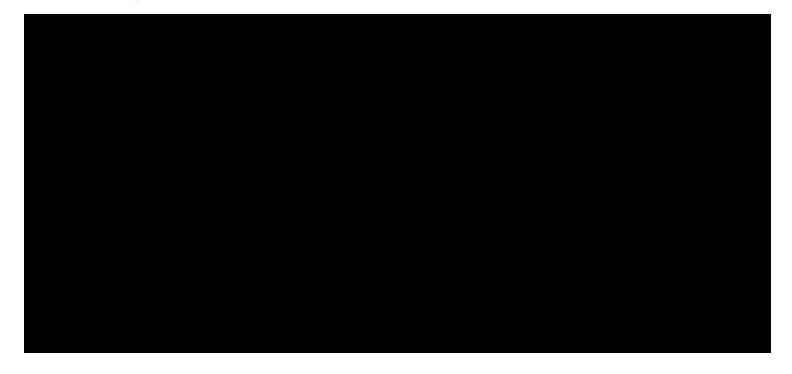
Dear Federal Circuit Court of Australia, FOI Officer.

It is my will, that your court provide documents which provide that, the Federal Circuit Court of Australia is operating in accordance with Chapter III of the Commonwealth Constitution 1901 as proclaimed and gazetted, and that the Federal Circuit Court of Australia is operating as a Crown Court?

It is my will, the Court also provide documentation, copies of the Oath of Office for Justice Collier, Federal Court of Australia, District: Queensland, a copy of her sworn Oath to Queen Elizabeth II, Her Majesty's heirs and successors in the sovereignty of the United Kingdom, i.e. the Queen as per the Constitution Act 1900 Covering Clause two.

It is my will that the court confirms that the Constitution Act 1900 Covering Clause 5, is currently binding on all current serving Federal Court Judges in every Federal Court in every State of this Commonwealth.

Yours faithfully,



9 April 2020			
	By email:		
Dear			

Request under the Freedom of Information Act

I refer to your email of 11 March 2020, sent to the Customer Service mailbox of the Federal Circuit Court of Australia. Your email reads as follows:

It is my will, that your court provide documents which provide that, the Federal Circuit Court of Australia is operating in accordance with Chapter III of the Commonwealth Constitution 1901 as proclaimed and gazetted, and that the Federal Circuit Court is operating as a Crown Court?

It is my will, the Court also provide documentation, copies of the Oath of Office for Justice Collier, Federal Court of Australia, District: Queensland copy of her sworn Oath to Queen Elizabeth II, Her Majesty's heirs and successors in the sovereignty of the United Kingdom, i.e. the Queen as per the Constitution Act 1900 Covering Clause two.

It is my will that the court confirms that the Constitution Act 1900 Covering Clause 5, is currently binding on all current serving Federal Court Judges in every Federal Court in every State of this Commonwealth.

On 31 March 2020, a request was made by the Federal Circuit Court to the Federal Court of Australia to transfer part of the request (namely, the request for 'copies of the Oath of Office for Justice Collier, Federal Court of Australia, District: Queensland copy of her sworn Oath to Queen Elizabeth II, Her Majesty's heirs and successors in the sovereignty of the United Kingdom' as outlined in paragraph 2 of your email above) under section 16 of the Freedom of Information Act 1982 (Cth) (FOI Act).

That request for partial transfer was accepted on 31 March 2020 by the Federal Court of Australia.

Transfers of requests under the FOI Act

Subsection 16(1) of the FOI Act provides:

Where a request is made to an agency for access to a document and:

- (a) the document is not in the possession of that agency but is, to the knowledge of that agency, in the possession of another agency; or
- (b) the subject-matter of the document is more closely connected with the functions of another agency that with those of the agency to which the request is made;

the agency to which the request is made may, with the agreement of the other agency, transfer the request to the other agency.

Subsection 16(3A) of the FOI Act provides:

Where:

- (a) a request is made to an agency for access to more than one document; and
- (b) one or more of those documents is a document to which subsection (1) ... applies;

this section applies to each of those documents as if separate requests for access had been made to the agency in respect of each of those documents.

Agencies may transfer requests for access to documents to other agencies so long as:

- (a) in the opinion of the agency that receives the request originally, another agency is in possession of the document or documents requested; or
- (b) the subject-matter of the document requested is more closely connected with the functions of the other agency.

Justice Collier is a judge of the Federal Court of Australia. The Federal Circuit Court of Australia and Federal Court of Australia are different Courts. You have requested, among other things, 'copies of the Oath of Office for Justice Collier, Federal Court of Australia, District: Queensland copy of her sworn Oath to Queen Elizabeth II, Her Majesty's heirs and successors in the sovereignty of the United Kingdom'. Those documents, being documents recording the oath, or oaths, Justice Collier has made, are more closely connected with the functions of the Federal Court of Australia than the Federal Circuit Court of Australia and, accordingly, the request for a transfer of the request made to the Federal Circuit Court in respect of those documents was accepted by the Federal Court of Australia.

Authorised decision-maker

I am authorised under the FOI Act to make decisions on behalf of the Federal Court of Australia (the **Court**) in relation to requests made under the FOI Act.

Reasons for decision

Introductory comments

In making my decision I have had regard to:

- a. the terms of your request;
- b. the content of the documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Applicable law and application of that law to the facts

Section 5(1) of the FOI Act provides:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

FOI requests can be made to a court (and a registry or office of a court), although the FOI Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The phrase 'matters of an administrative nature' has been considered by the Commonwealth judiciary.

In *Kline v Official Secretary to the Governor-General* [2012] FCAFC 184, when considering the word 'administrative' in context, the Full Court of the Federal Court concluded:

[c]ontext is especially important when considering the word "administrative". Plainly, the point of distinction in the present context is not between matters of a judicial nature or matters of a legislative nature ... ¹

The Full Court continued, stating:

the FOI Act applies only to requests for access to a document ... where the document relates to matters of an administrative nature: the FOI Act does not apply to requests for access to a document ... of any other character.²

The Full Court was of the view that the phrase 'matters of an administrate nature' was to be interpreted by reference to substantive powers and functions, on the one hand, and the apparatus for the exercise of such powers or functions (i.e. matters merely supportive of those powers or functions), on the other.³

By way of example, the Full Court stated:

¹ Kline v Official Secretary to the Governor-General [2012] FCAFC 184, [19].

² Ibid, [20].

³ Ibid, [21].

[t]he first respondent accepted, and we agree, that documents dealing with staffing arrangements within the Office, the costs of running the Office, or statistics about the activities undertaken by the Office, could all be the subject of a request for access to which the FOI Act would apply.⁴

But the Full Court went further, stating:

[w]e would add that, in our opinion, the expression "unless the document relates to matters of an administrative nature" goes to the character of the document so that, contrary to the submission of the applicant, a document would not so relate merely because it bore an annotation asking that an administrative task, such as filing, be carried out.⁵

When *Kline v Official Secretary to the Governor-General* [2012] FCAFC 184 was appealed to the High Court of Australia in *Kline v Official Secretary to the Governor-General* [2013] HCA 52, the appeal was dismissed. Chief Justice French and Justices Crennan, Kiefel and Bell observed that the Full Court of the Federal Court's apprehension of 'matters of an administrative nature', especially with respect to the interpretation of that phrase by reference to substantive powers and functions, on the one hand, and the apparatus for the exercise of those powers, on the other, was correct.⁶

Mirroring the views of the Full Court of the Federal Court, the plurality of the High Court, in a joint judgment, dismissing the appeal, held that:

[t]he FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".

Further, the High Court held:

... the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁸

The examples referred to by the High Court constituted a 'secondary' aspect of assistance and support provided to the authority making substantive decisions. That aspect of support was the management and administration of office resources, such as financial and human resources and information technology. The 'primary' aspect, which was thereby excluded from the management and administration of office resources, included assisting and supporting the discharge of substantive powers and functions. ¹⁰

As relevant, the High Court then held that:

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<sup>4</sup> Ibid.
<sup>5</sup> Ibid, [23].
<sup>6</sup> Kline v Official Secretary to the Governor-General [2013] HCA 52, [41].
<sup>7</sup> Ibid, [19].
<sup>8</sup> Ibid, [41].
<sup>9</sup> Ibid, [13].
<sup>10</sup> Ibid.
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[a]ccordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.¹¹

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

[t]he distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become 'administrative' merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹²

The documents that you seek, being documents recording an oath, or oaths, made by Justice Collier are not documents that 'relate to matters of an administrative nature' as that compound of words has been interpreted by the High Court. They are not documents that relate to the management and administration of registry and office resources.

Since the documents you have requested access to are not documents that relate to matters of an administrative nature for the purposes of section 5 of the FOI Act, the Court does not need to produce them pursuant to a request for access to documents under the FOI Act. Moreover, because the documents you have requested access to are not documents that relate to matters of an administrative nature for the purposes of section 5 of the FOI Act, the Court need not undertake searches for the documents because the documents you have requested are, by their nature, not documents that relate to matters of an administrative nature for the purposes of section 5 of the FOI Act.

Decision

Your request for access to a document, or documents, recording the oath, or oaths, made by Justice Collier in connection with her commission as a judge of the Court is denied.

Additional comments

I note that you requested, in paragraph 3 of your email of 11 March 2020 to the Federal Circuit Court, that 'the court confirms that the Constitution Act 1900 Covering Clause 5, is currently binding on all current serving Federal Court Judges in every Federal Court in every State of this Commonwealth'.

It cannot go unnoticed that an agency may transfer a request for *documents* according to subsection 16(1) of the FOI Act. It was, and is, not open to the Federal Circuit Court to transfer your request for information about the 'Constitution Act 1900 Covering Clause 5' binding 'all current serving Federal Court Judges in every Federal Court in every State of this Commonwealth' because that aspect of your request is not a request for access to documents; it is a request for the Court to confirm a prevailing state of affairs.

¹¹ Ibid, [47].

¹² Ibid, [75] - [76].

For that reason, the Federal Circuit Court's request for transfer was construed not to be a request for the transfer of your request for confirmation that the 'Constitution Act 1900 Covering Clause 5' binds 'all current serving Federal Court Judges in every Federal Court in every State of this Commonwealth'. That is why I have not substantively considered that request for information in my decision.

Charges

You have not been charged for the processing of your request.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely

Susan O'Connor National Judicial Registrar FOI OFFICER (Internal Reviews)
FEDERAL COURT OF AUSTRALIA
LEVEL 17
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000



Request for an Internal Review under the Freedom of Information Act 1982 s54B(1)(a)).

Reference: FOI Request Response Letter from Federal Court of Australia to dated 09 April 2020

Statement of Reasons for Internal Review

The objects of the FOI Act are set out in s3 of the Act, where one of the objects is i.e. to give the Australian community access to information held by government, by requiring agencies to publish that information and by providing for a RIGHT of access to documents.

Part IV of the Act which contains exemption provisions, talks about provisions that are subject to the public interest test (conditional exemptions) and those that are not (exemptions). A single public interest test, favoring disclosure, applies to conditional exemptions. Decision-makers when giving reasons for decisions must address the public interest factors they have taken into account. Your response did not account for these factors.

Administrative Law is about challenging official power. The Oath of Office is an administrative function, that binds office-holders to their duties of office, and binds them to the performance of those duties.

The oath of office both guarantees the performance of official judicial duties of an administrative nature, and subjects the content of those duties to external judgment. It is said that Oaths and affirmations remain a ubiquitous presence in our public law and government administration.

The Judiciary and their Oath

Justices of the Federal Court of Australia, like the judges of all Australian courts, are required to affirm or swear a similar oath of allegiance and service to the Queen and to promise to "do right to all manner of people according to law without fear or favor, affection or ill-will."

Judges take the Oath of Office which is contend is an administrative function in nature, the Oath and administrative document, is administered by a public official and then taken by Judicial Officers, who swear that Oath, which then permits the sworn in Judicial Officer to participate in the administration of the law in a Chap III Constitutional and Crown Court of competent jurisdiction.

<u>Sir Gerard Brennan</u> had occasion on his swearing in as Chief Justice of the High Court of Australia to reflect on the judicial oath as the ground upon which he was obliged to do justice according to law and not according to his own view of what the law ought to be. AKA Administration of Justice:

http://www.hcourt.gov.au/assets/publications/speeches/former-justices/brennanj/brennanj swearing.htm

The Judicial Oath of Office places a limit on judicial power and binds the judiciary to administer justice in accordance with the Rule of Law. It binds the Judiciary to the responsibilities of their office and reminds them that they are "as much judged as judging."

The swearing of the correct and lawful Oath of Office according to the Schedule in our Commonwealth Constitution and to our Sovereign at Covering Clause 2, suggests that if we are to have faith in public office and the judiciary, we may keep our faith in public office when such an office shall willingly provide relevant information that is requested of them by the people, whom by community standards, expect the lawful and correct administration of justice and have faith in our judiciary, that the judiciary are swearing a lawful Oath of Office, to lawfully administer justice of which that Oath binds them, and so they "Shall have jurisdiction" a content of judicial power, the power of a Court to lawfully entertain an action, suit, or other proceeding.

Without the public having access to such relevant information of an administrative nature, how are we to know if a Federal Court Judge is holding office on their good behavior or misbehavior or is administering justice in accordance with the law?

The Right to Know

We have a right to know that a particular Judge has justifiability and standing at law or is "Non-justiciable" with respect to Ch III of the Constitution in identifying the absence of the constitutional competence of the Federal Court to restrain or otherwise intervene in some activities entrusted to the Parliament by Ch I and the Executive by Ch II.

The Quick and Garran Annotated Constitution of the Australian Commonwealth

United States - The judges, both of the supreme court and inferior courts, shall hold their offices during good behavior and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office-Art. III., sec. 1 (The Quick and Garran Annotated Constitution of the Australian Commonwealth page 728.)

"Shall be Appointed" but sub-section 2, prescribing the only mode of removal show the tenure is during "good behavior" with special restrictions as to the mode by which misbehavior or incapacity is to be proved and adjudicated on." (The Quick and Garran Annotated Constitution of the Australian Commonwealth page 728. Sub section 293.)

Sub section 293 also talks about "breach of good behavior is a breach of condition annexed to it - that is to say, by misbehavior." (Todd, Parl. Govt. in England, p. 857.)

The appointment of a judge is done through an administrative function and a signed document is administrative in character. To claim a signed Oath document is not of an administrative character is unreasonable and not rational. What is APPOINTMENT? "The selection or designation of a person, by the person or persons having authority therefore, to fill an office or public function and discharge the duties of the same." State v. New Orleans, 41 La Ann. 156, 0 South. 592; Wickersham v. Brit- tan, 93 Cal. 34, 28 Pac. 792, 15 L. R. A. 100; Sliced v. Crawford, 3 Mete. (Ky.) 210.

"Misbehavior includes, firstly, the improper exercise of judicial functions; secondly, willful neglect of duty," (The Quick and Garran Annotated Constitution of the Australian Commonwealth page 731. Sub section 297.) "On the Ground of Proved Misbehavior or Incapacity."

"at common law the grantor of an office has the power to suspend the grantee from his duties, though not to affect his salary or emoluments." (The Quick and Garran Annotated Constitution of the Australian Commonwealth page 733.)

Federal Court FOI Response dated 09 April 2020

On page 3 of the Federal Court of Australia FOI response dated 09 April 2020, you referenced **Kline v Official Secretary to the Governor-General [2012] FCAFC 184** considering the word "administrative" where the Full Court continued stating: "the FOI Act applies only to requests for access to a document...where the document relates to matters of an administrative nature."

Kline v Official Secretary to the Governor-General [2012] FCAFC 184 being the case you are relying on to deny my request, I request you provide a copy of the Crown Order you are relying on for that particular case, as proof of a valid reason for you to refuse my initial FOI request based on the definition you rely on being, "administrative in nature".

On the other hand, put it to you that the Oath of Office signed by a Judicial Officer is "administrative in nature", it is a signed and administered document of which when signed, allows the judicial officer to lawfully carry out his or her judicial administrative functions, and to lawfully administer justice within the court which goes to the character of the signed Oath of Office document and its function from an administrative law perspective.

The Federal Court or its judiciary are not simply beyond the law or public scrutiny. I can not see anywhere in the Annotated Constitution of the Australian Commonwealth, that explicitly suggests the Federal Court and the administration of justice within it, is not up for public scrutiny or discovery of administrative documents, documents like an Oath of Office that authorizes a judicial officer to carry out administrative duties, responsibilities and functions of the court and for the lawful administration of justice, which is arguably administrative in nature regardless of the Federal Court Justices interpretation in the case you referenced?

Having been employed in government myself and swearing an Oath to our Sovereign, it is my understanding, that an Oath of Office would normally be kept on a person's personal file or filed in the headquarters of where they are employed i.e. in the Office Registry with all of the personnel files, in this case, an Oath could be filed on a Judges personal file within the court registry which is a back end office that receives and processes all documents of an administrative nature.

It is my understanding that the Registry is responsible for the secure custody and safekeeping of Court records. The Manager Corporate Services in the High Court of which I suggest is not much different to the Federal Courts administrative function, is responsible for supporting the Chief Executive and "Principal Registrar" in "the general administration" of the Court and leading and managing corporate services functions. The Manager Corporate Services is responsible for Human resources which would include filing of documents like Oaths of Office.

On page 5 of your FOI response, you mentioned in words to the effect of that, answering the question put to you about Covering Clause 5 of the Constitution, is not a request for access to documents; it is a request for the Court to confirm a prevailing state of affairs.

My question to you is, is it not the duty of a Court and its officers and staff to disclose the true State of affairs of a particular court of which the tax payer funds even though a question has nothing to do with documents, but a relevant general question was asked of the court of which it has a public duty and responsibility to answer the question as a matter of public interest considerations and not taking a rigid view?

The NSW GIPA Act

The NSW Government Information (Public Access) Act 2009 (GIPA Act) and associated legislation is aimed at giving the public access to the widest possible range of information held by government. As with the federal FOI amendments, these claims are yet to be justified to my knowledge.

There is a presumption in favor of disclosure of government information (s 5 of GIPA Act), and provision for proactive and informal release of government information unless there is an overriding public interest against disclosure (s7(1) and s 8(1)). A person who makes an access application has a legally enforceable right to be provided with the information unless there is an overriding public interest against disclosure (s9).

There are identified public interests in favor of disclosure (s12), but other considerations against disclosure. By s 14(1) is to be conclusively presumed that there is an overriding public interest against disclosure of any of the information described in Schedule 1. These include overriding secrecy laws, cabinet information, Executive Council information, contempt and legal professional privilege. I mention this Act from a s118 Cth Constitutional full faith and credit perspective, regarding rights and access to information under a State Act of Parlaiment.

Discretionary Powers and Rights

Outside of the FOI Act, the Federal Court will have discretionary powers to disclose information that is requested of it by concerned citizens and subjects, information requested that is not unreasonable, and taking into account relevant considerations.

When interpreting legislation like the FOI Act, "the courts should not impute to the legislature an intention to interfere with fundamental rights" i.e. in this case "The Right to Know."

See: Coco v R (1994) 179 CLR 427 at 437 per Mason CJ, Brennan, Gaudron and McHugh JJ

This goes hand in hand with Inflexible Application of Policy, where the courts have insisted that the power must be exercised on each occasioning the light of the particular circumstances. The primary Australian case on inflexible application of policy is Green v Daniels (1977) 51 ALJR 463, about a denial of unemployment benefits to a 18 year old school leaver.

Under the Acts Interpretation Act 1901 s 15AA preference should be given to a construction that promotes the purpose or object of the Act.

There is a presumption that Statues like the FOI Act are not intended to invade common law rights, we can reasonably assume the Right to Know information for all, as a foundation of an open and accountable democracy could well be a 21st Century common law right?

Reliance on Case Precedent to Deny FOI Request & Removal of the Queen from the Court invalidates the decision

We go back to the court case precedent you referred to, to deny the initial FOI request for a copy of the Oath document i.e. Kline v Official Secretary to the Governor-General [2012] FCAFC 184.

I put it to you that your reliance on Kline v Official Secretary to the Governor-General [2012] FCAFC 184, is not justified, as I allege, the Federal Court of Australia was not operating as a Chap III Constitutional Court at the time this case was being heard and decided on, and was acting outside of Crown Jurisdiction, and was misbehaving, so the

definition of what is or is not a document that relates to an administrative matter, relied on by the Judiciary involved in the above case, administrative function or document definition and case you are using as case precedent, I allege has no standing in law and is unreliable, as the Court had no Federal Jurisdiction or Constitutional standing at the time the case was heard and decided on, it was allegedly acting under a foreign jurisdiction.

Removing the Queen our (Head of Power) out of the Federal Court for this period of time, could be compared to removing Jesus from the Bible where the Bible would have no real religious meaning and would become just another book for good reading. In other words, if we remove the Queen from our Federal Court, or any other court, then the constitutional jurisdiction, power and authority of that court, is removed and it becomes non-justiciable and running Coram non judice.

The judiciary under our Commonwealth Constitution cannot exercise any power when the Queen is removed, as "the power of that court is vested in the Queen and then exercised by Judges appointed by the Crown during good behavior." (The Quick and Garran Annotated Constitution of the Australian Commonwealth page 318 (3) Judicial Department.)

I have searched through the Federal Court Act 1976 and alarmingly, can find no reference to our sovereign the Queen being listed as the head of power for the Federal Court.

Removal of the Queen form the High Court

Sometime around 12 Sep 2016, the then Senator Rodney Culleton in the Australian Parliament, brought to the then Senator and Attorney General George Brandis attention, a Constitutional issue, that the High Court of Australia had been operating outside of Crown jurisdiction for a period between at least 2005 - 2016, where the High Court had contravened the HIGH COURT OF AUSTRALIA ACT 1979 - SECT 33 by not operating the courts processes in the name of the Queen, in contravention of Sect 33 and they allegedly removed the Queen from the High Court Rules 2004.

According to Attorney General Brandis in his speech addressing the issue on a later date, addressing the then Senator Rodney Culleton in the Australian Parliament House Chamber, Brandis claimed the issue was raised with the Principal Registrar and "CEO" of the High Court Mr Phelan, who said "The high Court Rules Committee considered the issues raised by Senator Culleton on 12 Oct 2016, and proposed amendments to the High Court Rules to address the issue.

The High Court is the "guardian of the Federal Constitution" and has the duty of preventing its violation where removing its head of power from all writs, commissions and processes, removing the "the Queen" from the equation was an alleged Constitutional violation, done "Ultra Vires."

Removal of the Queen from the Federal Court

After me having conducted a thorough search through the Federal Court of Australia Act 1976, I am now of the conclusion that the our Sovereign and head of power the Queen has been removed from the Federal Court of Australia court processes being in the name of the Queen, and the Federal Court Rules, as was the case with the High Court Writs etc, and again, the Queen is absent from the Federal Court of Australia Act 1976.

Federal Court Processes and Writs not in the Queens name, see FEDERAL COURT OF AUSTRALIA ACT 1976 - SECT 37 Writs etc:

FEDERAL COURT OF AUSTRALIA ACT 1976 - SECT 37

- **←** Writs **→** etc.
- (1) All **writs**, commissions and process issued from the <u>Court</u> shall be:
- (a) under the seal of the Court; and
- (b) signed (including by way of <u>electronic signature</u>) by the <u>Chief Executive Officer</u>, a District Registrar or an officer acting with the authority of the <u>Chief Executive Officer</u> or a District Registrar.
- (2) For the purposes of <u>paragraph</u> (1)(b), a document is taken to be signed by the <u>Chief Executive Officer</u> if the <u>electronic signature</u> of the <u>Chief Executive Officer</u> is applied to the document by an officer acting with the authority of the <u>Chief Executive Officer</u>.

 (3) In this section:
- "electronic signature" of a person means the person's unique identification in an electronic form that is approved by the Chief Executive Officer.

http://www6.austlii.edu.au/cgi-

bin/viewdoc/au/legis/cth/consol_act/fcoaa1976249/s37.html?context=1;query=Writs;mask_path=au/legis/cth/consol_act/fcoaa1976249

The position of Chief Executive Officer assumes the Federal Court of Australia is operating as a Corporation and is not a Chap III Constitutional Court and is operating in violation of the Commonwealth Constitution.

The Definition of a Chief Executive Officer:

A chief executive officer (CEO), [1] or just chief executive (CE), is the most senior corporate, executive, or administrative officer in charge of managing an organization — especially an independent legal entity such as a company or nonprofit institution. Reference: Wikipedia.

From Cambridge English Dictionary: **CEO**, **abbreviation for** <u>chief executive officer</u>: the <u>person</u> with the most <u>important position</u> in a <u>company</u>.

In the Publics Best Interests to Authorise Access to the Requested Documents

Due to the points raised here by me, I allege that it will not be in the publics best interest, to deny my request for a copy of Justice Colliers Oath in connection with her commission and that a signed Oath is a document of an administrative character and nature, as the signed document gives the green light for that Judge, to lawfully administer the law in the Federal Court.

It is also in the publics best interest that you use your discretionary powers, statutory reasonableness, as a reasonable decision maker, and not exercise an inflexible application of policy, by answering the relevant question regarding Covering Clause 5 of the Constitution, so that your court might maintain some honor and integrity in the eyes and minds of the general public.

Exercise of Discretionary Powers IAW Australian Admin Law

"Public interest" remains an elusive, value-laden term. In O'Sullivan v Farrer (1989) 168 CLR 210 at 216, Mason CJ, Brennan, Dawson, and Gaudron JJ commented: "Indeed, the expression 'in the public interest', when used in a statute, classically imports a discretionary value judgment to be made by reference to undefined factual matters, confined only' in so far as the subject matter and the scope and purpose of the statutory enactments may enable".

Agencies and a minister for that matter, can always provide access to a document where the law permits, even if the document is exempt under the FREEDOM OF INFORMATION ACT 1982 - SECT 3A.

FREEDOM OF INFORMATION ACT 1982 - SECT 3A:

Objects--information or documents otherwise accessible Scope

(1) This section applies if a Minister, or an <u>officer</u> of an <u>agency</u>, has the power to publish, or give access to, information or a <u>document</u> (including an <u>exempt</u> <u>document</u>) apart from under this Act.

Publication and access powers not limited

- (2) The Parliament does not intend, by this Act, to limit that power, or to prevent or discourage the exercise of that power:
- (a) in the case of the power to publish the information or <u>document</u>--despite any restriction on the publication of the information or <u>document</u> under this Act; and

(b) in the case of the power to give access to the information or <u>document</u>—whether or not access to the information or <u>document</u> has been <u>requested</u> under section 15.

In **Hindi v Minister for Immigration** (1988) 16 ALD 526, the Federal Court adopted a now commonly used formula: the administrator must give "proper genuine and realistic consideration to the merits of the case and be ready in a proper case to depart from applicable policy".

The same principle can be applied to the release of information that is not a matter of national security, but in the public's best welfare and interests, and their right to know that our Courts are operating in accordance with their Chap III Constitutional obligations.

A rule of statutory interpretation is not to simply assume that legislation covers the ground it purports to, and I am of the understanding, that legislation like the FOI Act is not required to be interpreted in a rigid and inflexible fashion.

Documents Requested under this Internal Review 54B(1)(a)).

In summary the case precedent used by the Federal Court is void and holds no authority as it is alleged the Federal Court was operating a private court outside of Chap III Commonwealth Constitutional Jurisdiction.

The documents I request to be released are as follows:

- 1. A true copy of the Oath of Office for Justice Collier as per my original FOI request; and
- 2. A true certified copy of the Federal Court "Crown Court Order" for the case of Kline v Official Secretary to the Governor-General [2012] FCAFC 184.

Yours Sincerely



Request for an internal review under the Freedom of Information Act 1982

I refer to your email of 1 May 2020 seeking an internal review of the decision made by Registrar O'Connor on behalf of the Federal Court of Australia (the **Federal Court**), on 9 April 2020, refusing you access to documents you requested under the *Freedom of Information Act 1982* (**FOI Act**). An acknowledgement of receipt of this email was sent to you on 14 May 2020.

I am authorised under the FOI Act to make a decision on behalf of the Court in relation to your internal review request.

Background

On 11 March 2020, you sent an email to the Customer Service mailbox of the Federal Circuit Court of Australia, which included a request under the FOI Act (**FOI request**). Specifically, you requested:

It is my will, that your court provide documents which provide that, the Federal Circuit Court of Australia is operating in accordance with Chapter III of the Commonwealth Constitution 1901 as proclaimed and gazetted, and that the Federal Circuit Court is operating as a Crown Court?

It is my will, the Court also provide documentation, copies of the Oath of Office for Justice Collier, Federal Court of Australia, District: Queensland copy of her sworn Oath to Queen Elizabeth II, Her Majesty's heirs and successors in the sovereignty of the United Kingdom, i.e. the Queen as per the Constitution Act 1900 Covering Clause two.

It is my will that the court confirms that the Constitution Act 1900 Covering Clause 5, is currently binding on all current serving Federal Court Judges in every Federal Court in every State of this Commonwealth.

The Federal Circuit Court subsequently transferred part of your FOI request to the Federal Court. On 9 April 2020, Registrar O'Connor refused access to the documents requested as the documents requested did not relate to matters of an administrative nature. I attach Registrar O'Connor's letter of decision dated 9 April 2020 for ease of reference (**Annexure-1**).

On 1 May 2020, you sent an email to the NSW Registrar Support mailbox of the Federal Court. In that email, you sought an internal review of Registrar O'Connor's access refusal decision. Attached to your email of 1 May 2020 was a document in which you, among other things, made various claims about the authority of the Federal Court and sought access to documents. I attach that document to this letter of decision for ease of reference (**Annexure-2**). The final subsection of that document reads:

In summary the case precedent used by the Federal Court is void and holds no authority as it is alleged the Federal Court was operating a private court outside of Chap III Commonwealth Constitutional Jurisdiction.

The documents I request to be released are as follows:

- 1. A true copy of the Oath of Office for Justice Collier as per my original FOI request; and
- 2. A true certified copy of the Federal Court "Crown Court Order" for the case of Kline v Official Secretary to the Governor-General [2012] FCAFC 184.

Summary of Decision on Internal Review

For the reasons set out below, after reconsidering your request received by the Court on 11 March 2020, Registrar O'Connor's access refusal decision and the document you attached to your email request for internal review, I have decided to refuse access to a copy of the Oath of Office for Justice Collier sought in your request of 11 March 2020. Pursuant to section 5 of the FOI Act, the FOI Act does not apply to the document to which you seek access.

Materials taken into account

I have taken the following material into account in making my decision:

- your FOI request of 11 March 2020;
- Registrar O'Connor's letter to you of 9 April 2020;
- your internal review request Annexure-2;
- the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; and
- relevant case law.

Reasons for internal review decision

In the access refusal decision, Registrar O'Connor explained the limited application that the FOI Act has to the Federal Court. In particular, Registrar O'Connor explained that the FOI Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

Registrar O'Connor also explained that both the High Court of Australia and the Full Court of the Federal Court had considered the phrase 'matters of an administrative nature' in the context of the FOI Act and determined its scope.

In your internal review request of 1 May 2020 you state:

your reliance on Kline v Official Secretary to the Governor-General [2012] FCAFC 184, is not justified, as I allege the Federal Court was not operating as a Chap III Constitutional Court at the time this case was being heard and decided on, and was acting outside of Crown Jurisdiction, and was misbehaving, so the definition of what is or is not a document that relates to an administrative matter, relied on by the Judiciary involved in the above case, administrative function or document definition and case you are using as case precedent, I allege has no standing in law and is unreliable, as the Court had no Federal Jurisdiction or

Constitutional standing at the time the case was heard and decided on, it was allegedly acting under a foreign jurisdiction.

You further state:

the case precedent used by the Federal Court is void and holds no authority as it is alleged the Federal Court was operating a private court outside of Chap III Commonwealth Constitutional Jurisdiction.

The FOI Act has a very limited application to the Federal Court. It does not apply to Judicial Officers¹ or to any documents relating to complaints about Judicial Officers². Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act ³ the only request that can validly be made to it under the FOI Act is to access "a document that relates to matters of an administrative nature"⁴.

The law in respect of what constitutes a document that relates to matters of an administrative nature is clear. It was reasonable for Registrar O'Connor to rely on the Full Court of the Federal Court's judgment in *Kline v Official Secretary to the Governor-General* [2012] FCAFC 184 and the decision of the High Court in *Kline v Official Secretary to the Governor-General* [2013] HCA 52.

The instrument recording the form of the oath to which Justice Collier subscribed upon her elevation to the bench, is not a document that relates to matters of an administrative nature for the purposes of section 5 of the FOI Act.

I adopt, in full, the reasoning offered by Registrar O'Connor in respect of the characterisation of the instrument recording the form of the oath to which Justice Collier subscribed upon her elevation to the bench. I also adopt Registrar O'Connor's conclusion that the instrument recording the form of the oath to which Justice Collier subscribed upon her elevation to the bench is not a document that relates to matters of an administrative nature.

Request for an additional document

Along with your request for internal review, you requested the following:

A true certified copy of the Federal Court "Crown Court Order" for the case of Kline v Official Secretary to the Governor-General [2012] FCAFC 184.

The basis of your request is not clear, nor is it clear exactly what you are seeking as the Federal Court is not a Crown Court, but a Court established under Chapter III of the Australian Constitution.

I have interpreted your request as being a request for the Federal Court to provide a copy of the Federal Court Order in *Kline v Official Secretary to the Governor-General* [2012] FCAFC 184 in support of its access refusal request of 9 April 2020. The orders and judgments of the Full Court of the Federal Court are readily available online. This judgment and the relevant orders may be found on Austlii using the following link:

¹ paragraph 5(1)(b) FOI Act

² subsections 5(1A) to (1C) FOI Act

³ Paragraph 5(1)(a) FOI Act

⁴ section 5 FOI Act

Kline v Official Secretary to the Governor-General [2012] FCAFC 184 (19 December 2012)

Similarly, the decision of the High Court can be found using the following link:

Kline v Official Secretary to the Governor General [2013] HCA 52 (6 December 2013)

Court orders are not documents which can be accessed under the FOI Act as they are not documents related to matters of an administrative nature and they are publically available.

Charges

You have not been charged for the processing of your request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR 10

email: enquiries@oaic.gov.au

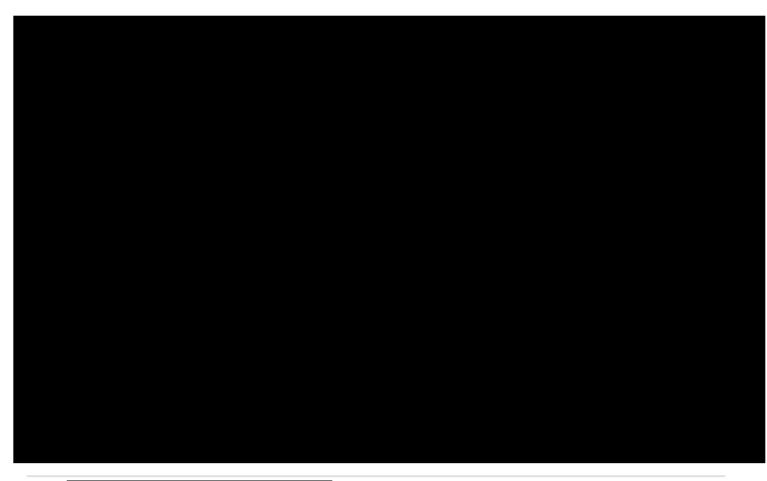
post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely



Scott Tredwell Acting Deputy Principal Registrar



From:

Sent: Wednesday, 10 June 2020 5:42 PM

To: NSWRegistrarSupport <NSWRegistrarSupport@fedcourt.gov.au>

Subject: New FOI Request in Accordance With The Freedom of Information Act 1982

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Reference: Federal Court of Australia FOI Response Titled: Request for an internal review under the Freedom of Information Act 1982, page 3 dated 29 May 2020

Note: This is a new FOI Request in accordance with the FOI Act 1982

In accordance with the above Reference and considering the information provided by Scott Tredwell Acting Deputy Principal Registrar where he stated ''the Federal Court is not a Crown Court, but a Court established under Chapter III of the Australian Constitution.''

I request the information that provides for or indicates the existence of an Australian Constitution in contradistinction of the Commonwealth Constitution as declared and gazetted in 1901, that might authorise the Federal Court of Australia's existence to lawfully administer justice and the rule of law, and to carry out the courts administrative functions on a daily basis.

Could you be so kind to respond and acknowledge receipt of this FOI Request in accordance with the Act.

Kindest Regards



Telephone: (02) 9230 8567 FEDERAL COURT OF AUSTRALIA

Your Ref: Our Ref:

LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

10 July 2020

	By email:	
Dear	-	

Request under the Freedom of Information Act

I refer to your email of 10 June 2020, sent to the New South Wales Registrar Support mailbox of the Federal Court of Australia (the Court). In your email you refer to the internal review decision of Acting Deputy Principal Registrar Tredwell dated 29 May 2020 and, specifically, the statement made in that decision that "the Federal Court is not a Crown Court, but a Court established under Chapter III of the Australian Constitution". With reference to that statement made by Acting Deputy Principal Registrar Tredwell, you assert in your email that you are making a new request under the Freedom of Information Act 1982 (Cth) (FOI Act) for the following:

information that provides for or indicates the existence of an Australian Constitution in contradistinction of the Commonwealth Constitution as declared and gazetted in 1901, that might authorise the Federal Court of Australia's existence to lawfully administer justice and the rule of law, and to carry out the courts administrative functions on a daily basis.

Authorised decision-maker

I am authorised under the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Preliminary comment

At the outset, I note that it is my understanding that the reference in Acting Deputy Principal Registrar Tredwell's decision to the 'Australian Constitution' is a reference to the Australian Constitution as provided on the website of the Parliament of Australia: https://www.aph.gov.au/about_parliament/senate/powers_practice_n_procedures/constitution Generally-speaking, any reference the Court makes to being a Court established under Chapter III of the Australian Constitution is a reference to that document. That document is also known, more technically, as the 'Commonwealth of Australia Constitution Act' and is sometimes referred to as the 'Commonwealth Constitution' or simply 'The Constitution'.

Decision

To the extent that the information you are seeking in your email is a copy of the Australian Constitution (as provided in the website link above), the request that you have made is not a

valid request under the FOI Act as such a document is publicly available and is therefore not 'a document of an agency' in accordance with the relevant provisions of the FOI Act.

To the extent that the information you have requested is not, or is asking for more than, a copy of the Australian Constitution, the request you have made does not constitute a valid request under the FOI Act because it does not seek access to a 'document of an agency' in accordance with section 11 of the FOI Act and nor does not it provide sufficient information to identify a 'document' in accordance with the relevant provisions of the FOI Act.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner (the FOI Guidelines).

Reasons for decision

Relevantly to your request, subsection 11(1) of the FOI Act provides that:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document;

Subsection 4(1) of the FOI Act stipulates that a document is a 'document of an agency' if:

(a) the document is in the possession of the agency, whether created in the agency or received in the agency.

Subsection 4(1) of the FOI Act contains the following definition of a 'document':

document includes:

- (a) any of, or any part of any of, the following things:
 - (i) any paper or other material on which there is writing:
 - (ii) a map, plan, drawing or photograph;
 - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
 - (v) any article on which information has been stored or recorded, either mechanically or electronically;
 - (vi) any other record of information; or
- (b) any copy, reproduction or duplicate of such a thing; or
- (c) any part of such a copy, reproduction or duplicate;

but does not include:

- (d) material maintained for reference purposes that is otherwise publicly available; or
- (e) Cabinet notebooks.

Given that the Australian Constitution is a publicly available document, it does not fall within the definition of 'document' under subsection 4(1) the FOI Act, as subsection 4(1)(d) (as set

out above) makes clear that a 'document' does not include material that is maintained "for reference purposes that is otherwise publicly available".

To the extent that the information you have requested is not, or is asking for more than, a copy of the Australian Constitution, subsection 11(1)(a) stipulates that requests made under the FOI Act must be for "a document of an agency" which is defined in subsection 4(1) to mean a document "the possession of the agency, whether created in the agency or received in the agency".

The FOI Guidelines elaborate on the above relevant legislative provisions at paragraph 2.33 which provides that the "right of access under the FOI Act is to existing documents, rather than to information". The FOI Guidelines further explain that the FOI Act does not require an agency to create a new document in order to provide information that might be sought in a request; the document must exist at the time the FOI request was made.

In accordance with the legislative provisions outlined above, I have decided that your FOI request is not a valid request in accordance with the FOI Act for either one of the following reasons:

- a) you are requesting a document that is publicly available and therefore does not fall within the definition of a 'document' under the FOI Act; or
- b) your request does not seek access to a 'document of an agency' in the sense of being a document in the possession of the Court in accordance with the FOI Act;

Charges

You have not been charged for the processing of your request.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely



C Hammerton Cole Registrar



From:

Sent: Thursday, 18 June 2020 12:42 PM

To: Customer Service < Customer. Service@federalcircuitcourt.gov.au>

Subject: FOI request

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Customer Service

As part of a research project I am conducting examining the enforcement of age discrimination law in Australia, I would like to file a request to obtain information from the FCCA for the purposes of the FOI Act.

I would appreciate annual data from 2009 to 2019, where this is held and accessible, relating to:

- 1. Federal unlawful discrimination matters relating to complaints under the Age Discrimination Act 2004; and
- 2. Matters under the Fair Work Act 2009 relating to adverse action on the basis of age, namely:
 - 1. General protections disputes relating to age discrimination
 - 2. General protections disputes involving dismissal relating to age discrimination

More specifically, I seek access to age discrimination related statistics on:

- Applications filed
- Applications finalised

- Referrals to mediation
 - o Of referrals to mediation matters finalised but not resolved; matters finalised and resolved; and matters finalised and resolved in part
- Judgments finalised

These statistics appear in the FCCA's Annual Report, but all human rights and industrial law matters are reported together (e.g. http://www.federalcircuitcourt.gov.au/wps/wcm/connect/7e7fd944-b9df-429b-8d99-55be84591898/19375+Federal+Circuit+Court+of+Australia+Annual+Report+2018-19-low-res.pdf?MOD=AJPERES&CVID=). I would appreciate gaining access to data just for matters that relate to age discrimination, where this is possible to discern. Data in an Excel file or similar would be much appreciated.

Please let me know if you require any clarification of this request.

Kind regards



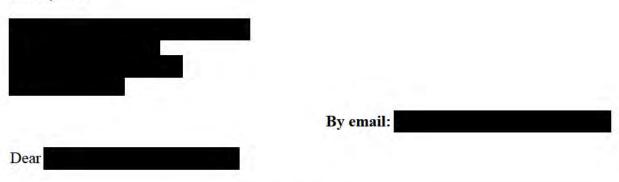
AUSTRALIA LIA

FEDERAL CIRCUIT COURT OF AUSTRALIA

LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

Telephone: (02) 9230 8567

17 July 2020



Freedom of Information Request

I refer to your email of 18 June 2020, sent to the Customer Service mailbox of the Federal Circuit Court of Australia (the **Court**). In your email you have sought access to a range of documents under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Specifically you have requested:

I would appreciate annual data from 2009 to 2019, where this is held and accessible, relating to:

- Federal unlawful discrimination matters relating to complaint under the Age Discrimination Act 2004; and
- 2. Matters under the Fair Work Act 2009 relating to adverse action on the basis of age, namely:
 - 1. General protections disputes relating to age discrimination
 - 2. General protections disputes involving dismissal relating to age discrimination

More specifically, I seek access to age discrimination related statistics on:

- Applications filed
- Applications finalised
- · Referrals to mediation
 - Of referrals to mediation matters finalised but not resolved; matters finalised an resolved; and matters finalised and resolved in part
- Judgments finalised

Authorised decision-maker

I am authorised under the FOI Act to make decisions on behalf of the Court in relation to requests.

Decision

I have decided to refuse access to those documents sought pursuant to your FOI request for the following reasons:

- the document or documents do not exist under s 24A(1)(b)(ii) of the FOI Act;
- there is no requirement to produce the document or documents under s 17 of the FOI Act; and
- the FOI Act would not apply due to the operation of s 5(1) of the FOI Act.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the content of the documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Searches undertaken

The searches undertaken by the Court to identify documents within the scope of your FOI request were exhaustive and extended to discussions with the Court's Business Information Solutions Architect to determine if the Court maintained any of the requested information within its business information systems.

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

Document does not exist under paragraph 24A(1)(b)(ii)

I consider that the document or documents you have requested do not exist.

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevant provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

In seeking to respond to your request I am satisfied that all reasonable steps were taken to try to identify a document or documents falling within the scope of your request. No document or documents were identified that fell within the scope of your request.

Section 17 of the FOI not applicable

I am not satisfied that there is a requirement on the Court, pursuant to section 17 of the FOI Act, to produce a document that meets the terms of your request.

Section 17 provides:

- (1) Where:
 - (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba)it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
 - (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer program or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency; the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

The FOI Guidelines issued by the Office of the Australian Information Commissioner provide:

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in a discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

The Guidelines provide further:

- 3.182 Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if the applicant does not wish to be provided with a computer tape or disk. Examples include a transcript of a sound recording or a written compilation of information held across various agency databases. The obligation to produce a written document arises if:
- The agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- Producing a written document would not substantially or unreasonably divert the resources of the agency from its other operations (s 17(2)).

If those conditions are met the FOI Act applies as if the applicant had requested access to the written document and it was already in the agency's possession.

The Court does not maintain a digital record of the information requested. The Court does not break down the relevant statistics any further than as is reported in the Annual Report. Consequently, a document containing these statistics is not something that could be achieved merely by the use of a computer or other equipment that is ordinarily available to the Court for retrieving or collating stored information. Such a document could only be produced by a Court employee physically assessing each relevant litigation file.

The production of the requested document is therefore outside the requirements of section 17 of the FOI Act and has not been produced for the purposes of your FOI request.

Limited application of the FOI Act to the Federal Court

The FOI Act has a very limited application to the Federal Court. ¹ It does not apply to Judicial Officers ² or to any documents relating to the handling of complaints about Judicial Officers ³. Although the Federal Court is a "prescribed authority" for the purposes of the FOI Act ⁴ the only request that can validly be made to it under the FOI Act is to access a "document of an administrative nature" ⁵.

Section 5(1) of the FOI Act provides:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". 6

Further, the High Court held:

 $^{^{1}}$ paragraphs 2.6 - 2.8 of the FOI Guidelines

² paragraph 5(1)(b) of the FOI Act

³ subsections 5(1A) to (1C) of the FOI Act

⁴ paragraph 5(1)(a)

⁵ section 5

⁶ at [19]

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".⁷

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology. The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁹

The High Court, in considering the decision of *Bienstein v Family Court of Australia*¹⁰, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. ¹¹

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.¹²

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹³

I am satisfied that the documents you have requested access to, even if they did exist, would not be documents that 'relate to matters of an administrative nature' as that compound of words has been interpreted by the High Court. They are not documents that relate to the management

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<sup>7</sup> at [41]
<sup>8</sup> at 13]
<sup>9</sup> at [47]
<sup>10</sup> (2008) 170 FCR 382
<sup>11</sup> at [51]
<sup>12</sup> at [51]
<sup>13</sup> at [75] and [76]
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and administration of registry and office resources, rather they are documents that contain details that are essentially about the nature of claims instituted in the Court.

As they are not matters of an administrative nature pursuant to s 5(1) of the FOI Act, they are not accessible under the FOI Act and your FOI request is therefore refused.

Access to documents and information outside the scope of the FOI Act

The FOI Act provides a mechanism where it is possible to provide documents or information outside the scope of the FOI Act.

Section 3A of the FOI Act provides:

- (1) This section applies if a Minister, or an officer of an agency, has the power to publish, or give access to, information or a document (including an exempt document) apart from under this Act.
- (2) The Parliament does not intend, by this Act, to limit that power, or to prevent or discourage the exercise of that power:
 - (a) in the case of the power to publish the information or document despite any restriction on the publication of the information or document under this Act; and
 - (b) in the case of the power to give access to the information or document whether or not access to the information or document has been requested under section 15.

Paragraph 3.10 of the FOI Guidelines issued by the Office of the Australian Information Commissioner provides:

Decision making under the FOI Act must take into account the objects in s 3. As discussed in further detail in Part 1 of these Guidelines, the objects embody a policy — or presumption — of open government that is relevant to all FOI decision making. This is emphasised in s 3(4), which states Parliament's intention 'that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost'. Another specific object, stated in s 3A, is that agencies and ministers retain an administrative discretion (subject to other legislation) to provide access to information and documents other than under the FOI Act.

If the relevant documents existed, or it was possible to produce a document from information stored within the Court's information management systems, I would be only too happy to provide it. Regrettably, this is not the case.

Charges

You have not been charged for the processing of your request.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely



C Hammerton Cole **Registrar**

External FOI

From:
Sent: Tuesday, 11 August 2020 10:30 AM

To: External FOI

Subject: Freedom of Information request - assault footage

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Hi,

My name is

I am making a request for CCTV footage under the Freedom of Information act. The footage was captured in a government building, the court at 305 William Street, Melbourne, VIC on 02/12/2019, at approximately 10am. The location was outside the elevators on the safety rooms level (balcony of level 2).

The incident that took place was an Unlawful Assault, against me.

You can find details of the case with

The Victoria police incident number is:

There is court hearing scheduled for the melbourne Magistrates court on 02/12/2020, case number These reference numbers may be helpful in locating the footage.

I need this footage to assist my compensation lawyers with determining aspects of their investigation.

Please contact me via phone or email as a first preference, and post as a second preference.



21 August 2020		

		By email:	
Dear			

Transfer of freedom of information request to another agency

I refer to your email request for access to documents pursuant to the Freedom of Information Act 1982 (FOI Act) sent to the External.FOI@fedcourt.gov.au mailbox on Tuesday, 11 August 2020.

I am authorised to make decisions on behalf of the Federal Court of Australia under the FOI Act.

Under paragraph 16(1)(a) of the FOI Act, it is open to me to transfer a request received by the Federal Court of Australia if the document is not in the possession of the Federal Court of Australia but is, to the knowledge of the Federal Court of Australia, in the possession of another agency, and that other agency agrees to a transfer of the FOI request.

You have requested closed circuit television footage of an incident that took place on 2 December 2019 on level 2 of the Owen Dixon Commonwealth Law Courts Building at 305 William Street, Melbourne VIC 3000. Given that level 2 of the Owen Dixon Commonwealth Law Courts Building is not occupied by the Federal Court of Australia, the agreement of relevant officers in the Federal Circuit Court of Australia was sought, and obtained, to transfer the whole of your request to the Federal Circuit Court of Australia.

The Federal Court of Australia received your request on 11 August 2020 and the 30 day statutory period for processing your request commenced from the day after that date. The Federal Circuit Court of Australia will treat your request as though it received it on 11 August 2020.

An FOI contact officer in the Federal Circuit Court of Australia can be contacted by email or post.

The email address for an FOI contact officer is customer.service@federalcircuitcourt.gov.au.

The postal address for an FOI contact officer is:

Chief Executive Officer Federal Circuit Court of Australia GPO Box 9991 Sydney NSW 2001

Yours sincerely



C Hammerton Cole Registrar

External FOI

From:

Sent: Friday, 14 August 2020 8:05 AM

To: External FOI

Subject: FOI - Constitution Alteration (Family Law) 1988

Attachments: BILL No.25 family law..png

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

To Whom It May Concern,

It is My Will to request the below information under the Freedom of Information Act (1982):

• any and all documents that validate, confirm or deny that the attached bill ("Constitution Alteration (Family Law) 1988") was enacted or not enacted by the Parliament of the Commonwealth of Australia to alter the Constitution.

Please send correspondence and documents via email to

I appreciate your time and effort helping me in this regard

Many thank and take care,

2 September 2020 By email:

Request under the Freedom of Information Act

I refer to your email request of 14 August 2020, sent to the <u>External.FOI@fedcourt.gov.au</u> mailbox of the Federal Court of Australia (**Court**). Your request reads as follows:

It is My Will to request the below information under the Freedom of Information Act (1982):

• any and all documents that validate, confirm or deny that the attached bill ("Constitution Alteration (Family Law) 1988") was enacted or not enacted by the Parliament of the Commonwealth of Australia to alter the Constitution.

Authorised decision-maker

I am authorised under section 23 of the Freedom of Information Act 1982 (**FOI Act**) to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your FOI request for the following reasons:

- the documents requested are not documents in the possession of the Court in accordance with subsection 11(1) of the FOI Act; and
- the FOI Act would not, in any event, apply due to the operation of s 5(1) of the FOI Act.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner (the **FOI Guidelines**).

Reasons for decision

Requesting documents of an agency

Paragraph 11(1)(a) of the FOI Act provides:

Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:

(a) a document of an agency, other than an exempt document;

Subsection 4(1) of the FOI Act stipulates that a document is a 'document of an agency' if:

(a) the document is in the possession of the agency, whether created in the agency or received in the agency.

Subsection 4(1) of the FOI Act provides that a document includes:

- (a) any of, or any part of, the following things:
 - (i) any paper or other material on which there is writing;
 - (ii) a map, plan, drawing or photograph;
 - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;
 - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;
 - (v) any article on which information has been stored or recorded, either mechanically or electronically;
 - (vi) any other record of information; or
- (b) any copy, reproduction or duplicate of such a thing; or
- (c) any part of such a copy, reproduction or duplicate;

but does not include:

- (d) material maintained for reference purposes that is otherwise publicly available; or
- (e) Cabinet notebooks.

The Court does not possess any documents that satisfy the terms of your FOI request in that such documents validate, confirm or deny that the "("Constitution Alteration (Family Law) 1988") was enacted or not enacted by the Parliament of the Commonwealth of Australia to alter the Constitution."

I note that the Court would not ordinarily possess documents that would "validate, confirm or deny" whether a bill was enacted or not, apart from material maintained for reference purposes that is otherwise publicly available. In that regard, subsection 4(1) of the FOI Act makes clear that, for the purposes of the FOI Act, a document of an agency does not include "material maintained for reference purposes that is otherwise publicly available".

I note that judgments of the Court often make references to bills and legislation. However, judgments of the Court are publicly available documents which can be accessed on the Court's website at: https://www.fedcourt.gov.au/digital-law-library. In any event, judgments

of the Court do not relate to "matters of an administrative nature" in accordance with subsection 5(1) of the FOI Act which is discussed further below.

Requests for documents that relate to matters on an administrative nature

Subsection 5(1) of the FOI Act provides:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

Accordingly, FOI requests can be made to a court, although the FOI Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The phrase "matters of an administrative nature" has been considered by the Commonwealth judiciary.

In *Kline v Official Secretary to the Governor-General* [2012] FCAFC 184, when considering the word 'administrative' in context, the Full Court of the Federal Court concluded:

[c]ontext is especially important when considering the word "administrative". Plainly, the point of distinction in the present context is not between matters of a judicial nature or matters of a legislative nature \dots 1

The Full Court continued, stating:

the FOI Act applies only to requests for access to a document ... where the document relates to matters of an administrative nature: the FOI Act does not apply to requests for access to a document ... of any other character.²

The Full Court was of the view that the phrase "matters of an administrate nature" was to be interpreted by reference to substantive powers and functions, on the one hand, and the apparatus for the exercise of such powers or functions (i.e. matters merely supportive of those powers or functions), on the other.³

¹ Kline v Official Secretary to the Governor-General [2012] FCAFC 184, [19].

² Ibid, [20].

³ Ibid, [21].

By way of example, the Full Court stated:

[t]he first respondent accepted, and we agree, that documents dealing with staffing arrangements within the Office, the costs of running the Office, or statistics about the activities undertaken by the Office, could all be the subject of a request for access to which the FOI Act would apply.⁴

But the Full Court went further, stating:

[w]e would add that, in our opinion, the expression "unless the document relates to matters of an administrative nature" goes to the character of the document so that, contrary to the submission of the applicant, a document would not so relate merely because it bore an annotation asking that an administrative task, such as filing, be carried out.⁵

When Kline v Official Secretary to the Governor-General [2012] FCAFC 184 was appealed to the High Court of Australia in Kline v Official Secretary to the Governor-General [2013] HCA 52, the appeal was dismissed. Chief Justice French and Justices Crennan, Kiefel and Bell observed that the Full Court of the Federal Court's apprehension of "matters of an administrative nature", especially with respect to the interpretation of that phrase by reference to substantive powers and functions, on the one hand, and the apparatus for the exercise of those powers, on the other, was correct.⁶

Mirroring the views of the Full Court of the Federal Court, the plurality of the High Court, in a joint judgment, dismissing the appeal, held that:

[t]he FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".

Further, the High Court held:

... the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".8

The examples referred to by the High Court constituted a 'secondary' aspect of assistance and support provided to the authority making substantive decisions. That aspect of support was the management and administration of office resources, such as financial and human resources and information technology. The 'primary' aspect, which was thereby excluded from the management and administration of office resources, included assisting and supporting the discharge of substantive powers and functions. ¹⁰

As relevant, the High Court then held that:

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<sup>4</sup> Ibid.
<sup>5</sup> Ibid, [23].
<sup>6</sup> Kline v Official Secretary to the Governor-General [2013] HCA 52, [41].
<sup>7</sup> Ibid, [19].
<sup>8</sup> Ibid, [41].
<sup>9</sup> Ibid, [13].
<sup>10</sup> Ibid.
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[a]ccordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources. 11

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

[t]he distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of ... functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become 'administrative' merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.¹²

The documents that you seek, being documents that "validate, confirm or deny" that the "("Constitution Alteration (Family Law) 1988" was enacted or not enacted by the Parliament of the Commonwealth of Australia to alter the Constitution" are not documents that "relate to matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents that relate to the management and administration of registry and office resources.

Since the documents you have sought are not documents that relate to matters of an administrative nature for the purposes of subsection 5(1) of the FOI Act, the documents, even if they were in the possession of the Court, would not be accessible under the FOI Act.

Charges

You have not been charged for the processing of your request.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

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¹¹ Ibid, [47].

¹² Ibid, [75] - [76].

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely

C Hammerton Cole

Registrar

From:
To: External FOI
Subject: Internal review

Date: Friday, 6 November 2020 3:26:59 PM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

To the relevant officer:

I refer to the my freedom of information request dated 30 August 2020.

On 30 August 2020 I requested access to the Public Service Commissioner's representative's certificate of compliance for each of the selection processes to:

- * recruit each ongoing and non-ongoing SES employee from outside the Australian Public Service (APS) from 1 July 2016 to 14 June 2020 into the 'single administrative entity',
- * promote each ongoing and non-ongoing APS employee (including an SES employee) from within the APS to an SES position in the 'single administrative entity' from 1 July 2016 to 14 June 2020, and
- * transfer each ongoing and non-ongoing SES employee from another public service agency to the 'single administrative entity' from 1 July 2016 to 14 June 2020.

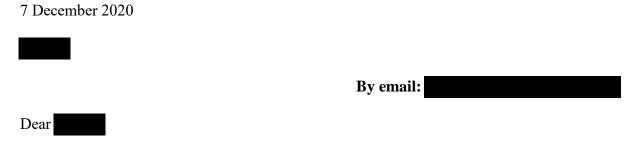
On 29 October 2020 Registrar C Hammerton Cole granted access to eleven representatives' certificates.

According to documents released on 11 August 2020 by Registrar C Hammerton Cole there is only one National Judicial Registrar in the 'single administrative entity'. That National Judicial Registrar is and she is has an SES1 classification.

I requested access to the Public Service Commissioner's representative's certificate of compliance for each of the selection processes, including the selection process for the National Judicial Registrar vacancy. Registrar C Hammerton Cole did not grant access to the representative's certificate for the selection process relating to the SES1 National Judicial Registrar vacancy. I request an internal review of Registrar C Hammerton Cole's decision because Registrar C Hammerton Cole has not provided the Public Service Commissioner's representative's certificate of compliance for each of the selection processes. As part of the internal review request I request that the representative's certificate for the selection process relating to the SES1 National Judicial Registrar vacancy is granted access to.

Please	direct your responses	to	

Sincerely,



Request under the Freedom of Information Act

I refer to your email of 6 November 2020 seeking an internal review of the decision made by Registrar Hammerton Cole, on behalf of the Federal Court of Australia (the **Court**), on 29 October 2020, pursuant to which Registrar Hammerton Cole granted you access in full to each of the documents covered by Request 1 and Request 2 of your original request of 30 August 2020 under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

I am authorised to make a decision on behalf of the Federal Court in relation to your internal review request.

Request for Internal Review

In your request for internal review of 6 November 2020, you provide as follows:

I request an internal review of Registrar C Hammerton Cole's decision because Registrar C Hammerton Cole has not provide the Public Service Commissioner's representative's certificate of compliance for each of the selection process. As part of the internal review request I request that the representative's certificate for the selection process relating to the SESI National Judicial Registrar vacancy is granted access to.

Earlier in your correspondence you had identified that:

According to documents released on 11 August 2020 by Registrar C Hammerton Cole there is only one National Judicial Registrar in the 'single administrative entity'. That National Judicial Registrar is and she has an SES1 classification.

I extrapolate from the preceding sections of your request that you request the representative's certificate for the selection process relating to Registrar Susan O'Connor which you say was refused by Registrar Hammerton Cole.

Decision on Internal Review

I have reconsidered your request received by the Court on 30 August 2020, Registrar Hammerton Cole's decision and your request for internal review. I have decided to refuse your request for the Public Service Commissioner's representative's certificate of compliance

for the selection process relating to Registrar , because that certificate does not exist and therefore must be refused under section 24A(1)(b)(ii) of the FOI Act.

Material taken into Account

In making my decision on internal review, I have taken the following material into account:

- your FOI request received on 30 August 2020;
- Registrar Hammerton Cole's letter to you dated 29 October 2020;
- your request for internal review received on 6 November 2020;
- the FOI Act; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Relevant Provisions of the FOI Act

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister belief as to what are his or her reasons for access.

The FOI Act therefore provides a legally enforceable right to obtain access to various documents. Subsection 24A(1) of the FOI Act relevantly provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist."

Searches Undertaken

Registrar Hammerton Cole undertook, and had other Court personnel undertake, extensive searches and enquiries to identify documents that may have been within the scope of your FOI request. I have also undertaken and had other Court personnel undertake similar searches and enquiries. These included searches undertaken by senior staff of the Court's People and Culture team to identify all Public Service Commissioner's representative's certificates of compliance that were captured by the terms of your original request, and specifically for a certificate of compliance relating to the selection process by which Registrar Susan O'Connor was appointed.

I am satisfied that the searches undertaken were thorough and comprehensive. I do not believe that any further search or enquiry that could be reasonably undertaken is likely to identify or discover further information that would assist in locating a certificate relating to the selection process by which Registrar Susan O'Connor was appointed. I am satisfied that no such certificate exists.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

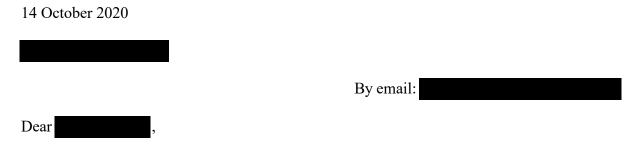
post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

Scott Tredwell
Acting Deputy Principal Registrar

External FOI From: Sent: Monday, 12 October 2020 12:14 PM External FOI To: Cc: - Seeking all prior Subject: Application for the purposes of FOI Act documentation for AVO/DVO/FVO Applications [SEC=UNOFFICIAL] Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe. UNOFFICIAL Good morning I am lodging a request under the FOI Act to the Federal Magistrate's Court for access to all documentation I have previously lodged in relation to Domestic or Family Violence, in particular to an Apprehended Violence Order I applied for against in December 2008, which was upheld. My details are the following: My current Residential Address is 2 The Defendant's details are the following: DOB: Address at the time the Dec 2008 application was made: If any further information is required, please let me know and I will provide it. I understand that fees may apply with regard to retrieving this information and I will pay a deposit or retrieval fees. If you have any questions with regards to my request, I am contactable at any time on: Thank you and regards



Transfer of freedom of information request to another agency

I refer to your email request for access to documents pursuant to the *Freedom of Information Act 1982* (**FOI Act**) sent to the <u>External.FOI@fedcourt.gov.au</u> mailbox on Monday, 12 October 2020.

I am authorised to make decisions on behalf of the Federal Court of Australia under the FOI Act.

Under paragraph 16(1)(b) of the FOI Act, it is open to me to transfer a request received by the Federal Court of Australia if the subject-matter is "more closely connected with the functions of another agency than with those of the agency to which the request is made", and that other agency agrees to a transfer of the FOI request.

You have requested access to all documentation that you lodged with the Federal Magistrates Court "in relation to Domestic or Family Violence, in particular to an Apprehended Violence Order [you] applied for against in December 2008".

The Federal Magistrates Court has since been reconstituted as the Federal Circuit Court of Australia. As you have requested documents lodged with the Federal Magistrates Court, it would appear that your request for documents should have been addressed to the Federal Circuit Court of Australia. With the agreement of relevant officers in the Federal Circuit Court of Australia, I have decided to transfer the whole of your request to the Federal Circuit Court of Australia.

The Federal Court of Australia received your request on 12 October 2020 and the 30 day statutory period for processing your request commenced from the day after that date. The Federal Circuit Court of Australia will treat your request as though it received it on 12 October 2020.

An FOI contact officer in the Federal Circuit Court of Australia can be contacted by email or post.

The email address for an FOI contact officer is customer.service@federalcircuitcourt.gov.au.

The postal address for an FOI contact officer is:

Chief Executive Officer Federal Circuit Court of Australia GPO Box 9991 Sydney NSW 2001

Yours sincerely



C Hammerton Cole **Registrar**

FCA to FAX 9230 8295

FEDERAL COURT OF AUSTRALIA ABN -

1 To the CHIEF JUSTICE OF THE COURT

2 OFFICER RESPONSIBLE FOR the

COMMON WEALTH (COMPLETED WITH DISCRIMINATION ACTS.



REQUEST UNDER THE FREEDOM OF INFORMATION ACT TO PROVIDE DOCUMENTS .

- REQUEST UNDER THE HUMAN RIGHTS LAWS AND ICCPR 1966 obligations of Commonwealth .
- DISABILITY DISCRIMINATION ACT CTH S 4 ,23, 24, 31 access to Government's services /courts by persons with defective hearing organs.
 Deprivation of in-room hearings.
 Please respond in 2 days.

Dear Sir,

I am the disable person with a hearing organs pathology/disability and I have direct legal interests in the mattes I have rised below. Clause 5 of the Constitution warranty me the rights that the Court shall comply with the laws made by the Parliament.

FOI ACT REQUEST .

1) I request to provide me a copy of all and every document which has been from the Dawwy -- March 2020 to date provided to the Federal Court by :

the Attorney General Cth , Office of the Prime Minister and Cabinet its department or any officer , by a Health Minister Cth or a NSW State , by the Australian Public Services Department ,

or by any other office of any other Minister or the Department of the Commonwealth or a NSW State which have requested the Federal Court to keep its court rooms shut for a hearings up to date (shut for a hearing organs disable persons also).

And any order of the persons above to keep the Registry NSW doors shut for the access by the public and disable, for 9 months.

- I ask to provide me a copy of all and every official document that has been created:
 - a) by the court , its judicial Committee or a responsible officer
 - b) by any persons as stated above in s (1)

the document which exhibit specific measures , practice and standards that has been put down for the Human Rights <u>protection</u> of the persons with the <u>defective hearing organs</u> to warranty that those disable be able to have <u>in -room hearings</u> , <u>to see</u> and <u>to read the oral</u>

1/2

articulations of a judge and others, to be able to actually to see and to notice all spoken legal matters involved in the case, to be able to manage their disability requirements and to hear all legal matters that may affect their legal rights.

- 3) copy of the disability standards the court shall and undertook to comply with as the Commonwealth office in general and as the CL5 Constitution. The court, the judges "In relation to the disable in court, and the hearing organs disable needs in the court.
- 4) copy of all and every document which in 2020 has been created to accommodate disable persons needs and hearing organs disable persons need for the access to the IN-ROOM hearings.

And the copy of **2019** same nature of the document regarding disable rights in relation to the court services .

- 5) copy of the document which exhibits who is in 2020 has been put in charge and to be legally responsible on behalf of the Commonwealth for the decisions related to the court compliance with the Human Rights of disable with hearing organs defects.
- 6) what is the name and the position of that person(s) in s 5 above for the purpose of the Administrative Decisions Act and the First Optional Protocol to the ICCPR 1966.

Note: The matters above are administrative compliance with the Human Rights, in its legal foundation.

- The Human Rights of disable to in-room verbal /visual hearings are a matter of Commonwealth administrative law and the government liability decisions and, shall not be and can not be muddled - in in to " a commercial etc proceedings".

The matter of access to courts and discrimination is between the Commonwealth and the disable , not any third irrelevant " a person of private nature " . ,

- I will BE Lodging chim under I. Optional Protocol And AMRC Act FOR discrimination By FEA. JAM Notifying that HEEdows.

Signed

JUST A NOTICE & it is well obvious to a school child that a persons with defective hearing organs can not participate at the process conducted by the phones. The Commonwealth by its actions of FEA COUSING SEVERE Breach of HR JUNDISC 2006. As became well obvious no the Prime Minister, no the Attorney General made any orders to the court to keep it with no functional hearing rooms to date, and shut down doors Registry to date.

Downing Centre since July 2020 have to 200 cases in its rooms daily . Local Court , IMT are working and open for public and DISABLE able to have in-room hearings .



Telephone: (02) 9230 8567

FEDERAL COURT OF AUSTRALIA

Your Ref: Our Ref: LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

11 December 2020



Dear

Request under the Freedom of Information Act

I refer to your facsimile to the Federal Court of Australia (the **Court**) received on 11 November 2020, requesting access to documents under the *Freedom of Information Act* 1982 (Cth) (**FOI Act**). Specifically, you have requested the following:

- 1) I request to provide me a copy of all and every document which has been from the January March 2020 to date provided to the Federal Court by: the Attorney General Cth, Office of the Prime Minister and Cabinet its department or any officer, by a Health Minister Cth or a NSW State, by the Australian Public Services Department, or by any other office of any other Minister or the Department of the Commonwealth or a NSW State which have requested the Federal Court to keep its court rooms shut for a hearings up to date (shut for a hearing organs disable persons also).
- 2) I ask to provide me a copy of all and every official document that has been created:
 - (a) by the court, its judicial committee or a responsible officer
 - (b) by any persons as stated above in s (1)
 - the document which exhibit specific measures, practice and standards that has been put down for the Human Rights protection of the persons with defective hearing organs to warrant that those disable be able to have in-room hearings, to see and to read the oral articulations of a judge and others, to be able to actually to see and to notice all spoken legal matters involved in the case, to be able to manage their disability requirements and to hear all legal matters that may affect their legal rights.
- 3) copy of the disability standards the court shall and undertook to comply with as the Commonwealth office in general and as the Cl 5 Constitution "the court, the judges" in relation to the disable in court, and the hearing organs disable needs in the court.
- 4) copy of all and every document disability policy which in 2020 has been created to accommodate disable persons needs and hearing organs disable persons need for the access to the in-room hearings, and the copy of 2019 same nature of document regarding disable rights in relation to the court services.
- 5) Copy of the document which exhibits who is in 2020 has been put in charge and to be legally responsible on behalf of the Commonwealth for the decisions related to the court compliance with the Human Rights of disable with hearing organs defects.
- 6) What is the name and the position of that person(s) in s 5 above for the purpose of the Administrative Decisions Act and the First Optional Protocol to the ICCPR 1966.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Searches undertaken

Extensive searches were undertaken by various staff of the Court to identify all documents falling within the scope of your FOI request. This included a range of electronic searches of the Court's record management system and electronic network drives and extended to discussions with relevant staff. I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents captured by your request.

Decision

I have decided to refuse your FOI request for the reason that the FOI Act does not apply to your request due to the operation of subsection 5(1) of the FOI Act.

Under subsection 5(1), it is only open to you to make a request for documents that relate to "matters of an administrative nature". The documents you have requested are not documents that relate to "matters of an administrative nature" and, on this basis, I have determined that a valid request under the FOI Act has not been made. Alternatively, if a valid request has been made, none of the documents you have requested relate to "matters of an administrative nature" and, as such, the documents requested cannot be accessed under the FOI Act.

I have taken the following into account in making my decision:

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (**FOI Guidelines**)

Reasons for Decision

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and

(c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The FOI Act has a very limited application to the Court.¹ Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "matters of an administrative nature" in accordance with subsection 5(1).

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".²

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".³

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁴ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁵

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁶, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an

³ at [41]

 $^{^{1}}$ paragraphs 2.6 - 2.8 of the FOI Guidelines

² at [19]

⁴ at 13]

⁵ at [47]

^{6 (2008) 170} FCR 382

administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁷

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁸

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁹

The documents you have sought are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents that relate to the management and administration of registry and office resources but, rather, are documents that concern access to court hearings for people with disabilities. In this regard, I note that subsection 15(1) of the Federal Court of Australia Act 1976 (Cth) provides that the Chief Justice of the Court is responsible for "ensuring the effective, orderly and expeditious discharge of the business of the Court". Accordingly, access to court hearings is a matter that falls squarely within the responsibility of the Chief Justice and cannot be considered to relate to "matters of an administrative nature".

Since requests for access can only be made for documents relating to "matters of an administrative nature", I have determined that your FOI request has not been validly made under the FOI Act. Alternatively, if a valid request has been made, none of the documents you have requested relate to "matters of an administrative nature" and, as such, the documents requested cannot be accessed under the FOI Act.

Access to documents and information outside the scope of the FOI Act

The FOI Act provides a mechanism where it is possible to provide access to documents and information outside the scope of the FOI Act.

Section 3A of the FOI Act provides as follows:

(1) This section applies if a Minister, or an officer of an agency, has the power to publish, or give access to, information or a document (including an exempt document) apart from under this Act.

⁸ at [51]

⁷ at [51]

⁹ at [75] and [76]

- (2) The Parliament does not intend, by this Act, to limit that power, or to prevent or discourage the exercise of that power:
 - (a) in the case of the power to publish the information or document despite any restriction on the publication of the information or document under this Act; and
 - (b) in the case of the power to give access to the information or document whether or not access to the information or document has been requested under section 15.

Paragraph 1.44 of the FOI Guidelines provides:

The FOI Act is not intended to restrict the circumstances in which government information can be released. Section 3A(2) states that it is not the intention of the Parliament in enacting the FOI Act to limit the power of government agencies to publish information or provide access to documents, or to prevent or discourage agencies from doing so.

Paragraph 3.10 of the FOI Guidelines provides further:

Decision making under the FOI Act must take into account the objects in s 3. As discussed in further detail in Part 1 of these Guidelines, the objects embody a policy — or presumption — of open government that is relevant to all FOI decision making. This is emphasised in s 3(4), which states Parliament's intention 'that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost'. Another specific object, stated in s 3A, is that agencies and ministers retain an administrative discretion (subject to other legislation) to provide access to information and documents other than under the FOI Act.

In light of the above, I have determined that it would be appropriate to provide you with information in the Court's possession that is relevant to your FOI request.

In relation to Court hearings currently proceeding via remote access technology, there is information available on the COVID-19 section of the Court's website which can be accessed at this link: https://www.fedcourt.gov.au/covid19. This information includes an explanation of how and why the Court has modified its usual practices in response to the COVID-19 pandemic, as well as a user guide for online hearings which are generally run using Microsoft Teams. In relation to persons with hearing loss or impairment participating in online hearings, Microsoft Teams has a closed captions option which is available for all users.

If you would like assistance in relation a specific online hearing, you should contact the relevant Registry. In that regard, please see the "Help for People with Disabilities" page on the Court's website: https://www.fedcourt.gov.au/services/help-for-people-with-disabilities. If you are a party or a witness to proceedings, AUSLAN interpreters are also available and can be arranged through the Court by contacting the relevant Registry.

In relation to the accessibility of courtrooms to people with disabilities, I note that the Court applies the requirements of the *Disability (Access to Premises – Buildings) Standards 2010* to all of its facilities. In addition, in all property-related planning activities the Court has regard to the *Disability Discrimination Act 1992 (Cth)*.

In relation to access to the Court's facilities more broadly, I have extracted below the following passage which is contained in the Court's "Accommodation Guidelines and Standards":

2.7 FACILITIES FOR DISABLED PERSONS

Disabled persons are to have access to buildings occupied by the FCA without unnecessary segregation or isolation from other users. The Federal Disability Discrimination Act (DDA) provides protection for everyone against discrimination based on disability.

The building and its immediate surrounds is to be compliant with the relevant Australian Standards on disability, the Building Code of Australia (BCA) and the Human Rights and Equal Opportunity (HREOC) guidelines.

These codes provide detail on requirements for:

- external access
- building access
- internal facilities
- lifts
- sanitary facilities
- signage

Concerning access to courtrooms for persons with hearing loss or impairment, each District Registry of the Court has at least one courtroom with a hearing loop installed. Arrangements can be made through the relevant Registry to assist individuals who are deaf or hearing impaired to utilise this facility. Interpreter services for persons with hearing loss, hearing impairment and/or speech impairment are also available for in-person hearings. Arrangements can be made through the relevant Registry for AUSLAN interpreters or CART (Communication Access Real-time Translation) service providers to accompany individuals who are deaf, hearing impaired and/or speech impaired at court events.

In addition to the above, I note the following passage contained in a document of the Court entitled "Audio-Visual Technology Requirements for Electronic Courtrooms":

The Court is to provide assistance for the hearing impaired, to improve their ability to hear proceedings. Generally, hearing aid loops have been used but these can sometimes affect the sound in nearby courtrooms.

The technology to be used:

• headphones receiving audio via an infrared receiver

The hearing aid augmentation facilities are to be commissioned by an appropriately qualified person.

Appropriate signage is to be placed outside courtrooms equipped with hearing augmentation facilities.

Finally, as you may already be aware, the National Relay Service (NRS) is a free telephone service that allows deaf, or hearing and/or speech impaired clients with a TTY machine, to make telephone calls to a Court Registry. More information about the NRS can be found at this link: https://www.communications.gov.au/what-we-do/phone/services-people-disability/accesshub/national-relay-service

Charges

You have not been charged for the processing of your request.

Your review rights

If you are dissatisfied with my decision, you may apply for internal review or to the Australian Information Commissioner for review of those decisions. As the decision maker, I

encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website at: https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely



C Hammerton Cole Registrar



From:

Sent: Thursday, 10 December 2020 11:25 AM **To:** External FOI <External.FOI@fedcourt.gov.au>

Subject: FOI access request

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear FOI Officer,

I would like to view documents in relation to the below cases please.

Kabbabe v Google LLC [2020] FCA 126

- (a) the originating application filed 6 December 2019;
- (b) the affidavit of affirmed 6 December 2019;
- (c) the affidavit of affirmed 10 February 2020
- (a) the originating application filed on 22 June 2020;
- (b) the affidavit of affirmed on 22 June 2020;
- (c) the affidavit of affirmed on 10 August 2020

In addition to the above all other related supporting documents submitted to the Court. Documents can be sent via email to to discuss this matter.

Yours Sincerely,



Telephone: (02) 9230 8567

FEDERAL COURT OF AUSTRALIA

Your Ref: Our Ref: LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

22 December 2020



Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) of 10 December 2020 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you have requested the following:

I would like to view documents in relation to the below cases please.

Kabbabe v Google LLC [2020] FCA 126 (a) the originating application filed 6 December 2019; (b) the affidavit of affirmed 6 December 2019; (c) the affidavit of affirmed 10 February 2020 Kukulka v Google LLC [2020] FCA 1229 (a) the originating application filed on 22 June 2020; (b) the affidavit of affirmed on 22 June 2020; (c) the affidavit of affirmed on 10 August 2020 In addition to the above all other related supporting documents submitted to the Court. Documents can be sent via email to . I can be reached on to discuss this matter.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your FOI request for the reason that the FOI Act does not apply to your request due to the operation of subsection 5(1) of the FOI Act.

Under subsection 5(1), it is only open to you to make a request for documents under the FOI Act that relate to "matters of an administrative nature". The documents you have requested are not documents that relate to "matters of an administrative nature" and, on this basis, I have determined that a valid request under the FOI Act has not been made.

All the documents you have requested would ordinarily be part of the court file for the relevant proceedings. Access to documents relating to proceedings in the Court are governed by the *Federal Court of Australia Act 1976* and the *Federal Court Rules 2011*.

Specifically, requests for documents that are part of a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. Information on accessing court documents can be found on the Court's website at: https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents. The information on the website includes a step-by-step guide on how to make a formal access request to the Court to inspect documents on the court file.

I have taken the following into account in making my decision:

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (**FOI Guidelines**)

Reasons for Decision

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, subsection 5(1) makes clear that the only request that can validly be made to

the Court under the FOI Act is to access a document that relates to "matters of an administrative nature".

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". ¹

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".²

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.³ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁴

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁵, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁶

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of

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<sup>1</sup> at [19]
<sup>2</sup> at [41]
<sup>3</sup> at 13]
<sup>4</sup> at [47]
<sup>5</sup> (2008) 170 FCR 382
<sup>6</sup> at [51]
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a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁷

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁸

The documents you have sought are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents concerning the management and administration of registry and office resources but, rather, are documents concerning court proceedings that would ordinarily be found on a court file.

Since requests for access can only be made for documents relating to "matters of an administrative nature", I have determined that your FOI request has not been validly made under the FOI Act.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Circuit Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

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⁷ at [51]

⁸ at [75] and [76]

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

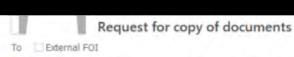
post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely



C Hammerton Cole **Registrar**



You forwarded this message on 7/01/2021 9:37 AM.

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Federal Court of Australia

I am writing to ask you for a copy (PDF) of the documents filed in the following case:

Best regards



Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) of 29 December 2020 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Specifically, you have requested access to PDF copies of documents filed in proceeding NSD 1076 of 2020 – Facebook Inc v Australian Information Commissioner.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your FOI request for the reason that the FOI Act does not apply to your request due to the operation of subsection 5(1) of the FOI Act.

Under subsection 5(1), it is only open to you to make a request for documents under the FOI Act that relate to "matters of an administrative nature". The documents you have requested are not documents that relate to "matters of an administrative nature" and, on this basis, I have determined that a valid request under the FOI Act has not been made.

All the documents you have requested would ordinarily be part of the court file for the relevant proceedings. Access to documents relating to proceedings in the Court are governed by the *Federal Court of Australia Act 1976* and the *Federal Court Rules 2011*.

Specifically, requests for documents that are part of a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. Information on accessing court documents can be found on the Court's website at:

https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

The information on the website includes a step-by-step guide on how to make a formal access request to the Court to inspect documents on the court file.

I have taken the following into account in making my decision:

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines)

Reasons for Decision

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, subsection 5(1) makes clear that the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "matters of an administrative nature".

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". 1

Further, the High Court held:

¹ at [19].

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".²

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.³ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁴

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁵, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁶

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁷

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁸

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<sup>2</sup> at [41].
<sup>3</sup> at 13].
<sup>4</sup> at [47].
<sup>5</sup> (2008) 170 FCR 382.
<sup>6</sup> at [51].
<sup>7</sup> at [51].
<sup>8</sup> at [75] and [76].
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The documents you have sought are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents concerning the management and administration of registry and office resources. They are documents concerning court proceedings that would ordinarily be found on a court file.

Since requests for access can only be made for documents relating to "matters of an administrative nature", I have determined that your FOI request has not been validly made under the FOI Act.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Circuit Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely,



Scott Tredwell

Acting Deputy Principal Registrar

External FOI

From:
Sent: Wednesday, 6 January 2021 4:24 PM

To: External FOI Subject: FOI request

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir/Madam,

For the purposes of the FOI Act, I apply for copy of records relating to the application and granting (including reasons for granting) of a the court that was originally filed in my own name before said pseudonym was applied by the Court.

I originally sought access to these records via a Party Access to Files request, but was told by a Registry staff member in reply that that access only applied to documents filed by the parties (which I already have access to via ComCourts) or a transcript (if held on the court file), "not the administrative record of the Court".

As I am the person to whom this pseudonym applies, it is personal information about me. This email address is registered as the address for service for myself with the Court.

Warmest Regards



Your Ref: Our Ref:	
3 February 2021	
	By email:
Dear ,	

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) of 6 January 2021 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Your request reads as follows:

For the purposes of the FOI Act, I apply for copy of records relating to the application and granting (including reasons for granting) of a that was originally filed in my own name before said pseudonym was applied by the Court.

I originally sought access to these records via a Party Access to Files request, but was told by a Registry staff member in reply that that access only applied to documents filed by the parties (which I already have access to via ComCourts) or a transcript (if held on the court file), "not the administrative record of the Court".

As I am the person to whom this pseudonym applies, it is personal information about me. This email address is registered as the address for service for myself with the Court.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your FOI request for the reason that the FOI Act does not apply to your request due to the operation of subsection 5(1) of the FOI Act.

Under subsection 5(1) of the FOI Act, the FOI Act only applies to requests for documents of the Court where those documents relate to "matters of an administrative nature". The documents you have requested are not documents that relate to "matters of an administrative nature" for the purposes of the FOI Act and, on this basis, I have determined that a valid request under the FOI Act has not been made.

I have taken the following into account in making my decision:

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines)

Reasons for Decision

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, subsection 5(1) makes clear that the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "matters of an administrative nature".

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". 1

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".²

¹ at [19].

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.³ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁴

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁵, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁶

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁷

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁸

The documents you have sought are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents concerning the management and administration of registry and office resources. They are documents concerning proceedings of the Court.

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<sup>2</sup> at [41].

<sup>3</sup> at 13].

<sup>4</sup> at [47].

<sup>5</sup> (2008) 170 FCR 382.

<sup>6</sup> at [51].

<sup>7</sup> at [51].

<sup>8</sup> at [75] and [76].
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Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Circuit Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely,

Scott Tredwell

Acting Deputy Principal Registrar

External FOI

From:
Sent: Tuesday, 19 January 2021 4:53 PM

To: External FOI Subject: FOI request

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir/Madam,

For the purposes of the FOI Act, I apply for copy of any record of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of an exhibit list (or other listing of evidence received during hearing) in the second of the

Registrar Buckingham from the Brisbane Registry was originally going to obtain a copy, and had made enquiries to that end, but as I have not heard back from him for some time, it may be appropriate to change that administrative access request of 29 December 2020 (which he acknowledged on 31 December 2020), to a formal FOI request.

This email address is registered as the address for service for myself with the Court, for that proceeding.

Warmest Regards





05 February 2021

		By email:	
Dear	,		

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) of 19 January 2021 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Your request reads as follows:

For the purposes of the FOI Act, I apply for copy of any record of an exhibit list (or other listing of evidence received during hearing) in a compared to the purposes of the FOI Act, I apply for copy of any record of an exhibit list (or other listing of evidence received during hearing) in the purposes of the FOI Act, I apply for copy of any record of an exhibit list (or other listing of evidence received during hearing) in the purposes of the FOI Act, I apply for copy of any record of an exhibit list (or other listing of evidence received during hearing) in the purpose of the FOI Act, I apply for copy of any record of an exhibit list (or other listing of evidence received during hearing) in the purpose of the FOI Act, I apply for copy of any record of an exhibit list (or other listing of evidence received during hearing) in the purpose of the FOI Act, I apply for copy of any record of an exhibit list (or other listing of evidence received during hearing) in the purpose of the pur

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your FOI request for the reason that the FOI Act does not apply to your request due to the operation of subsection 5(1) of the FOI Act.

Under subsection 5(1) of the FOI Act, the FOI Act only applies to requests for documents of the Court where those documents relate to "matters of an administrative nature". The documents you have requested are not documents that relate to "matters of an administrative nature" and, on this basis, I have determined that a valid request under the FOI Act has not been made.

I have taken the following into account in making my decision:

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines)

Reasons for Decision

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, subsection 5(1) makes clear that the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "matters of an administrative nature".

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". ¹

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".²

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.³ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

¹ at [19].

² at [41].

³ at 131.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁴

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁵, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁶

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁷

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁸

The document you have sought, being 'exhibit list (or any other listing of evidence received during hearing) in VID416/2017', are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents concerning the management and administration of registry and office resources. They are documents concerning proceedings of the Court.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

⁴ at [47].

⁵ (2008) 170 FCR 382.

⁶ at [51].

⁷ at [51].

⁸ at [75] and [76].

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Circuit Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely,

Scott Tredwell

Acting Deputy Principal Registrar

From:
To: External FOI

Subject:
Date: Thursday, 4 March 2021 12:20:20 PM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sir/Madam,

I would like to make an application for the purposes of the FOI Act and seek copies of the following:

All documentation including notes, emails, letters, telephone records of any conversation between the court concerning the above matter and in particular concerning the original decision to delay this hearing that was originally set to be heard in April 26 2021 before Anderson J .

All records between the representatives of the Commonwealth of Australia (Australian Taxation Office) directly or indirectly affecting the decision to change to original court hearing date relating to the matter of Harilaos Serpanos vs Commonwealth of Australia due to be heard in the Federal Circuit Court now on the 17 June 2021

Please send documents to



1 April 2021

4 Maldon Court Wheelers Hill Vic 3150

By email:

Dear ,

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) of 4 March 2021 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you have requested the following:

All documentation including notes, emails, letters, telephone records of any conversation between the court concerning the above matter and in particular concerning the original decision to delay this hearing that was originally set to be heard in April 26 2021 before Anderson J.

All records between the representatives of the Commonwealth of Australia (Australian Taxation Office) directly or indirectly affecting the decision to change to original court hearing date relating to the matter of Harilaos Serpanos vs Commonwealth of Australia due to be heard in the Federal Circuit Court now on the 17 June 2021

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your FOI request for the reason that the FOI Act does not apply to your request due to the operation of subsection 5(1) of the FOI Act.

Under subsection 5(1), it is only open to you to make a request for documents under the FOI Act that relate to "matters of an administrative nature". The documents you have requested are not documents that relate to "matters of an administrative nature" and, on this basis, I have determined that a valid request under the FOI Act has not been made.

I have taken the following into account in making my decision:

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (**FOI Guidelines**)

Reasons for Decision

The FOI Act has a very limited application to the Court.¹ Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, subsection 5(1) makes clear that the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "matters of an administrative nature".

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

 $^{^{1}}$ paragraphs 2.8 - 2.10 of the FOI Guidelines

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".²

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".³

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁴ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁵

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁶, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁷

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁸

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

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<sup>2</sup> at [19]
<sup>3</sup> at [41]
<sup>4</sup> at 13]
<sup>5</sup> at [47]
<sup>6</sup> (2008) 170 FCR 382
<sup>7</sup> at [51]
<sup>8</sup> at [51]
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Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁹

The documents you have sought are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents concerning the management and administration of registry and office resources but, rather, are documents concerning Court proceedings.

Since requests for access can only be made for documents relating to "matters of an administrative nature", I have determined that your FOI request has not been validly made under the FOI Act.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

⁹ at [75] and [76]

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely



C Hammerton Cole **Registrar** From:
To: External FOI:

Subject:
Date: Thursday, 1 April 2021 9:30:41 PM

Attachments: 2021 04 01 - Response to FOI request - Serpanos.pdf

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear sir/madam,

I would like to seek an internal review of the decision made by Registrar Mr Hammerton Cole.

My reason for a review is because i am a party to the proceedings against the Commonwealth of Australia (ATO) and I am entitled under Rule 2.32 of the Federal Court Rules 2011 (Cth) to inspect any document that is relevant to my proceedings against the Commonwealth of Australia (ATO) concerning myself

I am requesting once again inspection of any correspondence with the Australian Taxation Office in relation to the delay and or deferring of my original hearing date that was set down for hearing in April 2021 and then deferred to March 2022. Resulting in an application made for the matter to be bought back for hearing on the 17 June 2021 by myself.

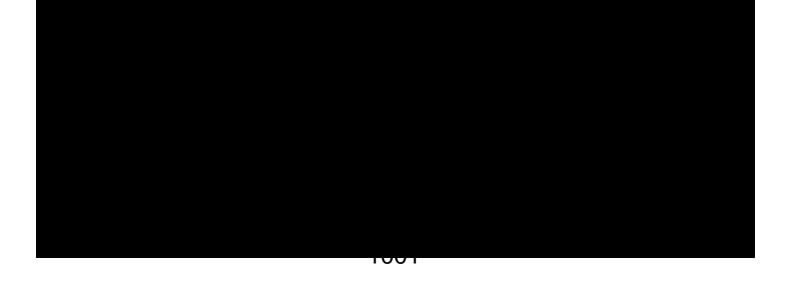
I base my review upon the principles of "open Justice" being seen to be done and nothing is withheld that impacts upon myself as the party to the proceedings.

I am not seeking any documents relating to the decision on the original hearing date in April 2021, but any documentation relating to any communications made between the court and the ATO (if there are any) that resulted or influenced the deferral of the change of hearing dates.

I implore you to please reconsider my request once again.

Kind regards

1 April 2021.







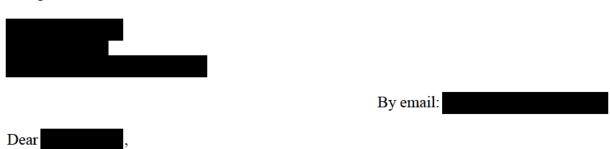


FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

A.B.N. 49 110 847 399

HARRY GIBBS COMMONWEALTH LAW COURTS 119 NORTH QUAY BRISBANE QLD 4000

30 April 2021



Request for an internal review under the Freedom of Information Act 1982

I refer to your email of 1 April 2021 seeking an internal review of the decision made by Registrar Hammerton Cole on behalf of the Federal Court of Australia (the **Federal Court**), on 1 April 2021, refusing you access to documents you requested under the *Freedom of Information Act 1982* (**FOI Act**). An acknowledgement of receipt of this email was sent to you on 22 April 2021.

I am authorised under the FOI Act to make a decision on behalf of the Court in relation to your internal review request.

Background

On 4 March 2021, you sent an email to the <u>External.FOI@fedcourt.gov.au</u> mailbox for access to documents under the *Freedom of Information Act 1982 (Cth)*. Specifically, you requested:

All documentation including notes, emails, letters, telephone records of any conversation between the court concerning the above matter and in particular concerning the original decision to delay this hearing that was originally set to be heard in April 26 2021 before Anderson J.

All records between the representatives of the Commonwealth of Australia (Australian Taxation Office) directly or indirectly affecting the decision to change to original court hearing date relating to the matter of Harilaos Serpanos vs Commonwealth of Australia due to be heard in the Federal Circuit Court now on the 17 June 2021.

On 1 April 2021, Registrar Hammerton Cole refused access to the documents requested as the documents requested did not relate to matters of an administrative nature. I attach Registrar Hammerton Cole's letter of decision dated 1 April 2021 for ease of reference (**Annexure-1**).

On 1 April 2021, you sent an email to the External.FOI@fedcourt.gov.au mailbox of the Federal Court. In that email, you sought an internal review of Registrar Hammerton Cole's refusal decision. Specifically, you noted:

I would like to seek an internal review of the decision made by Registrar Mr Hammerton Cole.

My reason for a review is because to the proceedings against the Commonwealth of Australia and I am entitled under Rule 2.32 of the Federal Court Rules 2011 (Cth) to inspect any document that is relevant to my proceedings against the Commonwealth of Australia (ATO) concerning myself Harilaos Serpanos.

I am requesting once again inspection of any correspondence with the in relation to the delay and or deferring of my original hearing date that was set down for hearing in April 2021 and then deferred to March 2022. Resulting in an application made for the matter to be brought back for hearing on the 17 June 2021 by myself.

I base my review upon the principles of "open Justice" being seen to be done and nothing is withheld that impacts upon myself as the party to the proceedings.

I am not seeking any documents relating to the decision on the original hearing date in April 2021, but any documentation relating to any communications made between the court and the resulted or influenced the deferral of the change of hearing dates.

Summary of Decision on Internal Review

For the reasons set out below, after reconsidering your request received by the Court on 1 April 2021, and Registrar Hammerton Cole's access refusal decision, I have decided to refuse access to the documentation requested in your FOI request dated 4 March 2021. Pursuant to section 5 of the FOI Act, the FOI Act does not apply to the documents to which you seek access.

Materials taken into account

I have taken the following material into account in making my decision:

- your FOI request of 4 March 2021;
- Registrar Hammerton Cole's letter to you dated 1 April 2021 (Annexure 1);
- your internal review request dated 1 April 2021;
- the FOI Act:
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; and
- relevant case law.

Reasons for internal review decision

In the access refusal decision, Registrar Hammerton Cole explained the limited application that the FOI Act has to the Federal Court. In particular, Registrar Hammerton Cole explained that the FOI Act does not apply to any request for access to a document of the Court unless the document relates to matters of an administrative nature¹.

Registrar Hammerton Cole also explained that both the High Court of Australia and the Full Court of the Federal Court had considered the phrase 'matters of an administrative nature' in the context of the FOI Act and determined its scope.

Further, the Registrar also explained that while although the Federal Court is a "prescribed authority" for the purposes of the FOI Act², the only request that can validly be made to it under the FOI Act is to access "a document that relates to matters of an administrative nature"³.

¹ section 5 FOI Act

² Paragraph 5(1)(a) FOI Act

³ section 5 FOI Act

The law in respect of what constitutes a document that relates to matters of an administrative nature is clear. Registrar Hammerton Cole clearly outlined the relevant case law in her response. Namely, the decision of the High Court in *Kline v Official Secretary to the Governor-General* [2013] HCA 52.

The documents sought by you are not documents that relate to matters of an administrative nature for the purposes of section 5 of the FOI Act. I adopt Registrar Hammerton Cole's conclusion that the documents sought in your FOI request dated 4 March 2021 are not documents that relate to matters of an administrative nature.

Inspection request

Along with your request for an internal review, you also noted the following:

My reason for a review is because i am a party to the proceedings against the Commonwealth of Australia (ATO) and I am entitled under Rule 2.32 of the Federal Court Rules 2011 (Cth) to inspect any document that is relevant to my proceedings against the Commonwealth of Australia (ATO) concerning myself Harilaos Serpanos.

Access to documents relating to proceedings in the Court are governed by the *Federal Court of Australia Act 1976 (Cth)* and the *Federal Court Rules 2011 (Cth)*. The procedures for access to documents pursuant to the Federal Court Rules are separate and distinct from those relating to requests under the FOI Act. Information on accessing court files can be found on the Federal Court of Australia's website at https://www.fedcourt.gov.au/services/access-to-files-and-transcripts.

Specifically, requests for documents that are part of a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents on a court file can be found on the Federal Court's website at: https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

I also note that the Court's case management system indicates that you are legally represented. Your legal representation can provide further information and assistance about inspecting a court file.

Charges

You have not been charged for the processing of your request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR 10

email: <u>FOIDR@oaic.gov.au</u>

post: GPO Box 5218, Sydney NSW 2001 in person: Level 3, 175 Pitt Street, Sydney NSW 2000 More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely



Scott Tredwell Acting Deputy Principal Registrar





From: External FOI To: Subject: Freedom of Information request - Request for access to employment documents Date: Monday, 15 March 2021 9:04:02 AM Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe. Dear Federal Court of Australia, I request documents under the FOI Act. Notices, decisions and documents issued under the FOI Act in response to this request can be sent to me by return email (through the It is my understanding that there has been an officer responsible for publishing listings of proceedings in the New South Wales District Registry of the Federal Court of Australia (NSWDR) since at least 1 January 2010. The officer has, informally, been referred to as, among other things, the listings officer, listings manager, listings coordinator, senior court officer, listings and events manager or court support coordinator by people in the NSWDR. Part 1 I would like access to any and all documents, from 1 January 2010 to the date of this request, that could reasonably be described as a formal position description of the work that the officer responsible for publishing listings of proceedings in the NSWDR was, and is, required to do. Any position descriptions would, or should, contain the group of duties that the officer responsible for publishing listings of proceedings in the NSWDR was, and is, required to do. It may also contain the formal position titles of that officer, the classification of that officer (e.g. FCS5 or APS5) and the nature of that officer's engagement (e.g. ongoing APS employee, non-ongoing APS employee).

Past 2

I would like access to the set of documents that, broadly speaking, correspond to the role evaluation report that would have been, or should have been, prepared when a vacancy first existed for someone to undertake the duties of the officer responsible for publishing listings of proceedings in the NSWDR.

I would also like access to the set of documents, in existence from 1 January 2010 to the date of this request, that, broadly speaking, correspond to the role evaluation report that would have been, or should have been,

prepared, and updated, in respect of the role undertaken by the officer responsible for publishing listings of proceedings in the NSWDR.

Based on my understanding on what a role evaluation report should contain (that understanding is informed by the Role Evaluation Guidance and Tool, issued by the Australian Public Service Commission in 2014), please ensure that the documents furnished in response to Part 2 of this request contain the following information:

- job title;
- evaluation date:
- name of the person responsible for conducting the evaluation;
- name of the person responsible for any past role evaluations in respect of the officer responsible for publishing listings of proceedings in the NSWDR;
- role status (new or existing);
- date of role creation;
- primary purposes / main objectives of the role;
- list of sources of information and evidence that has been used to inform the evaluation of the role of the person responsible for publishing listings of proceedings in the NSWDR;
- information about evaluation factors, including scores and explanations of rationale or evidence adopted, in respect of the following factors: knowledge application, accountability, scope and complexity, guidance, decision-making, problem solving, contacts and relationships, management responsibility, and resource accountability;
- the approval of the Agency Head or relevant delegate in respect of the classification level assigned to the role of the person responsible for publishing listings of proceedings in the NSWDR;
- the signature of the Agency Head or relevant delegate on the role evaluation report; and
- the date that the role evaluation report was signed.

In the event that the Agency Head or the Agency Head's delegate in the Federal Court of Australia has, for some reason, refused to adopt the Australian Public Service Commission's evaluation template to conduct role evaluations, please ensure that any and all documents relating to role evaluations in respect of duties undertaken by the person responsible for publishing listings of proceedings in the NSWDR, from 1 January 2010 to the date of this request, are granted access to. Even if the documents you have access to do not each contain the information that should be recorded on a role evaluation report prepared by a diligent public servant, please grant access to any and all documents relating to role evaluations in respect of duties undertaken by the person responsible for publishing listings of proceedings in the NSWDR, from 1 January 2010 to the date of this request. I will aggregate the information contained in those documents to form a complete picture of the role evaluation.

Part 3

A vacancy notice for the position of listings coordinator in the NSWDR was published in the Public Service

Gazette. The relevant issue was issue number The relevant vacancy number was . The role was classified at the APS5 classification and the nature of engagement was set as ongoing. To the extent that the decision maker does not believe that the documents that are to be requested are covered by Parts 1 and 2 of this request, please grant access to the position description associated with vacancy , as well as the role evaluation report associated with vacancy .				
If a role evaluation report was not prepared for vacancy contrary to the appropriate practices that inform the way that an Agency Head or delegate should prepare evaluation reports, please provide access to any and all documents and records that shed light on the following information, in relation to role of listings coordinator:				
•	job title;			
•	evaluation date;			
•	name of the person responsible for conducting the evaluation for the listings coordinator role;			
	name of the person responsible for any past role evaluations in respect of the officer responsible for shing listings of proceedings in the NSWDR;			
•	role status (new or existing);			
•	date of role creation;			
•	primary purposes / main objectives of the listing coordinator role;			
	list of sources of information and evidence that has been used to inform the evaluation of the role of the gs coordinator;			
• information about evaluation factors, including scores and explanations of rationale or evidence adopted, in respect of the following factors: knowledge application, accountability, scope and complexity, guidance, decision-making, problem solving, contacts and relationships, management responsibility, and resource accountability;				
	the name and position of the person who approved the classification level assigned to the listings linator role;			
•	the date on which the relevant person approved the classification of the listings coordinator role.			
	the name and position of the person who approved the nature of engagement (i.e. ongoing APS employee) spect of the listings coordinator role; and			
•	the date on which the relevant person approved the nature of engagement of the listings coordinator role.			
Part 4	4			
from	ect to what follows in the paragraph immediately below, I would like access to any and all vacancy notices, 1 January 2010 to the date of this request, published in the Public Service Gazette in respect of the role of fficer responsible for publishing listings of proceedings in the NSWDR.			
You	do not need to provide me with access to vacancy, which was published in the Public Service			



From: External FOI

Subject: Freedom of Information request - Request for access to documents

Date: Saturday, 27 March 2021 3:26:39 PM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Federal Court of Australia,

I am submitting this request under the FOI Act 1982.

A vacancy notice for the position of Listings Coordinator in the NSW District Registry of the Federal Court was published in the Public Service Gazette. The relevant issue was number . The relevant vacancy number was I would like access to the selection report relating to the successful candidate for the Listings Coordinator position in the NSW District Registry of the Federal Court.

Please do not hesitate to redact the name of the successful candidate from the selection report, but please ensure that the reasons of the selection panel are not redacted. Please also ensure that any date information, the names of the members of the selection panel and any signatures that members of the selection panel have applied to the selection report are not redacted from the selection report. Notices, decisions and documents issued under the FOI Act in response to this request can be sent to me by return email.



From:
To: External FOI

Subject: FOI Request - Access to documents

Date: Monday, 19 April 2021 12:16:40 PM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

I request documents under the FOI Act 1982.

Notices, decisions and documents issued under the FOI Act in response to this request can be sent to me by return email.

I started working in the NSW District Registry of the Federal Court in Started working in the NSW District Registry of the Federal Court I was a casual, non-ongoing court officer. During my almost decade of service in the NSW District Registry of the Federal Court, several people were responsible for the publication of listings information in respect of proceedings in the NSW District Registry of the Federal Court. There was an analogous position in the Victoria District Registry of the Federal Court. Among those who held the analogous position was

During my time working in the NSW District Registry of the Federal Court, there has always been an officer responsible for publishing listings of proceedings in the Victoria District Registry of the Federal Court. Those officers should have done so on a full-time basis because the duties have ever had to be performed on a full-time basis. In other words, the duties were not irregular or intermittent.

I would like access to the following documents.

PART 1

I would like access to the contract of employment provided to

was engaged on a short term, irregular or intermittent basis, please also provide any extensions of contracts of engagement provided by the Agency Head, or the Agency Head's delegate, of the relevant agency.

You are welcome to redact personal details such as address, telephone number and email address. Please do not redact details relating to the classification of the role (eg. APS 5), the nature of the engagement (eg. ongoing or non-ongoing) and any date information. Please also do not redact the name of the Agency Head or delegate who offered the contract of employment. To the extent that extensions to the contract of employment were offered to please do not redact the name of the Agency Head or Delegate who offered the extension and please do not redact the dates relating to any of those extensions.

Please also provide the position description, role evaluation report, and to the extent that it applies, the vacancy notice published in the Public Service Gazette that correspond to the contract of employment, or, to the extent applicable, extensions of engagements, entered into by

PART 2

To the extent that publishing, or anybody else undertaking the role of the officer responsible for publishing listings in the Victoria District Registry of the Federal Court, was engaged on a nonongoing basis at any time from 1 January 2010 to the date of this request, please provide any documents recording the views of the Agency Head, or his or her delegate, as to why the person undertaking the role of the officer responsible for publishing listings should have been engaged on a non-ongoing basis. Please also provide any documents containing records made by the Agency Head or his delegate in furtherance of Regulation 3.5 of the Public Service Regulations 1999 as to the reasonable estimate of the time required for the performance of the duties of the officer responsible for publishing listings in the Victoria District Registry of the Federal Court on a non-ongoing basis.

Sincerely,



From:
Sent: Wednesday, 12 May 2021 10:43 AM
To:
Cc:

Subject: RE:

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Hi Andrew

Apologies for the delay in coming back to you — does not press his outstanding FOI requests.

Regards













From:
To: External FOI

Cc:
Subject: Freedom of information request
Date: Friday, 19 March 2021 12:08:41 PM

UNCLASSIFIED

Good Afternoon Scott,

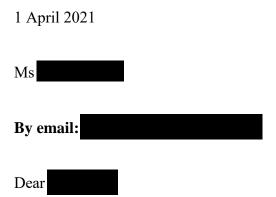
I am writing a request under the purpose of the Freedom of Information Act under section 11A 'Access of documents on request' in accordance with subsection 15(2).

My freedom of information request pertains to my personal HR documents on record with the Federal Court of Australia (FCA). I wish to obtain copies of **ALL** documents on my HR file as an employee permitted under the Privacy Act and the Office of the Australian Information Commissioner . This request is inclusive of the investigation I was subject to for workplace bullying in 2019 . This information is not subject to the archives act nor public interest exemption or Part IV of the Act for exempt documents.

Please let me know if there is a cost involved, as I do not believe this applies in this instance in providing these documents, as these documents relate to myself personally my understanding is there is no cost involved.

These documents and any further c	communication in regards to this request can be ser
electronically to	or I can be contacted on

Kind Regards



Request for access to documents under the Freedom of Information Act 1982

I acknowledge receipt of your request, dated 19 March 2021 and communicated by email to the Federal Court of Australia (the **Court**), for access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you have requested the following:

My freedom of information request pertains to my personal HR documents on record with the Federal Court of Australia (FCA). I wish to obtain copies of <u>ALL</u> documents on my HR file as an employee permitted under the Privacy Act and the Office of the Australian Information Commissioner. This request is inclusive of the investigation I was subject to for workplace bullying in 2019. This information is not subject to the archives act nor public interest exemption or Part IV of the Act for exempt documents.

Under subsection 15A(2) the FOI Act, where there are "established procedures in an agency" for past or present employees to access their personnel records, the person wishing to obtain access to their personnel records must first utilise those established procedures rather than applying under the FOI Act for access to such records. Subsection 15A(2) provides:

Where:

- (a) there are established procedures in an agency (apart from those provided for by this Act) in accordance with which a request may be made by an employee of the agency for access to his or her personnel records; and
- (b) a person who is or was an employee of the agency wishes to obtain access to his or her personnel records;

the person must not apply under section 15 for access to such records unless the person:

- (c) has made a request for access to the records in accordance with the procedures referred to in paragraph (a); and
- (d) either:
 - (i) is not satisfied with the outcome of the request; or
 - (ii) has not been notified of the outcome within 30 days after the request was made.

(c) has made a request

The Court's "established procedures" for accessing personnel records are found in the Court's Personal Information Statement, which is available on the Court's intranet and a copy of which accompanies this letter. I understand that you have not yet made a request to access your personnel records using the Court's "established procedures". Of course, if this is incorrect please advise me as soon as possible.

On the basis that you have not yet made a request for your personnel records using the Court's "established procedures", subsection 15A(2) of the FOI Act prohibits you from applying for access to your personnel records under the FOI Act unless you are not satisfied with the outcome of your request made under the Court's established procedures or have not been notified of the outcome of your request within 30 days after it was made.

Given what I have outlined above regarding subsection 15A(2), I am proposing not to provide a formal decision in response to your FOI request in order to give you the opportunity to make a request for access to your personnel records using the Court's "established procedures". If you would nonetheless like to pursue the FOI request you made to the Court on 19 March 2021, please advise me as soon as possible and I will provide a decision to you within the legislated timeframe. However, as foreshadowed, my decision will apply subsection 15A(2) which only allows requests for personnel records to be made under the FOI Act in very limited circumstances.

Yours sincerely,

C Hammerton Cole

Registrar

From:
To: External FOI

Subject: Freedom of Information Act 1982 (Cth) Application

Date: Tuesday, 23 March 2021 11:57:47 AM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

To whom it concerns,

1. I request from the Registry of the Federal Court of Australia, under the Freedom of Information Act 1982 (Cth), all documents, within the meaning of the Freedom of Information Act 1982 (Cth) s 4, in the possession of the Registry of the Federal Court of Australia, that contain the personal information, within the meaning of the Freedom of Information Act 1982 (Cth) s 4, of about or in relation to file number ("the documents").

2. For the avoidance of doubt:

- a. the provision of any document, within the meaning of the *Freedom of Information Act 1982* (Cth) s 4, or any part thereof, for which any fee or charge would be payable by me is not within the scope of the request made under the *Freedom of Information Act 1982* (Cth) set forth within Paragraph 1 herein; and
- b. without limiting that set forth within Paragraph 2.a herein:
 - any information that would otherwise be redacted within "the documents" by the Registry of the Federal Court of Australia is within the scope of the request made under the *Freedom of Information Act 1982* (Cth) set forth within Paragraph 1 herein;
 - ii. I oppose any redaction of "the documents"; and
 - iii. the full name, personal logon identifiers and direct contact details of staff of the Registry of the Federal Court of Australia are within the scope of the request made under the *Freedom of Information Act 1982* (Cth) set forth within Paragraph 1 herein.
- 3. Without otherwise limiting that set forth within Paragraphs 1 and 2 herein, I authorise the Registry of the Federal Court of Australia to, at its discretion, release "the documents" to me informally *in lieu* of under the *Freedom of Information Act 1982* (Cth).
- I respectfully request that:
 - a. "the documents" be provided to me; and
 - I only be communicated within in relation to that set forth herein;

via email to .

5. I thank the Registry of the Federal Court of Australia in advance for its prompt

forthcoming consideration, compliance, assistance and response in relation to that set forth herein.

Yours faithfully,



FEDERAL COURT OF AUSTRALIA

LEVEL 17 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000

16 April 2021			
By email:	į		
Dear			

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (Court) of 23 March 2021 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). Specifically, you have requested the following:

- 1. I request from the Registry of the Federal Court of Australia, under the Freedom of Information Act 1982 (Cth), all documents, within the meaning of the Freedom of Information Act 1982 (Cth) s 4, in the possession of the Registry of the Federal Court of Australia, that contain the personal information, within the meaning of the Freedom of Information Act 1982 (Cth) s 4, of about or in relation to file number ("the documents").
- 2. For the avoidance of doubt:
 - a. the provision of any document, within the meaning of the Freedom of Information Act 1982 (Cth) s 4, or any part thereof, for which any fee or charge would be payable by me is not within the scope of the request made under the Freedom of Information Act 1982 (Cth) set forth within Paragraph 1 herein; and
 - b. without limiting that set forth within Paragraph 2 a herein:
 - any information that would otherwise be redacted within "the documents" by the Registry of the Federal Court of Australia is within the scope of the request made under the Freedom of Information Act 1982 (Cth) set forth within Paragraph 1 herein;
 - ii. I oppose any redaction of the "the documents"; and
 - iii. the full name, personal logon identifiers and direct contact details of staff of the Registry of the Federal Court of Australia are within the scope of the request made under the Freedom of Information Act 1982 (Cth) set forth within Paragraph 1 herein.
- 3. Without otherwise limiting that set forth within Paragraphs 1 and 2 herein, 1 authorise the Registry of the Federal Court of Australia to, at its discretion, release "the documents" to me informally in lieu of under the Freedom of Information Act 1982 (Cth).

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your FOI request for the reason that the FOI Act does not apply to your request due to the operation of subsection 5(1) of the FOI Act.

Under subsection 5(1), it is only open to you to make a request for documents under the FOI Act that relate to "matters of an administrative nature". The documents you have requested are not documents that relate to "matters of an administrative nature" and, on this basis, I have determined that a valid request under the FOI Act has not been made.

I have taken the following into account in making my decision:

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Reasons for Decision

The FOI Act has a very limited application to the Court.¹ Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, subsection 5(1) makes clear that the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "matters of an administrative nature".

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

-

¹ paragraphs 2.8 – 2.10 of the FOI Guidelines

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".²

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".³

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁴ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁵

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁶, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁷

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of

² at [19]

³ at [41]

⁴ at 13]

⁵ at [47]

⁶ (2008) 170 FCR 382

⁷ at [51]

a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.8

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of ... functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.

The documents you have sought are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents concerning the management and administration of registry and office resources but, rather, are documents concerning Court proceedings.

Since requests for access can only be made for documents relating to "matters of an administrative nature", I have determined that your FOI request has not been validly made under the FOI Act.

All or some of the documents captured by your request may be part of the court file for the relevant proceedings in the Court. Access to documents relating to proceedings in the Court are governed by the Federal Court of Australia Act 1976 (Cth) and the Federal Court Rules 2011 (Cth).

Specifically, requests for documents that are part of a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents on a court file can be found on the Federal Court's website at: https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

-

⁸ at [51]

⁹ at [75] and [76]

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

B Henderson

FOI Officer



From:

Sent: Friday, 26 March 2021 5:55 PM

To: QLD Registry Email <qldreg@fedcourt.gov.au>; Query Account

<Query.Account@fedcourt.gov.au>

Subject: Re: Lodgement - Refuse to file letter

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Registry

Further to below could you please treat my request as a Freedom of Information Act 1982 request.

Regards

From:

Sent: Friday, 26 March 2021 5:33 PM

To: QLD Registry Email query@fedcourt.gov.au>; query@fedcourt.gov.au

<query@fedcourt.gov.au>

Subject: Re: Lodgement ID 959578 - Refuse to file letter

After all this time.

Not a word of explanation

Amazing....

So please provide written reasons and a copy of the order so that I may consider avenues of a review or appeal

Regards

From: QLD Registry Email <<u>qldreg@fedcourt.gov.au</u>>

Sent: Friday, 26 March 2021 5:05 PM

To:

Subject: Lodgement - Refuse to file letter

UNCLASSIFIED

Good afternoon

I refer to your application submitted under e-Lodgment on 18 March 2021.

The lodgement has been rejected as per the reasons set out in the attached letter.

Regards

Client Services

Federal Court of Australia | Queensland Registry Harry Gibbs Commonwealth Law Courts, 119 North Quay, Brisbane Q 4000

p. | www.fedcourt.gov.au



FEDERAL COURT OF AUSTRALIA

LEVEL 17
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

16 April 2021

Dear

By email:

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (Court) of 24 March 2021 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). Specifically, you requested the following:

Please provide a copy of emails, file notes or other documents that relate to the handing of this application dating from 3 Mar 2021.

On 7 April 2021, you were sent a letter from the Acting Deputy Principal Registrar acknowledging receipt of your request. On 7 April 2021, you replied by email, to a request in the acknowledgment letter confirming that we understood your request correctly, and stated the following:

Yes, you are basically correct.

I request copies of emails, file notes, instructions, Court orders, written reasons or explanations for action taken by registry and court staff and judicial officers and any documents referring and/or relevant to my applications that were rejected.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

Under section 5(1) of the FOI Act, it is only open to you to make a request for documents that relate to "matters of an administrative nature". Furthermore, the FOI Act does not apply to judicial officers.

The documents you have requested are not documents that relate to "matters of an administrative nature". Some of the documents you requested are also documents of a judicial officer. On that basis, I have decided that a valid request, pursuant to the FOI Act, has not been made.

I have taken the following into account in making my decision:

- the terms of your request;
- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (FOI Guidelines).

Reasons for Decision

The FOI Act has a very limited application to the Court.¹ Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, subsection 5(1) makes clear that the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "matters of an administrative nature". Furthermore, paragraph 5(1)(b) makes clear that the FOI Act does not apply to judicial officers.

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

-

 $^{^{1}}$ paragraphs 2.8 - 2.10 of the FOI Guidelines

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".²

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".³

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology. The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁵

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁶, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁷

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁸

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance

³ at [41]

² at [19]

⁴ at 13]

⁵ at [47]

^{6 (2008) 170} FCR 382

⁷ at [51]

⁸ at [51]

of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.9

The documents you have sought are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. They are not documents concerning the management and administration of registry and office resources but, rather, are documents concerning Court proceedings.

As noted above, the FOI Act does not apply to judicial officers. ¹⁰ Consequently, any out of court correspondence of a judicial officer, could not be a document for which a valid request may be made pursuant to the FOI Act.

Since requests for access can only be made for documents relating to "matters of an administrative nature", I have determined that your FOI request has not been validly made under the FOI Act.

Some of the documents captured by your request may be part of the court file for the relevant proceedings in the Court. Access to documents relating to proceedings in the Court are governed by the Federal Court of Australia Act 1976 (Cth) and the Federal Court Rules 2011 (Cth).

Specifically, requests for documents that are part of a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents on a court file can be found on the Federal Court's website at: https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

If you have not already done so, you can also register on the Commonwealth Courts Portal which will provide you with access to filed documents, judgments and court orders. More information on the Portal can be found on the Federal Court's website at: https://www.fedcourt.gov.au/online-services/commonwealth-courts-portal.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

⁹ at [75] and [76]

¹⁰ paragraph 5(1)(b) of the FOI Act

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely

B Henderson

FOI Officer

From: To:

Query Account; External FOI

Subject: Re: Previous case dismissed request foi log and rectification

Date: Friday, 30 April 2021 5:44:06 PM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear FOI,

I would like to request a list of my submissions and attempts to start cases through Federal Court Circuit since 2018 to date.

Can I do this through this channel?

Best regards.

Subject: RE: Previous case dismissed request foi log and rectification

Date: Friday, 30 April 2021 6:00:32 PM

UNCLASSIFIED Dear Sir/Madam

You refer to your submissions and attempts to start cases in the Federal Circuit Court - so you will need to contact the Federal Circuit Court FOI contact officer

http://www.federal circuit court.gov.au/wps/wcm/connect/fccweb/contact-us/freedom-of-information-and-information-publication-scheme/disclosure-logs

I'm afraid the Federal Court of Australia is unable to assist in this request as your matters are with the Federal Circuit Court.

Regards

Federal Court of Australia - Website Query Team



From: To: Cc: Subject: Date: Attachments:	External FOI FOIA Requestr re: Wednesday, 26 May 2021 6:49:45 AM GK DOCS-#8525387-v1-ACCC FOIA Request.docx				
Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.					
Dear Sir or Madam,					
Please see attac	hed a FOIA request related to documents for the case.				
This request is b	eing made by the through its and				
Please let me know in advance if the cost to process the request will exceed \$300 dollars.					
Please do not he	esitate to contact me by phone or email if you have any questions.				
Sincerely,					



FEDERAL COURT OF AUSTRALIA

HARRY GIBBS COMMONWEALTH LAW COURTS 119 NORTH QUAY BRISBANE QLD 4000

1 June 2021	
	By email:
Dear	

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (Court) of 26 May 2021 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act). Specifically, you have requested the following:

For the purposes of the FOI Act, we request all documents	the
The	is pursuing a similar case against
and such documents are pertinent to our litigation.	No. of the second secon

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your FOI request for the reason that the FOI Act does not apply to your request due to the operation of subsection 5(1) of the FOI Act.

Under subsection 5(1), it is only open to you to make a request for documents under the FOI Act that relate to "matters of an administrative nature". The documents you have requested are not documents that relate to "matters of an administrative nature" and, on this basis, I have determined that a valid request under the FOI Act has not been made.

I have taken the following into account in making my decision:

the terms of your request;

- the content of the documents that fall within the scope of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the Freedom of Information (Charges) Regulations 1982 (FOI Charges Regulations); and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (**FOI Guidelines**).

Reasons for Decision

The FOI Act has a very limited application to the Court.¹ Although the Federal Court is a "prescribed authority" in accordance with paragraph 5(1)(a) of the FOI Act, subsection 5(1) makes clear that the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "matters of an administrative nature".

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and
- (c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature".²

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources,

¹ paragraphs 2.8 – 2.10 of the FOI Guidelines

examples of which were given above. This is a common enough connotation of the epithet "administrative".³

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁴ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁵

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁶, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁷

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁸

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁹

The documents you have sought are not documents that relate to "matters of an administrative nature" as that compound of words has been interpreted by the High Court.

³ at [41]
⁴ at 13]
⁵ at [47]
⁶ (2008) 170 FCR 382
⁷ at [51]
⁸ at [51]
⁹ at [75] and [76]

They are not documents concerning the management and administration of registry and office resources but, rather, are documents concerning Court proceedings.

Since requests for access can only be made for documents relating to "matters of an administrative nature", I have determined that your FOI request has not been validly made under the FOI Act.

All or some of the documents captured by your request may be part of the court file for the relevant proceedings in the Court. Access to documents relating to proceedings in the Court are governed by the *Federal Court of Australia Act 1976 (Cth)* and the *Federal Court Rules 2011 (Cth)*.

Specifically, requests for documents that are part of a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents on a court file can be found on the Federal Court's website at: https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

To assist in preparing any request for documents, information such as the document type and date of filing can be found on the Commonwealth Courts Portal at the following link: https://www.comcourts.gov.au/public/esearch/disclaimer. Orders and published judgments can also be found on the Portal.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

Online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR 10

Email: FOIDR@oaic.gov.au

Post: GPO Box 5218 SYDNEY NSW 2001

In person: Level 3, 175 Pitt Street SYDNEY NSW 2000

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/

Yours sincerely

B Henderson **FOI Officer**



Sent: Wednesday, 23 June 2021 10:39 PM

To: Tuan Van Le < <u>Tuan.VanLe@fedcourt.gov.au</u>>

Subject:

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear Registrar

Could I have access to the court record of the hearing of this case under the FOI or the Privacy Act urgently?

I understand that the court has a record of the date, time, presiding judges, appearance etc. In old days, it was one sheet of paper. Nowadays I don't know. Since my name must be on the record, I should be able to see it under those Acts or maybe by the Court's administrative arrangement. I am in a big hurry....

If I need to submit proof of my identity, please let me know.

Kind regards

30 June 2021



Request under the Freedom of Information Act or Privacy Act

I acknowledge receipt of your request, dated 23 June 2021, requesting access to documents under the *Freedom of Information Act 1982* (**FOI Act**) or the *Privacy Act 1988* (**Privacy Act**). By way of a further email, dated 28 June 2021, you clarified that the documents you seek are the report of listings in the following proceedings:

• ; ; and

I am authorised to make decisions on behalf of the Federal Court of Australia (**Federal Court**) in relation to requests for access to documents under the FOI Act and Privacy Act.

The FOI Act has a very limited application to the Federal Court. It only applies to requests for documents of the Court where those documents relate to "matters of an administrative nature" (see FOI Act, subsection 5(1)). The Privacy Act, so far as the Federal Court is concerned, applies only to "an act done, or practice engaged in, in respect of a matter of an administrative nature" (see Privacy Act, paragraphs 7(1)(a) and (b)).

All of the documents you have requested are related to proceedings in the Federal Court. These are documents outside of the operation of the FOI Act and Privacy Act. Accordingly, your request for access pursuant to the FOI Act or the Privacy Act, is refused.

Access to Court Documents Otherwise

Access to court documents in proceedings in the Federal Court is governed by the *Federal Court Act 1976* (particularly section 17 and Part VAA) and the *Federal Court Rules 2011*

(particularly Rule 2.32). More information can be found on the Federal Court's website: https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner Review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

Online: https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10

Email: FOIDR@oaic.gov.au

Post: GPO Box 5218 SYDNEY NSW 2001

In person: Level 3, 175 Pitt Street SYDNEY NSW 2000

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/

Yours sincerely,

R Muscat **FOI Officer**

From:
To:

Query Account

Subject: Re

Date: Wednesday, 30 June 2021 8:25:36 PM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

Dear FOI officer

I applied for internal review on the ground that I previously obtained these records of a case in another matter under the FOI Act. I Understand that there is no amendment of the Act which would cause a different decision.

Kind regards







Telephone: (02) 9230 8336 Facsimile: (02) 9223 1906

DX 613 SYDNEY

A.B.N. 49 110 847 399

Your Ref: Our Ref:

FEDERAL COURT OF AUSTRALIA PRINCIPAL REGISTRY

LEVEL 16 LAW COURTS BUILDING QUEENS SQUARE SYDNEY NSW 2000



Request for an internal review under the Freedom of Information Act 1982

I refer to your email of 30 June 2021 seeking an internal review of the decision made by Registrar Muscat on 30 June 2021 on behalf of the Federal Court of Australia (**Court**), refusing access to documents you requested under the *Freedom of Information Act 1982* (**FOI Act**).

I am authorised under the FOI Act to make a decision on behalf of the Court in relation to your internal review request.

Background

On 23 June 2021, you sent an email to a Registrar of the Court requesting access to documents under the FOI Act and *Privacy Act 1988* (**Privacy Act**). Specifically, you asked:

Could I have access to the court record of the hearing of this case under the FOI or the Privacy Act urgently?

I understand that the court has a record of the date, time, presiding judges, appearance etc. In old days, it was one sheet of paper. Nowadays I don't know. Since my name must be on the record, I should be able to see it under those Acts or maybe by the Court's administrative arrangement. I am in a big hurry....

On 28 June 2021, Registrar Muscat contacted you by email seeking clarity in relation to the documents sought in your request of 23 June 2021. You replied to Registrar Muscat on 28 June 2021 stating the following:

Is the listing report includes a note (presumably by an associate) about what happened in court and at what time? If so, that is what I want in relation to the following cases.



In a decision dated 30 June 2021, Registrar Muscat refused access to the documents you requested because the documents did not relate to "matters of an administrative nature" in accordance with subsection 5(1) of the FOI Act. In that decision, Registrar Muscat also explained that your request was outside the scope of the Privacy Act due to the operation of paragraphs 7(1)(a) and (b) of that Act. A copy of Registrar Muscat's decision letter dated 30 June 2021 is enclosed with this letter for ease of reference (Annexure 1).

On 30 June 2021, you sent an email to the query.account@fedcourt.gov.au mailbox of the Court seeking an internal review under the FOI Act of Registrar Muscat's decision. Specifically, you stated:

I applied [sic] for internal review on the ground that I previously obtained these records of a case in another matter under the FOI Act. I understand that there is no amendment of the Act which would cause a different decision.

Summary of Decision on Internal Review

For the reasons set out below, after reviewing Registrar Muscat's refusal decision and considering your FOI request afresh, I have decided to refuse access to the documents sought in your FOI request of 23 June 2021. Due to the operation of subsection 5(1) of the FOI Act, the documents you have requested are outside the scope of the FOI act.

Materials taken into account

I have taken the following material into account in making my decision:

- your FOI request of 23 June 2021 and subsequent clarification of that request provided by email on 28 June 2021;
- Registrar Muscat's decision letter to you dated 30 June 2021 (Annexure 1);
- your internal review request dated 30 June 2021;
- the FOI Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act; and
- relevant case law.

Reasons for internal review decision

As Registrar Muscat explained in the decision letter of 30 June 2021, the FOI Act has very limited application to the Court. In particular, Registrar Muscat explained that, with respect to the Court, the FOI Act only applies to requests for access to documents that relate to "matters of an administrative nature" in accordance with subsection 5(1) of the FOI Act.

Subsection 5(1) of the FOI Act provides as follows:

For the purposes of this Act:

- (a) a court (other than a court of Norfolk Island) shall be deemed to be a prescribed authority;
- (b) the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island)

in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department; and

(c) a registry or other office of a court (other than a court of Norfolk Island), and the staff of such a registry or other office when acting in a capacity as members of that staff, shall be taken as a part of the court;

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The High Court of Australia (**High Court**) considered the operation of section 5 of the FOI Act and the meaning of the phrase "matters of an administrative nature" in Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature". ¹

Further, the High Court held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".²

The examples referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.³ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

As relevant, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁴

The High Court, in considering the decision of *Bienstein v Family Court of Australia*⁵, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.⁶

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<sup>1</sup> at [19]
<sup>2</sup> at [41]
<sup>3</sup> at 13]
<sup>4</sup> at [47]
<sup>5</sup> (2008) 170 FCR 382
<sup>6</sup> at [51]
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The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁷

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.⁸

The documents you have sought are not documents that relate to "matters of an administrative nature" for the purposes of subsection 5(1) of the FOI Act. The documents you have requested relate to court proceedings and, on this basis, I have decided to refuse your request for access to documents under the FOI Act.

Access to documents otherwise

In your FOI request of 23 June 2021, you also requested access to the relevant documents pursuant to the Privacy Act. As Registrar Muscat explained to you in the decision letter of 30 June 2021, the Privacy Act has limited application to the Court and only applies to "an act done or practice engaged in, in respect of a matter of an administrative nature" in accordance with subsection 7(1) of that Act. For this reason, the documents you requested are also outside the scope of the Privacy Act in so far as it applies to the Court.

In your request for internal review dated 30 June 2021, you make reference to having previously obtained "these records of a case in another matter".

As was explained to you by Registrar Muscat in the decision of 30 June 2021, access to documents relating to court proceedings are governed by the *Federal Court of Australia Act* 1976 (Cth) and the *Federal Court Rules* 2011 (Cth). Procedures for accessing documents pursuant to the Federal Court Rules are separate and distinct from those relating to requests for documents under the FOI Act.

Specifically, requests for documents that are part of a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. As Registrar Muscat pointed out to you, more information on accessing documents on a court file can be found on the Court's website here: https://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents.

⁷ at [51]

⁸ at [75] and [76]

Charges

You have not been charged for the processing of your request.

Your review rights

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601 in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely



C Hammerton Cole Registrar





From:
To: External FOI

Subject: FOI request re Registry Files

Date: Sunday, 27 June 2021 5:33:07 AM

Caution: This is an external email. DO NOT click links or open attachments unless you recognise the sender and know the content is safe.

- 1. All my correspondence exchanged with the FCA, for the period of 1st Jan 2016 to current date, concerning
- 2. IN particular, I have written many times to **Deputy Registrar Mathieson & Registrar Lagos** during that time many of which have been ignored. I require included in that communication, a copy of all their communication with any Fed Ct personnel concerning me & ...
- 3. Vic Registrars, **R Tesorioro's & Hird** got involved in this long running affair, so require a copy of all their communication with the above Registrars & Deputies and I, concerning this matter and other personnel in Fed Ct.
- 4. Most Recently I received an email from Acting Deputy Principal Registrar, Scott Tredwell, where he has communicated with the above Registrars & Deputies & CJ Alsop. I require a copy of all his communication with the above people including the named Registrars, Tesorioro & Hird [Vic] and the below matter via the Online Filing section should be included
- 5. An online lodgement was made by me re this case & a Fee of \$520 or so, paid.

 I require a copy of all communication concerning that Lodgement.
- 6. AS I am a Pensioner, I am exempted from any fees. See attached my ID. Please use Email as the only form of communication.

An extract from the FCA website states:

The FOI Act, in relation to applicable documents held by the Court gives an person the right to:

- access copies of applicable documents the Court holds;
- ask for applicable information about the person making the request to be changed or annotated if it is incomplete, out of date, incorrect or misleading; and
- seek a review of any decision not to allow access to an applicable document or not to amend a person's personal record.

Under the FOI Act you can ask to see any document relating to the management and administration of the Court's registry and office resources that the Court holds. Access can be refused to documents, or parts of documents, that are exempt. Exempt documents may include those relating to national security, documents containing material obtained in confidence, Cabinet documents, or other matters set out in the FOI Act.



	By email:
Dear ,	

Request under Freedom of Information Act

I refer to your email to the Federal Court of Australia (the **Court**) of 27 June 2021 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you have requested the following:

Dear FOI, pursuant to my rights under the FOI Act I wish to obtain a copy of my & my Companies File [that concern:

- 1. All my correspondence exchanged with the FCA, for the period of 1st Jan 2016 to current date, concerning
- 2. IN particular, I have written many times to Deputy Registrar Mathieson & Registrar Lagos during that time many of which have been ignored. I require included in that communication, a copy of all their communication with any Fed Ct personnel concerning me & Mijac.
- 3. Vic Registrars, **R Tesorioro's & Hird** got involved in this long running affair, so require a copy of all their communication with the above Registrars & Deputies and I, concerning this matter and other personnel in Fed Ct.
- 4. Most Recently I received an email from Acting Deputy Principal Registrar, Scott Tredwell, where he has communicated with the above Registrars & Deputies & CJ Alsop. I require a copy of all his communication with the above people including the named Registrars, Tesorioro & Hird [Vic] and the below matter via the Online Filing section should be included
- 5. An online lodgement was made by me re this case & a Fee of \$520 or so, paid.

 I require a copy of all communication concerning that Lodgement.
- 6. AS I am a Pensioner, I am exempted from any fees. See attached my ID. Please use Email as the only form of communication.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

I have decided to refuse your request for documents on the basis that none of the documents are accessible under the FOI Act. The FOI Act does not apply to:

- a request for access to a document of the Federal Court "unless the document relates to matters of an administrative nature" (section 5(1));
- documents relating to the handling of judicial complaints (section 5(1A)); or
- judicial officers (section 5(1)(b)).

All of the documents sought in your request fall under the first of these categories. For this reason, I am precluded from granting access to the documents under the FOI Act.

Some of the documents sought in your request also fall under the second or third of these categories, or have been refused for access because the documents do not exist (section 24A).

I have taken the following into account in making my decision:

- your request;
- the contents of the documents that fall within the scope of your request;
- the FOI Act and relevant case law; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Section 11 of the FOI Act and right of access generally

Underneath your request to access documents, you quoted an extract from the Court's website regarding your right to access documents held by the Court. The right to access documents is enshrined in section 11 of the FOI Act.

Section 11 of the FOI Act provides:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document..."

The FOI Act confers rights to obtain, on request, access to documents including in the possession of an "agency". An "agency" is defined to include "prescribed authorities" (subsection 4(1)). This captures the Court and its registry or other offices (subsection 5(1)).

However, this right of access is, as section 11 makes clear, "subject to the Act", only "in accordance with this Act", and only for a document "other than an exempt document". The extract from the Court's website which you quoted in your request reflects these limitations imposed by the FOI Act. It explains that there is a right to access "applicable" documents the Court holds and that "Access can be refused to documents, or parts of documents, that are exempt". These limitations and exemptions apply to the documents you have requested.

Section 5(1) of the FOI Act and "matters of an administrative nature"

The phrase "matters of an administrative nature" in the context of the operation of section 5 of the FOI Act has been considered at length by the High Court of Australia in Kline v Official Secretary to the Governor General of Australia & Anor. 1 In the joint judgment dismissing the appeal, Chief Justice French and Justices Crennan, Kiefel and Bell acknowledged that:

The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body "unless the document relates to matters of an administrative nature."2

Further, the High Court held that:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative." 3

The "examples" referred to by the High Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.⁴ The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

Relevantly, the High Court then held that:

Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.⁵

In its reasoning, the High Court held to be erroneous the decision of *Bienstein v Family Court* of Australia, 6 which suggested that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. The High Court held that the reasoning in Bienstein accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁸

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

The distinction sought to be drawn by the appellant between documents which "relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of

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<sup>1</sup> (2013) 249 CLR 645; [2013] HCA 52.
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² Ibid, at [19] (French CJ, Crennan, Kiefel and Bell JJ).

³ Ibid, at [41] (French CJ, Crennan, Kiefel and Bell JJ).

⁴ Ibid, at [13] (French CJ, Crennan, Kiefel and Bell JJ).

⁵ Ibid, at [47] (French CJ, Crennan, Kiefel and Bell JJ).

^{6 (2008) 170} FCR 382.

⁷ Kline v Official Secretary to the Governor General of Australia & Anor (2013) 249 CLR 645; [2013] HCA 52, at [51] (French CJ, Crennan, Kiefel and Bell JJ).

⁸ Ibid, at [51] (French CJ, Crennan, Kiefel and Bell JJ).

... functions", on the one hand, and documents which answer that description but which would "disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context", on the other, is too fine to be sustained. The true distinction is more robust and more practical.

Matters which do not relate to the provision of logistical support do not become "administrative" merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function. 9

Before *Kline* was appealed to the High Court, the Full Court of the Federal Court of Australia found that "the character of the documents" in that case "was apparent from the terms of the request", and in those circumstances it was sufficient for the agency to which the request was made (the Administrative Appeals Tribunal) to determine whether those *categories* related to "matters of an administrative nature" without having to examine each document individually. Justice Gageler adopted this approach in his Honour's reasoning:

All of those categories [of documents to which the appellant sought access] on their face relate to the exercise of the substantive function which the Governor-General performs as Chancellor of the Order of Australia pursuant to Letters Patent issued by the Queen. All relate to the "administration" of the Order of Australia within the meaning of the Letters Patent, but none relates to matters of an "administrative nature" within the meaning of... the FOI Act. None, therefore, falls within the scope of the FOI Act.

The Full Court of the Federal Court rightly held that the Administrative Appeals Tribunal was correct in law in so finding.¹⁰

The threshold question is whether or not the FOI Act applies to the documents which you seek. The answer to that question must be "no". The categories of documents you seek from the Court are in relation to you and the categories of the Court are a party, or to a matter ancillary or preparatory to the exercise of the Court's power (e.g. a decision made pursuant to r 2.26 of the Federal Court Rules 2011 to refuse to accept a document for filing). While some of these documents may relate to the conduct of your Court case, none relates to "matters of an administrative nature" as that compound of words has been interpreted by the High Court. As they are not documents which relate to the management and administration of registry and office resources, the FOI Act does not apply to them.

There are also exemptions that apply to some of the documents you have requested, further prohibiting those documents from disclosure. These are addressed in turn below.

Paragraph 5(1)(b) of the FOI Act and "judicial officers"

Paragraph 5(1)(b) of the FOI Act provides:

the holder of a judicial office (other than a judicial office in a court of Norfolk Island) or other office pertaining to a court (other than a court of Norfolk Island) in his or her capacity as the holder of that office, being an office established by the legislation establishing the court, shall be deemed not to be a prescribed authority and shall not be included in a Department;

⁹ Ibid, at [75]-[76] (Gageler J).

¹⁰ Ibid, at [78]-[80] (Gageler J).

Judicial officers of this Court are appointed by the Governor-General by commission pursuant to section 6 of the *Federal Court of Australia Act 1976*. Unlike a registry or office of the Court, which I have already explained is subject to the operation of the FOI Act, judges hold independent offices pursuant to a federal enactment that requires the impartial discharge of the powers and functions of such office.¹¹ Judges do not fall within the definition of an "agency" or "prescribed authority" and are expressly exempted from the operation of the FOI Act. ¹²

The majority in *Kline* explained:

There is a long-recognised public interest in the protection of judicial independence to enable holders of judicial office to exercise authority without fear or favour...¹³

Part of item (4) of your request seeks access to communications with Chief Justice Allsop, a judicial officer. To the extent that your request seeks access to documents held by judicial officers, that access is refused pursuant to paragraph 5(1)(b) of the FOI Act.

Subsection 5(1A) of the FOI Act and "complaint handlers"

Subsection 5(1A) of the FOI Act provides:

This Act does not apply to any request for access to a document of a court (other than a court of Norfolk Island) that relates to a complaint handler (or a body consisting of complaint handlers):

- (a) exercising powers or performing functions under paragraph 15(1AA)(c) and subsection 15(1AAA) of the Federal Court of Australia Act 1976; or
- (b) assisting in exercising those powers or performing those functions.

For this purpose **complaint handler** has the meaning given by that Act.

Subsection 5(1A) was inserted into the FOI Act by the *Courts Legislation Amendment (Judicial Complaints) Act 2012*. The Explanatory Memorandum to that Amendment Act explains that (at [225]):

The exclusion of documents that relate to complaints handling processes within the courts from the operation of the FOI Act will protect sensitive documents that arise in the course of a head of jurisdiction (or complaint handler) dealing with a complaint about a judicial officer.

The Chief Justice of the Court or any person or body authorised by the Chief Justice for that purpose (collectively defined as a complaint handler) may deal with any complaint about the performance by another Judge of the Court of his or her judicial or official duties. ¹⁴ This includes considering any such complaint, investigating it, reporting on an investigation, dealing with an investigation report, dismissing a complaint and referring a complaint to another person or body. In exercising powers or performing functions under paragraph 15(1AA)(c) and subsection 15(1AAA), or assisting in exercising those powers or performing those functions, a

¹¹ Ibid, at [33] (French CJ, Crennan, Kiefel and Bell JJ).

¹² Ibid, at [59] (Gageler J).

¹³ Ibid, at [45] (French CJ, Crennan, Kiefel and Bell JJ).

¹⁴ Federal Court of Australia Act 1976 (Cth), paragraph 15(1AA)(c), subsections 15(1AAA) and 15(1AAB), and definitions of "complaint", "complaint handler" and "handle" in section 4.

complaint handler has the same protection and immunity as a Justice of the High Court (section 18(XA) of the *Federal Court of Australia Act*).

In item (4) of your request, you seek access to documents including in relation to a "recent email" you received from Registrar Tredwell. Having searched the Court's records, I presume the email to which you refer was sent to you from Query.Account@fedcourt.gov.au dated 22 June 2021, enclosing a letter from Registrar Tredwell dated the same. That letter responded to judicial complaints you had made to the Court in correspondence dated 18 May 2021. Any such documents are within the class of documents covered by subsection 5(1A) of the FOI Act. They "relate to", and indeed are the very basis upon, which a complaint handler exercises powers, performs functions or assists in the exercise of powers or performance of functions under paragraph 15(1AA)(c) and/or subsection 15(1AAA) of the Federal Court of Australia Act 1976. For this reason, no valid request to access them can be made under the FOI Act.

Documents that cannot be found or do not exist – subparagraph 24A(1)(b)(ii)

Subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
 - (a) all reasonable steps have been taken to find the document; and
 - (b) the agency or Minister is satisfied that the document:
 - (i) is in the agency's or Minister's possession but cannot be found; or
 - (ii) does not exist.

In items (2) and (3) of your request, you seek access to documents including communications from the email accounts of certain Registrars. As part of the Court's normal administrative practice, some of those accounts have ceased and all of the data files have been removed. There exists no way to search these records in the usual manner. All reasonable steps have been taken to identify the documents captured by this aspect of your request, and I am satisfied that those documents do not exist. In these circumstances, your request to access these documents is also refused under subsection 24A(1) of the FOI Act. ¹⁵

Given my decision as to the application of the FOI Act in relation to documents relating to you or tis is not necessary for me to undertake a review of individual documents. The FOI Act does not apply to the documents sought by way of your request. Accordingly, no documents will be disclosed in response to your request.

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

¹⁵ See also FOI Guidelines issued by the Office of the Australian Information Commissioner, at [3.85].

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Federal Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: https://forms.business.gov.au/aba/oaic/foi-review-/

email: enquiries@oaic.gov.au

post: GPO Box 2999, Canberra ACT 2601

in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/.

Yours sincerely

Rohan Muscat

National Registrar