



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

Customer Service

Federal Circuit and Family Court of Australia
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14 August 2023

Ms Lauren Ainslie

by email: foi+request-10489-ae62c772@righttoknow.org.au

Dear Ms Ainslie

Re. Internal Review of FOI decision dated 26 July 2023

I refer to your email dated 6 August 2023, requesting an internal review of Mr Michael Raine's decision dated 26 July 2023, regarding your request under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

Authorised decision maker

I am authorised under s 23 of the FOI Act to make decisions on behalf of the Federal Circuit and Family Court of Australia (Division 1) and the Federal Circuit and Family Court of Australia (Division 2) (the 'Courts') in relation to your internal review request.

Background

By email dated 21 July 2023, you requested the following:

What is the difference between a family court and Family circuit court?

I heard that one is decided by which parent has more money in custody cases. This seems very alarming to me as the Australian government has made sure that most of its people are struggling financially, barely having somewhere to live.

If someone on a low income is in the midst of a custody battle which court do you recommend that they apply to?

You were advised by email sent on 26 July 2023 as follows:

I refer to your below email, seeking information under the Freedom of Information Act 1982 (Cth) ('FOI Act'). Although the FOI Act relates to requests for documents rather

than answers to queries such as this, I am happy to provide general information in response to your query administratively, outside the provisions of the FOI Act.

You ask about the difference between a ‘family court’ and ‘Family circuit court’, and which court a custody dispute should be filed in. In Australia, there are three courts that exercise family law jurisdiction:

1. *The Federal Circuit and Family Court of Australia (Division 1)*
2. *The Federal Circuit and Family Court of Australia (Division 2)*
3. *The Family Court of Western Australia*

Division 1 of the Federal Circuit and Family Court of Australia is a continuation of what used to be referred to as the ‘Family Court of Australia’. Division 2 used to be known as the ‘Federal Circuit Court of Australia’. The term ‘Circuit’ refers to that Court’s provision of services in regional Australia (on court ‘circuits’). There is no distinction made relating to the amount of money in custody cases.

All family law matters are to be filed in the Federal Circuit and Family Court of Australia (Division 2). Division 1 may deal with the more complex matters and other particular types of proceedings, but only where the matter is transferred to Division 1. For more information, please refer to the Courts’ [website](#).

The only exception to this is where the parties reside in Western Australia, as that state has their own separate [family court](#).

Decision

Under s 11A of the FOI Act, it is only open to you to make a request for ‘a document of the agency’. Your initial request sent on 21 July 2023 requested information about “*the difference between a family court and Family circuit court?*” and advice about which court a person on a low income should file in. As your request is not for documents, I have decided that a valid request, pursuant to the FOI Act, has not been made.

Nevertheless, I note that information was provided to you that appropriately addresses the queries set out in your request. As such I consider that your request has been appropriately dealt with.

In making my decision I have had regard to:

- a. the terms of your initial request dated 21 July 2023;
- b. the response to your request sent on 26 July 2023;
- c. your internal review request dated 6 August 2023;
- d. the relevant provisions of the FOI Act and case law considering those provisions; and
- e. the FOI Guidelines issued by the Office of the Australian Information Commissioner under s 93A of the FOI Act (‘FOI Guidelines’).

Reasons for decision

Section 11 and 11A of the FOI Act relevantly provide as follows:

11 Right of access

- (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; ...*

11A Access to documents on request

- (1) *This section applies if:*
- (a) *a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:*
- (i) *a document of the agency; or*
- (ii) *an official document of the Minister; and*
- (b) *any charge that, under the regulations, is required to be paid before access is given has been paid. ...*

The term ‘document’ is defined in s 4 of the FOI Act to include:

- (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;*

The FOI Guidelines confirm at paragraph 2.33 that the “*right of access under the FOI Act is to existing documents, rather than to information*”. Your request of 21 July 2023 made an enquiry requesting information about “*the difference between a family court and Family circuit court*” and advice about which court a person on a low income should file in. As such, your request was not for ‘a document of an agency’ within the meaning of the FOI Act.

As set out in the response provided to you on 26 July 2023 however, the information that you were seeking was provided to you in any event. As such I consider that you have received the

information that you were seeking, notwithstanding that your request was not validly made under the provisions of the FOI Act.

Your Review Rights

If you are dissatisfied with my decision you may apply to the Information Commissioner for review of the decision. An application under this section must be made in writing within 60 days of the date of this letter in one of the following ways:

- online (www.oaic.gov.au/freedom-of-information/foi-review-process)
- post (Australian Information Commissioner GPO Box 2999 Canberra ACT 2601)
- in person (Level 3, 175 Pitt Street Sydney NSW 2000)

More information about the Information Commissioner review process is available at the Office of the Information Commissioner website at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>

Yours sincerely



Amanda Morris
National Judicial Registrar
Federal Circuit and Family Court of Australia