



FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

Customer Service
Federal Circuit and Family Court of Australia
GPO Box 9991 in your capital city

Telephone: 1300 352 000 – family law matters
Telephone: 1300 720 980 – general federal law matters
Email: customer.service@fcfcoa.gov.au

29 September 2023

Waldek

by email: foi+request-10636-6d92aa7a@righttoknow.org.au

Dear Waldek

Re. FOI request dated 30 August 2023

I refer to your email dated 30 August 2023 sent to the Federal Circuit and Family Court of Australia (the Court) regarding your request for documents 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 in relation to your request.

Scope of request:

In your email you requested the following categories of documents:

*Under the FOI Act 1982 I request access to all documents of an administrative nature relating to Judge Vasta's involvement in the false imprisonment of the applicant in *Stradford (a pseudonym) v Judge Vasta [2023] FCA 1020*.*

Decision

Under section 5 of the FOI Act, the Act does not apply to any documents of a judicial officer in his or her capacity as the holder of judicial office. Further, under section 5 of the Act, is only open to you to make a request for documents of the Court that relate to matters of an administrative nature. The information you have requested relates to the court proceedings and the exercise of the judicial functions of the Court and not to matters of an administrative nature. On that basis, I have decided that a valid request, pursuant to the FOI Act, has not been made. Alternatively, if a valid request has been made, documents related to the exercise of judicial functions by judicial officers are not documents of an administrative nature and are not 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 under section 93A of the FOI Act (FOI Guidelines).

Reasons for decision

Application of the FOI Act

The FOI Act has a restricted application to the Court (paras 2.8 – 2.10 of the Guidelines). The Court is a ‘prescribed authority’ for the purpose of the FOI Act, but the Act does not apply to judicial officers (s 5(1) of the FOI Act and para 2.8 of the Guidelines). 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 FOI Act does not apply to any documents of a judicial officer in his or her capacity as the holder of judicial office (s 5(1)(b) of the Act). The judiciary are intentionally omitted from the application of the Act irrespective of whether or not the particular judicial officer is exercising judicial or administrative functions in performing his or her duties.

Further, under section 5(1) of the FOI Act, the Act only applies to documents of the Court that relate to matters of an administrative nature.

The phrase ‘matters of an administrative nature’ was clarified by the High Court in *Kline v Official Secretary of the Governor General* (2013) 249 CLR 645 (*Kline*) at [47]. In the joint judgment given by the then Chief Justice and Justices Crennan, Kiefel (as she then was) and Bell, the phrase ‘matters of an administrative nature’ was described as documents which concern the management and administration of office resources, such as financial and human resources and information technology (see paragraph [41] with examples at paragraph [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 paragraph [51]).

Kline was recently applied by the Australian Information Commissioner to confirm that documents relating to individual cases are properly characterised as relating to the exercise of the Court’s adjudicative functions, and not to ‘matters of an administrative nature’ for the purpose of the FOI Act (*Lilo Hana von Schoeler and Federal Circuit Court of Australia* [2021] AICmr 16 at paras [16] – [18]).

The documents sought in your request concern information related to individual cases and the exercise of judicial functions. I am satisfied that your request concerns documents of the Court that are not documents related to matters of an administrative nature within the meaning of section 5(1) of the FOI Act and the decision in *Kline*.

Charges

You have not been charged for the processing of this 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 the decision. You are encouraged to seek internal review as a first step.

1. Internal review

Under s 54 of the FOI Act, you may apply in writing 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, attach reasons why you consider a review is necessary. Any internal review will be carried out by another officer within 30 days of receipt of any request for review.

Application for a review of the decision should be addressed to:

The FOI Officer
Federal Circuit and Family Court of Australia
GPO Box 9991
CANBERRA ACT 2601
by email: customer.service@fcfcoa.gov.au

2. Information Commissioner review

Under s 54L of the FOI Act you may apply to the Australian Information Commissioner to review 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)

Yours sincerely

A handwritten signature in black ink, appearing to be 'AM.' with a period.

Amanda Morris
National Judicial Registrar
Freedom of Information Officer