



## FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

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

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27 October 2023

Waldek

by email: [foi+request-10636-6d92aa7a@righttoknow.org.au](mailto:foi+request-10636-6d92aa7a@righttoknow.org.au)

Dear Waldek

### **Re. Internal Review of FOI decision dated 29 September 2023**

I refer to your email dated 29 September 2023, requesting an internal review of Amanda Morris' decision dated 29 September 2023, 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 (Division 1) (the Court) in relation to your internal review request.

### **Background**

By email dated 30 August 2023, you requested the following category 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.*

You were advised by letter dated 29 September 2023 that a valid request under the FOI Act had not been made because the documents you requested are not documents of an administrative nature in accordance with s 5 of the FOI Act and the High Court decision in *Kline v Official Secretary of the Governor General* (2013) 249 CLR 645 (*Kline*). You were advised that in the alternative, if a valid request had 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 your email requesting an internal review sent on 29 September 2023, you state:

*I am writing to request an internal review of Federal Circuit Court of Australia's handling of my FOI request 'Stradford (a pseudonym) v Judge Vasta [2023] FCA 1020'.*

*I requested 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.*

*If there are 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 in the control of the Federal Circuit and Family Court of Australia, please make a lawful decision in respect of them.*

*If there are no 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 in the control of the Federal Circuit and Family Court of Australia, then you must refuse to grant access pursuant to section 24A of the FOI Act.*

*Yours reasons for decision have no relevance to my request.*

## **Decision**

Under s 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. Whilst you have sought documents of “an administrative nature” the information you have requested are not documents that relate 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, none of the documents requested are, or relate to, documents of an administrative nature within the meaning of s 5(1) of the FOI Act and the decision in *Kline*. As such, the documents requested may not be accessed under the FOI Act.

Alternatively, based on the limited application of the FOI Act, there are no documents of “an administrative nature” of the description you have provided. As such, pursuant to s24A of the FOI Act, the request for documents of an administrative nature of this kind do not exist.

In making my decision I have had regard to:

- a. the terms of your initial request dated 30 August 2023;
- b. the decision dated 29 September 2023;
- c. your internal review request dated 29 September 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

### *Application of the FOI Act*

The FOI Act has a restricted application to the Court (paras 2.8 – 2.10 of the FOI 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 FOI 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.*

To be within the scope of the FOI Act, any documents held by the Court must be documents relating to matters of an administrative nature (s 5(1) of the FOI Act).

The phrase ‘matters of an administrative nature’ was clarified by the High Court in *Kline*. 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 para [41] with examples at para [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 para [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*.

I am satisfied that there are no documents of the Court that exist within the scope your request that come within the meaning of the phrase ‘matters of an administrative nature’ as clarified by the High Court in *Kline*.

### **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](http://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



Virginia Wilson  
Deputy Principal Registrar  
Federal Circuit and Family Court of Australia