



**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

LEVEL 17
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

15 April 2024

FOIBLES
By email

By email: foi+request-11098-6ff4608e@righttoknow.org.au

Dear FOIBLES,

Request for an internal review under the *Freedom of Information Act 1982*

I refer to your two (2) emails, both dated 15 March 2024, sent to the External.FOI@fedcourt.gov.au mailbox of the Federal Court of Australia (Court). In those emails you requested an internal review of the decision made by the Court on 15 March 2024 refusing you access to documents under the *Freedom of Information Act 1982* (Cth) (FOI Act).

Authorised decision-maker

I am authorised under s 23 of the FOI Act to make decisions on behalf of the Court in relation to your internal review request.

In conducting the internal review, I am required to review the original freedom of information decision and make a fresh decision on behalf of the Court.¹ I acknowledge that an internal review is a merit review process and that I am required ‘to bring a fresh, independent and impartial mind to the review’.²

Material taken into account

I have considered the following material in making my decision on internal review:

- your FOI request of 14 February 2024 (FOI request);
- the decision issued to you on 15 March 2024 (FOI decision);
- your two (2) emails requesting internal review dated 15 March 2024 (review request);

¹ Section 54C of the FOI Act.

² Paragraphs 1.28 and 9.34 of the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines).

- the records of the searches conducted by Court staff;
- the FOI Act and relevant case law; and
- the guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (FOI Guidelines).

Searches undertaken

Prior to the FOI decision, searches were undertaken by staff of the Court to identify any documents falling within the scope of your request. I have reviewed those searches and spoken to Court personnel who were involved in this process.

The searches that were undertaken by staff of the Court to identify any documents falling within the scope your request were extensive. The searches involved discussions with senior employees of the Court, searches of personnel files and other files on the Information Management System. The searches utilised key words based on Court staff's knowledge of document titling practices in the Court, and included searching the Court's national network drive, the email exchange server, and electronic document and records systems.

Decision on internal review

I have decided to refuse your request for access to documents in full. I agree with the decision maker's finding that the documents are conditionally exempt under sections 47C, 47E and 47F of the FOI Act and that disclosure would be contrary to the public interest under subsection 11A(5) of the FOI Act. I consider that the number of deletions required to remove the exempt material from the documents would be so many that the remaining documents would retain little value or meaning.

Reasons for internal review decision

The searches conducted by Court staff identified around two hundred and forty-eight (248) documents that fell within the scope of your FOI request. The documents include emails, reports, transcripts, and other materials. The documents relate to the substantive investigation of workplace incidents and/or the procurement of services for the purposes of conducting those investigations. A broad summary of these documents is provided within the FOI decision, and I will refer to them collectively as the documents.

I am satisfied that the searches undertaken to identify documents that fell within the scope of your FOI request were thorough and comprehensive. I am not aware of any other searches that could reasonably be conducted to identify further documents within the scope of your FOI request.

While a distinction can be drawn between documents that relate to the procurement of services and documents that concern the substantive investigation of confidential employment matters, each of the documents contain information that is conditionally exempt from disclosure under sections 47C, 47E and 47F of the FOI Act. The documents contain information including sensitive employment details, particulars of allegations made against Court staff, deliberations on how to assess and manage those allegations, and personal details. I agree with the decision maker that the release of the documents would disclose a deliberative process and/or have an

adverse effect on the operations of an agency and/or be an unreasonable disclosure of personal information.

The original decision-maker set out the relevant statutory provisions and paragraphs of the FOI Guidelines in relation to sections 47C, 47E and 47F of the FOI Act. It is not necessary for me to repeat those provisions here. I adopt the original decision-maker's reasons in full and apply them to your FOI request to find that the documents requested are conditionally exempt from disclosure under sections 47C, 47E and 47F of the FOI Act.

Public interest test

In your review request, you say that you disagree with the decision maker's finding that it is not in the public interest to grant access "*to any one of the requested documents*" in respect of the conditional exemptions under sections 47C, 47E and 47F of the FOI Act. You do not provide any material in support of your contention that at least some documents ought to be released.

The decision maker identified on pages 13 and 14 of the FOI decision the factors favouring disclosure and a long list of factors weighing against disclosure of the documents requested. I agree with each of the factors that have already been identified by the decision maker and adopt those reasons here. In addition to the factors weighing against disclosure that were identified by the decision maker, I consider that disclosure of the documents could:

- compromise the Court's ability to carry out its obligations under various legislation including the *Privacy Act 1988* (Cth), *Public Service Act 1999* (Cth), *Fair Work Act 2009* (Cth), *Australian Human Rights Commission Act 1986* (Cth), and *Workplace Health and Safety Act 2011* (Cth);
- limit the ability of the Court to disclose confidential information as part of its procurement process, which would negatively impact its ability to procure services that are fit for purpose and offer value for money;
- deter the Court from taking confidential workplace investigations to tender, which could increase the workload of the Court and decrease the capacity to properly investigate workplace allegations, negatively impacting the ability of the Court to assess and manage its staff;
- reduce the willingness of Court staff to openly and candidly participate or deliberate as part of the investigative process by restricting the capacity of third parties to engage in that process; and
- prejudice the protection of the individual right to privacy including by disclosing sources of information that may not themselves disclose personal information but could reveal a person's identity when consulted with other information (for example, contract dates and supplier details for the workplace investigations available on AusTender).³

³ See *Office of Finance and Services v APV and APW* [2014] NSWCATAP 88 at [54].

I give significant weight to each of the above factors that weigh against disclosure. I am satisfied that the decision maker relied upon and correctly determined that the factors against disclosure of the documents outweigh those factors favouring disclosure.

Deletion of exempt or irrelevant material

In your review request, you disagree with the “*blanket*” refusal to grant you access to the documents requested. I have reviewed each document that falls within the scope of your FOI request and have considered the reasons provided by the decision maker in respect of the deletion of exempt matter and irrelevant material (section 22 of the FOI Act).

I am satisfied that the deletions required to remove the exempt material from the documents would be so many that only a skeleton of the former documents would remain that convey little of their content or substance. I am therefore satisfied that it is appropriate to refuse access to the documents in full.

I note that general information about the services that the Court sought from CPM Reviews, including information on the contract value of those services, is accessible online should this assist: see [PA-2023-0137](#) and [PA-2023-0138](#).

Your review rights

If you are dissatisfied with my decision, 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 sixty (60) days of the date of this letter and be lodged in one of the following ways:

online: [Information Commissioner Review Application form \(business.gov.au\)](#)
email: foidr@oaic.gov.au
post: Director of FOI Dispute Resolution, GPO Box 5288, Sydney NSW 2001

More information about the Information Commissioner review is available on the Office of the Australian Information Commissioner (OAIC) website at: <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/freedom-of-information-reviews/information-commissioner-review-process>.

Complaints

If you are dissatisfied with the way the Court has handled your FOI request, you may complain to the Information Commissioner in writing. There is no fee for making a complaint. More information about making a complaint is available on the OAIC website at: <https://www.oaic.gov.au/freedom-of-information/freedom-of-information-guidance-for-government-agencies/foi-guidelines/part-11-investigations-and-complaints>.

Yours sincerely



R Muscat
Registrar