



FAMILY COURT OF AUSTRALIA

GPO Box 9991
Canberra ACT 2601

Executive Officer

19 September 2016

Via email: foi+request-2211-a1287fe5@righttoknow.org.au

Dear Mr Valdez

This letter is in response to your request of 21 August 2016 (attached) under the Freedom of Information Act 1982 ('the FOI Act') for a review of the original decision made on your FOI request, as described below.

I am authorised by the Chief Executive Officer of the Family Court of Australia to conduct the review set out in this letter. I note that you have previously been informed of your rights of review in relation to these matters.

Your original request was as follows:

During the period 2006 to date, related to the Association of Family and Conciliation Courts (Australian Chapter) Incorporated ABN:78-579-371-667:

Those documents, including:

- 1. Receipts, invoices, bank statements related to establishing the Association of Family and Conciliation Courts (Australian Chapter) Incorporated ABN:78-579-371-667.*
- 2. Application forms and correspondence related to incorporation of the association with the Victorian regulator (Consumer Affairs Victoria), Registration number P0028402Y.*
- 3. Application forms and correspondence related to obtaining the Australian Business Number 78-579-371-667 for the Association of Family and Conciliation Courts (Australian Chapter) Incorporated.*
- 4. Receipts, invoices, bank statements related to payment of the Association membership fees for judges, justices, registrars and other staff of the Family Court of Australia (e.g. family counselors/consultants etc.).*
- 5. Application forms and correspondence related membership and activities of the*

Association for judges, justices, registrars and other staff of the Family Court of Australia (e.g. family counselors/consultants etc.)

6. Application forms and correspondence with the United States of America Association of Family and Conciliation Courts board or its members related to establishing the Australian Chapter of the United States of America Association of Family and Conciliation Courts (EIN:95-2597407)

7. Correspondence and documents of the Justice Dianna Bryant, in the course of her duties as an Office holder of the Association of Family and Conciliation Courts (Australian Chapter) for all years up to and including 2016. Specifically, but not limited to, the selection presenters at the Associations annual conference.

During the period 2004 to date, related to the Association of Family and Conciliation Courts in the USA (EIN:95-2597407):

8. Correspondence and documents of the Justice Dianna Bryant, in the course of her duties as Director of the Association of Family and Conciliation Courts of the United States of America for all years up to and including 2016. I note the associations IRS Form 990 for 2012-2015 states that Justice Bryant spends (on average) 1 hour per week occupied with the business of the USA Association, which also declares it has Public Charity Status (Schedule A of Form 990). Specifically, but not limited to, documents concerning the appointment of Ms McIntosh as editor of the Association's journal "Family Court Review".

The original decision maker responded on 19 August 2016 and provided the following:

*From: ClientFeedback/ACT/FamCrt
To: foi+request-2070-7f29fb53@righttoknow.org.au,
Date: 19/08/2016 10:18 AM
Subject: Fw: Freedom of Information request - Documents related to the Association of Family and Conciliation Courts [SEC=UNCLASSIFIED]*

Dear Mr Valdez

I refer to your email below, in which you request under the Freedom of Information Act 1982 (the FOI Act), copies of documents you have listed in that email.

Firstly, before I proceed to my decision, let me provide you with some general information. The Association of Family and Conciliation Courts (AFCC) Australian Chapter was formed in 2013 and is a private organisation with no link to the Family Court of Australia. The fact that a judge may be a member of the committee (or even President) has no direct relevance to the Family Court. Judges and Family Consultants are free to join, just as they are free to join any professional organisation. Accordingly, your requests under points 1 to 4 and points 6 to 8 relate to a private organisation, personal matters, and documents held in a private capacity,

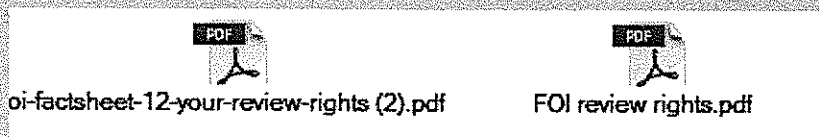
all of which are outside of the jurisdiction of the Family Court and which are therefore outside of the scope of matters I can properly consider on behalf of the Court.

The Court may pay for Family Consultants to attend annual conferences from time to time and Judges may be paid to attend a conference if they choose one as their annual conference. Administrative documents concerning payment for attendance at such conferences would be the only type of document potentially held by the Court that would respond to an FOI request to the Court such as yours. I have conducted searches in the Court's corporate services area and have located only one such document. It falls within the scope of point 5 of your request. That document consists of one page and is a tax invoice for conference registration fees.

In my capacity as an officer authorised by the Court to make decisions on behalf of the Court in accordance with the FOI Act, I have made a decision to partially release this document to you, exempting from release parts of the document that refer to contact details (a private address, phone and fax number) and bank account details, of a third party, that are not, to my knowledge, available publicly. I make these exemptions on the grounds of section 47F, which allows for a public interest determination on personal privacy. In making this decision I had regard to section 11A of the Act, which refers to public interest, and, in my view, access through the Court to such information would be on balance contrary to the public interest.

I attach the redacted document here:

I also attach here information regarding your review rights.



You now seek review of this response.

Firstly, I support the information provided to you on 19 August 2016 in respect of the Australian Chapter of The Association of Family and Conciliation Courts (AFCC). There is nothing further that I can add to what has already been provided to you on this matter.

Accordingly, I also deem your requests under points 1 to 4 and points 6 to 8 to be relating to a private organisation, personal matters, and documents held in a private capacity, all of which are outside of the jurisdiction of the Family Court and which are therefore outside of the scope of matters that can properly be considered on behalf of the Court.

I have also examined the searches that took place in relation to the Family Court's corporate services documents and am satisfied that only one such document was found. That document is a one-page tax invoice for conference registration fees.

I note that this document was provided to you with redactions made on the grounds of section 47F, which allows for a public interest determination on personal privacy. The parts of the document that were redacted refer to private contact details and bank

account details of a third party, that, to my and the original decision-maker's knowledge, are not publicly available.

In making the decision to redact the original tax invoice, the original decision-maker had regard to section 11A of the Act, which refers to public interest, and they expressed the view that access through the Court to such information would be on balance contrary to the public interest. I also support this decision.

In summary, my decision in reviewing this matter is to support the original decision made in respect of your FOI request for the documents listed above.

Once again, please find attached information on your review rights, should you be dissatisfied with this decision.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Leisha Lister', written in a cursive style.

Leisha Lister

Executive Officer

Family Court of Australia

Application to review decision

*From: Mr Valdez <foi+request-2070-7f29fb53@righttoknow.org.au>
To: FOI requests at Family Court of Australia
<clientfeedback@familycourt.gov.au>.
Date: 21/08/2016 02:58 PM
Subject: Internal review of Freedom of Information request - Documents related to
the Association of Family and Conciliation Courts*

Dear Family 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 Family Court of Australia's handling of my FOI request 'Documents related to the Association of Family and Conciliation Courts'.

I refer to the FCA's refusal to supply the documents requested in points 1 to 4 and 6-8.

While the establishment and operation of the Association of Family and Conciliation Courts (Australian Chapter) (hereafter AFCC(AU)) was and is done by natural persons. The name of the Association makes it irrefutable that the Australian Chapter is the Association of the Family Court of Australia (hereafter FCA).

Any "holder of a judicial office" or "part" of the FCA (as defined by the FOI Act s 5(1)(b) and s 5(1)(c)) engaged in establishing and operating the association were acting as or on behalf of the FCA for the purposes of the FOI Act.

The documents sought relate to activities that are administrative. Consequently these are required to be produced by the FCA.

The FCA, a "holder of a judicial office" or other "parts" of the FCA cannot act outside of its power or authority and at the same time claim these unlawful actions are protected from public knowledge and scrutiny by the FOI Act provisions that limit public access to documents arising from the lawful exercise of the power/authority conferred by the Family Law Act.

*This is made clear in *Bienstein and Family Court of Australia* [2006] AATA 385 (2006) 43 AAR 34. Specifically, at [46]-[48] the (partial) transcripts of parliamentary debate uses the qualifiers "properly so-called" when referring to the courts powers.*

Nevertheless, even without these qualifiers in the public debate, it is axiomatic that a "holder of a judicial office" or other "parts" of the FCA cannot achieve, as individuals, an end or action, which the Family Law Act specifically prevents the FCA from undertaking, achieving or obtaining.

The activities of the AFCC(AU) (and AFCC generally) breach of the provisions of Part XIVA of the Family Law Act, which establishes The Australian Institute of

Family Studies (hereafter the AIFS) and sets out its activities and the Ministerial control of those activities.

The FCA cannot undertake activities similar to or the same as the AIFS, which are activities that parliament placed under the control of the Minister.

A "holder of a judicial office" or other "parts" of the FCA cannot act in a private capacity to achieve the same end or outcome that they are prevented from undertaking as members of the FCA, and have those actions hidden from public view by the FCA or the administrators of the FCA.

Consequently, the administrative documents sought are within the scope of the FOI Act.

If the FCA's FOI officer does not have the documents because a "holder of a judicial office" or other "parts" of the FCA holds or withholds, then then under Sec 21 of the Family Law Act it is within the power of the Chief Justice (or if the Chief Justice is holding/withholding these documents, the Deputy Chief Justice) to compel their production.

It is axiomatic that the exemption (FOI Act s 5(1)(b) and s 5(1)(c)) in the FOI Act applies only when the activities of the "holder of a judicial office" or other "parts" of the FCA are within their power and authority under Family Law Act Act.

*I note that the High Court opinion expressed in *Kline v Official Secretary to the Governor-General* [2013] HCA 52 is irrelevant since it does not consider a situation like that here: Where the Court and its members are acting *Ultra Vires*.*

Or according to the FCA initial response: The members of the court are claiming to act in 'private capacity' to achieve an end they are prevented from achieving in their official capacity. In doing so they thwart the Parliament's intent that the activities of the AFCC(AU) are activities reserved for Ministerial direction and control via the AIFS, established by the Family Law Act.

Again, I reiterate the FCA, a "holder of a judicial office" or other "parts" of the FCA cannot act personally or privately to a achieve an end the Family Law Act prevents the FCA from achieving, so the exemptions of s 5(1)(b) and 5(1)(c) cannot be relied on here.

Finally, I would point out that the Judicial Conference of Australia (<http://www.jca.asn.au/>) exists as the proper (independent) Association for the members of the "holder of a judicial office" or other "parts" of the FCA.

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.righttoknow.org.au/request/documents_related_to_the_associa

Yours faithfully,

Mr Valdez