



Telephone: (02) 9230 8341
DX 613 SYDNEY

**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

Your Ref:
Our Ref: PA2925 – K Hazledine

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

10 December 2018

Ms Karren Hazledine

By email: foi+request-5120-0ab0b9e8@righttoknow.org.au

Dear Ms Hazledine

Freedom of Information Act 1982 (FOI Act) – Request for Internal Review

I refer to your correspondence of 30 November 2018, addressed to the Attorney-General's Department (**the AGD**).

In your correspondence of 30 November 2018, you state:

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Attorney-General's Department's handling of my FOI request 'Courts Transcripts from Hazledine vs ...

I will protest against firstly having to pay \$800 to a third party who I suspect makes a profit to obtain information which is of interest to the public.

The case involved myself and for that reason I should be provided with a copy of the transcripts free of charge.

Your correspondence to the AGD has been drawn to the attention of the Federal Court of Australia (**Federal Court**).

Background

On 22 November 2018 you made an FOI request to the AGD. In that FOI request you sought access to 'all transcripts and documents in relation to Karren Hazledine v Arthur J Gallagher & Co (AUS) Limited'.

The AGD transferred your FOI request to the Federal Court, pursuant to section 16(1) of the FOI Act, on 26 November 2018.

On 26 November 2018, John Mathieson, the Deputy Principal Registrar of the Federal Court, refused your request for access to the documents sought as they were not documents that could be accessed pursuant to the provisions of the FOI Act.

Internal Review Application

I note that, in his correspondence of 26 November 2018 (**access refusal decision**), the Deputy Principal Registrar stated:

Under section 54 of the FOI Act, you may apply in writing to Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. A request for internal review can be sent to the Court by email at foi@fedcourt.gov.au. Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out within 30 days.

Your application for internal review was made to the AGD and not the Federal Court. It was then referred by the AGD to the Federal Court as the agency that made the FOI decision of 26 November 2018. This referral and its acceptance is based on the assumption that your application for internal review is a request pursuant to s 54 of the FOI Act for an internal review of the FOI decision of 26 November 2018 by the Deputy Principal Registrar of the Federal Court. The referral by the AGD was appropriate given there exists no other decision under the FOI Act for which an application for internal review could be made to that agency and such an application for internal review must be conducted by the principal officer or authorised officer of the Federal Court.

For the reasons provided above, I have at your request, conducted an internal review of the access refusal decision of 26 November 2018 pursuant to section 54 of the FOI Act.

Authorised decision-maker

Subsection 23(2) of the FOI Act provides that a decision in respect of a request made to a court may be made on behalf of that court by the principal officer of that court or, subject to regulations, by an officer of that court acting within the scope of authority exercisable by him or her in accordance with the arrangements approved by the principal officer of that court.

The principal officer has authorised me to conduct internal reviews of decisions in relation to requests for access to documents. Thus, I am authorised under section 23(2) of the FOI Act to make decisions on behalf of the Federal Court in relation to your request for internal review.

Review Decision

I have, for the reasons set out below, decided to affirm the decision under review.

In making my decision I have had regard to:

- a. the terms of your application for internal review;
- b. the content of the identified documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions;
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act; and
- e. the Administrative Review Council Best Practice Guide on Internal Review, *Internal Review of Agency Decision Making*, Report No. 44 (2000), Chapter 8; and

Reasons for decision

As indicated by the Deputy Principal Registrar in the access refusal decision, the FOI Act has a very limited application to the Federal Court.¹ Although the Federal Court is a ‘prescribed authority’ for the purposes of the FOI Act,² the only request that can validly be made to it under the FOI Act is to access a ‘document of an administrative nature’.³

The High Court of Australia in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645 considered the meaning of the phrase ‘matters of an administrative nature’ and held that it refers to documents that concern the ‘management and administration of office resources, such as financial and human resources and information technology’.⁴

Your request of 22 November 2018 was for ‘all transcripts and documents in relation to *Karren Hazledine v Arthur J Gallagher & Co (AUS) Limited*’. The scope of your internal review application appears to be limited to that aspect of the access refusal decision by which access to transcripts was denied. However, even if your request for internal review could be construed as being wide enough to cover all other documents sought in your FOI request, it would still not affect the outcome of your application for internal review.

Transcripts and documents related to a legal proceeding in the Federal Court are not documents of an administrative nature. They are not documents that concern the ‘management and administration of office resources, such as financial and human resources and information technology’. As such, they cannot be requested pursuant to the provisions of the FOI Act.

In your correspondence of 30 November 2018 you suggested that your involvement in the proceedings in SAD 338 of 2016 - *Karren Hazledine v Arthur J Gallagher & Co (AUS) Limited* was sufficient reason for you to be provided with a copy of the transcripts free of charge. The extent of your involvement in these proceedings is not a determinative factor in refusing you access to the transcripts or other documents in circumstances where those transcripts and other documents cannot be requested pursuant to the provisions of the FOI Act.

I am satisfied that the Deputy Principal Registrar’s decision to refuse access to ‘all transcripts and documents in relation to *Karren Hazledine v Arthur J Gallagher & Co (AUS) Limited*’ is correct.

Accordingly, I affirm the decision of 26 November 2018.

Charges

You have not been charged for the processing of your request.

Complaints

Under s 70 of the FOI Act you may complain in writing to the Information Commissioner about an action taken by the Court in the performance of functions or the exercise of the powers under the FOI Act.

¹ see paragraphs 1.6 – 2.8 of the FOI Guidelines

² paragraph 5(1)(a) FOI Act

³ section 5 FOI Act

⁴ see [41] with examples at [13]

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australia Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter and be lodged in one of the following ways:

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely



Scott Tredwell
Registrar
Principal Registry