



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

21 December 2018

Ms Karren Hazledine

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

Dear Ms Hazledine

Freedom of Information Request – SAD 338 of 2016

On 3 December 2018, you sent an email to the Commonwealth Attorney-General's Department (**AGD**) in which you made a request under the *Freedom of Information Act 1982 (FOI Act)*. In that email, you requested AGD to:

[p]lease provide a copy of the transcripts for the Fair Work Decision in Hazledine vs Wakerley and Hazledine vs Giddings and Hazledine vs AJG.

With the consent of the Federal Court of Australia (**Federal Court**), on 11 December 2018, AGD transferred to the Federal Court, under section 16 of the FOI Act, that part of your request seeking access to transcripts in “Hazledine vs AJG” as those documents are not in the possession of AGD.

The request was transferred to the Federal Court because I am satisfied that “Hazledine vs AJG” is a reference to the action under the *Australian Human Rights Commission Act 1986* which you commenced in the South Australian District Registry of the Federal Court. Those proceedings in the Federal Court (SAD 338 of 2016 Karren Hazledine v Arthur J Gallagher & Co (AUS) Limited (**SAD 338 of 2016**)), were commenced on 16 December 2016 and dismissed by consent on 6 December 2017. SAD 338 of 2016 was a claim for unlawful discrimination. In this regard, I note that in the originating application in that proceeding, it was noted, by way of background, that you had:

“also made an application to the Fair Work Commission alleging contraventions of the accessorial provisions of the Fair Work Act 2009 (Cth) by certain of the Respondent’s managerial employees, exposing those individual managers to civil penalties under the Fair Work Act 2009 (Cth)”

and that you were:

“currently awaiting the outcome of a decision of the Full Bench of the Fair Work Commission regarding a jurisdictional objection brought against the Applicant’s application to the Fair Work Commission. That appeal hearing was heard before the Fair Work Commission on 10 November 2016 in proceedings C2016/4915, in the matter of Karren Hazledine v Kirk Wakerley & Ben Giddings in the Fair Work Commission. The decision of the Full Bench of the Fair Work Commission is pending”.

I am writing to advise you of my decision about that part of your request for access under the FOI Act (**FOI request**) as transferred to the Federal Court on 11 December 2018.

Authority

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Federal Court in relation to all aspects of an FOI request.

Scope of Request

Your FOI request is for a copy of the transcript of hearings held in the Federal Court in proceedings SAD 338 of 2016.

I note that on 22 November 2018, you also made a request under the FOI Act for, amongst other things, all transcripts in relation to that same proceeding; that on 26 November 2018 I refused that request; and on 10 December 2018, Registrar Tredwell, on internal review, affirmed my decision.

Application of the FOI Act

As both I and Registrar Tredwell have previously explained, the FOI Act has a very limited application to the Federal Court (see paragraphs 2.6 – 2.8 of the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act, available at: <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-2-scope-of-application-of-the-freedom-of-information-act>). Although the Federal Court is a ‘prescribed authority’ for the purposes of the FOI Act (section 5(1)(a)), the only request that can validly be made to it under the FOI Act is to access a ‘document of an administrative nature’ (section 5).

The High Court of Australia, in *Kline v Official Secretary to the Governor General of Australia & Anor* [2013] HCA 52, 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’ (see [41] with examples at [13]).

Decision

Your request relates to transcripts for proceedings SAD 338 of 2016. These are not documents of an administrative nature and are not available under the FOI Act. Access to court documents, including transcripts of hearings, relating to proceedings in the Federal Court are governed by the *Federal Court of Australia Act 1976* and the *Federal Court Rules 2011* and not by the FOI Act.

In addition, as I also explained in my letter to you dated 26 November 2018, transcripts of proceedings in the Federal Court are available for purchase.

Subsection 12(1)(c) of the FOI Act provides that a person is not entitled to obtain access under that Act to any document which is available for purchase by the public in accordance with arrangements made by an agency.

Even if subsection 5(1)(a) of the FOI Act didn’t exclude the operation of the FOI Act to transcripts, subsection 12(1)(c) would preclude a valid request being made to obtain transcripts of Federal Court proceedings.

As previously advised, information on purchasing transcript of proceedings is available on the Federal Court's website at <http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents>.

Review Rights

If you are dissatisfied with my decision, you may apply for an internal review by another officer of the Court or for an external review by the Australian Information Commissioner. If you are considering asking for a review, the Court encourages you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal Review

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.

External Review

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 60 days of the date of this letter, and be lodged in one of the following ways:

online:	www.oaic.gov.au
post:	GPO Box 5218, Sydney NSW 2001
fax:	+61 2 9284 9666
email:	enquiries@oaic.gov.au
in person:	Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about a review by the Australian Information Commissioner is available on the Office of the Australian Information Commissioner website at www.oaic.gov.au/freedom-of-information/foi-reviews.

If you wish to discuss this decision, please contact me by phone on the number shown in the letterhead above or by email at foi@fedcourt.gov.au.

Yours sincerely



John Mathieson
Deputy Principal Registrar