



DX 613 SYDNEY

**FEDERAL COURT OF AUSTRALIA  
PRINCIPAL REGISTRY**

Your Ref:  
Our Ref: PA2925 – N Sivakumaran

LEVEL 16  
LAW COURTS BUILDING  
QUEENS SQUARE  
SYDNEY NSW 2000

30 April 2019

Nikita Sivakumaran

By email: [foi+request-5393-cb0f0691@righttoknow.org.au](mailto:foi+request-5393-cb0f0691@righttoknow.org.au)

Dear Nikita Sivakumaran

**Freedom of Information Request**

I refer to your email of 26 April 2019 to the Federal Court of Australia in which you have sought access to a range of documents under the *Freedom of Information Act 1982* (**FOI Act**).

In your email of 26 April 2019, you make the following request (FOI request):

*I would like to request access to the initiating documents of the ACCC v Servcorp [2018] FCA 1044 case. Specifically, I am looking for copies of the contracts in issue:*

- (1) *the contract dated 24 April 2015, renewed on 15 June 2016 and 15 June 2017, between Servcorp Parramatta and Torch Professional Services Pty Ltd (TPS)(TPS Contract);*
- (2) *the contract dated 13 October 2016, renewed on 12 June 2017, between Servcorp Parramatta and Australian Supply Chain Institute (ASCI)(ASCI Contract); and*
- (3) *the contract dated 8 December 2015, renewed on 1 January 2017, between Servcorp Melbourne and Occidental Migration Services (OM)(OM Contract).*

**Authorised decision-maker**

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.

**Decision**

I have decided to refuse access to all the documents sought pursuant to your FOI request. These are documents for which the FOI Act does not apply due to the operation of s 5(1) of the FOI Act.

The documents you have requested are documents relating to proceedings in the Court. These are not documents of an administrative nature and are not available under the FOI Act.

Access to documents relating to proceedings in the Court are governed by the *Federal Court of Australia Act 1976* and the *Federal Court Rules 2011*, and not by the FOI Act. Requests for

documents that constitute a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents that constitute a court file can be found on the Federal Court's website at <http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents>.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the content of the documents within the scope of your request;
- c. the relevant provisions of the FOI Act and case law considering those provisions; and
- d. the FOI Guidelines issued by the Office of the Australian Information Commissioner.

## Reasons for Decision

### ***Limited application of the FOI Act to the Federal Court***

The FOI Act has a very limited application to the Federal Court.<sup>1</sup> It does not apply to Judicial Officers<sup>2</sup> or to any documents relating to the handling of complaints about Judicial Officers<sup>3</sup>. Although the Federal Court is a “prescribed authority” for the purposes of the FOI Act<sup>4</sup> the only request that can validly be made to it under the FOI Act is to access a “document of an administrative nature”<sup>5</sup> (section 5).

The High Court of Australia considered the operation of s 5 of the FOI Act and the meaning of the phrase “matters of an administrative nature” in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal the Chief Justice and Justices Crennan, Kiefel and Bell acknowledged that:

*The FOI Act does not apply to any request for access to a document of either a court or a specified tribunal, authority or body “unless the document relates to matters of an administrative nature”.*<sup>6</sup>

Further, the High Court held:

*...the exception of a class of document which relates to “matters of an administrative nature” connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet “administrative”.*<sup>7</sup>

The examples referred to by the Court were a second category of assistance and support provided to the Governor-General by the Office of the Official Secretary. That category of support was the management and administration of office resources, such as financial and human resources and information technology.<sup>8</sup> The first category, which was thereby excluded from the management and administration of office resources, included assisting and supporting the Governor-General's discharge of substantive powers and functions.

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<sup>1</sup> paragraphs 2.6 – 2.8 of the FOI Guidelines

<sup>2</sup> paragraph 5(1)(b) of the FOI Act

<sup>3</sup> subsections 5(1A) to (1C) of the FOI Act

<sup>4</sup> paragraph 5(1)(a)

<sup>5</sup> section 5

<sup>6</sup> at [19]

<sup>7</sup> at [41]

<sup>8</sup> at 13]

As relevant, the High Court then held that:

*Accordingly, the only documents which courts and specified tribunals, authorities and bodies are obliged to open to increased public scrutiny are those documents relating to the management and administration of registry and office resources.*<sup>9</sup>

The High Court, in considering the decision of *Bienstein v Family Court of Australia*<sup>10</sup>, held that decision to be erroneous in suggesting that even documents held by a court which related to individual cases might be characterised as documents relating to matters of an administrative nature, or that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act.<sup>11</sup>

The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.<sup>12</sup>

In a separate judgment, Justice Gageler also dismissed the appeal. His Honour held that:

*The distinction sought to be drawn by the appellant between documents which “relate to administrative tasks ... to support or assist the exercise of ... powers or the [performance] of ... functions”, on the one hand, and documents which answer that description but which would “disclose the decision-making process involved in the exercise of those powers or performance of those functions in a particular matter or context”, on the other, is too fine to be sustained. The true distinction is more robust and more practical.*

*Matters which do not relate to the provision of logistical support do not become “administrative” merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.*<sup>13</sup>

### ***Initiating documents and contracts in issue***

The documents you have requested are documents relating to proceedings in the Court. These are documents for which the FOI Act does not apply due to the operation of s 5(1) of the FOI Act, as they are not documents of an administrative nature.

Access to documents relating to proceedings in the Court is governed by the *Federal Court of Australia Act 1976* and the *Federal Court Rules 2011*. Requests for documents that constitute a court file may be made pursuant to Division 2.4 of the *Federal Court Rules 2011*. More information on accessing documents that constitute a court file can be found on the Federal Court’s website at <http://www.fedcourt.gov.au/services/access-to-files-and-transcripts/court-documents>.

Your request for access pursuant to the FOI Act, is refused.

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<sup>9</sup> at [47]

<sup>10</sup> (2008) 170 FCR 382

<sup>11</sup> at [51]

<sup>12</sup> at [51]

<sup>13</sup> at [75] and [76]

## **Charges**

You have not been charged for the processing of your request

## **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](mailto: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:	<a href="http://www.oaic.gov.au">www.oaic.gov.au</a>
post:	GPO Box 5218, Sydney NSW 2001
fax:	+61 2 9284 9666
email:	<a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a>
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](http://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](mailto:foi@fedcourt.gov.au).

Yours sincerely



Scott Tredwell  
**Acting Deputy Principal Registrar**