



Telephone: (02) 9230 8336  
Facsimile: (02) 9223 1906  
DX 613 SYDNEY

**FEDERAL COURT OF AUSTRALIA  
PRINCIPAL REGISTRY**

A.B.N. 49 110 847 399

Your Ref:  
Our Ref:

LEVEL 16  
LAW COURTS BUILDING  
QUEENS SQUARE  
SYDNEY NSW 2000

14 November 2019

Mr Phillip Sweeney

**By email:** [foi+request-5656-93f9aa27@righttoknow.org.au](mailto:foi+request-5656-93f9aa27@righttoknow.org.au)

Dear Mr Sweeney,

**Internal Review Decision under Subsection 54C of the *Freedom of Information Act 1982***

I write to advise you of my decision following your request for internal review of the Federal Court of Australia's decision to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act) on 29 September 2019.

**Authority**

I am authorised under subsection 23(2) of the FOI Act to make decisions on behalf of the Federal Court of Australia (Federal Court) in relation to your internal review request.

**Background**

In an email which you sent to the Federal Court on 29 September 2019 regarding a proceeding numbered NSD1654/2018, which the Federal Court titled *Australian Securities & Investments Commission v MLC Nominees Pty Ltd ACN 002 814 959 & Anor* (Proceeding NSD1654/2018), you requested (access request):

*The documents I seek are copies of any emails, phone logs, Orders or other documents related to the receipt of these documents, the decision not to file the Affidavit affirmed on 16 September 2019 and the instructions to a junior staff member to return the Interlocutory Application and supporting documents when no Order had been made with respect to these documents.*

On 18 October 2019, you were advised by letter of the decision made that day by Registrar Tredwell on behalf of the Federal Court to refuse your access request as he was satisfied that all reasonable steps had been taken to find documents within the scope of your request and no such documents existed (access refusal decision).

You sent an email to the Federal Court regarding that decision on 25 October 2019 requesting an internal review (internal review request). In that email you said:

*I am writing to request an internal review of Federal Court of Australia's handling of my FOI request 'Instructions to Return Contempt of Court Interlocutory Application'.*

*The responses from the Federal Court indicate that junior staff who only uses their first names such as "Megan" run the show as far as document and evidence management and administration is concerned at the Federal Court in Sydney.*

*On the 19 September 2019, Justice Yates ordered that 5 Affidavits affirmed on 1 May, 1 August, 5 August, 21 August and 26 August 2019 be removed from the Court file, following a classic example of disparaging the Whistleblower by journalist James Frost of the Australian Financial Review who labelled someone whom a Deputy President of the Administrative Appeals Tribunal described as a determined Whistleblower, as a "Serial Pest"!*

*No order was made with respect to an Interlocutory application and a Statement of Charge dated 16 September 2019 and supporting Affidavit affirmed on 16 September 2019 related to the Contempt in the face of the Court by Mr Frost.*

*Therefore junior staffer "Megan" cannot claim that she is acting on the Orders of Justice Yates.*

*Someone must have given an instruction to "Megan" to "get rid" of the evidence of the Contempt in the face of the Court and evidence of Scandalising the Court by Mr Frost included as Annexures PVS52 and PCS53 in the Affidavit affirmed on 16 September 2019 that was not one of the five Affidavits covered by the Order of Justice Yates.*

*Therefore there must be a record of the instruction to junior staffer "Megan". This is not a routine case for the Federal Court by any means.*

*Otherwise, it would appear that "Megan" was off on a frolic of her own to dispose of evidence that relates to not just one case of Contempt of Court, but two two cases of Contempt of Court - one by James Frost and the other by ASIC.*

*It is now a matter of public interest that a Journalist can dictate how a supposed "independent" member of the Judiciary can run a case before him or her and to exclude evidence of a Contempt of Court by ASIC as well as evidence of a Contempt of Court by that journalist.*

*Especially when that person is seeking to uphold a previous ruling from the Federal Court itself in VID 323 of 2011 and where the Applicant, ASIC, is in contempt of the Federal Court for failing to honour the undertaking given before the Honourable Justice Kenny.*

*This application for an Internal review is a necessary step before I appeal this matter to the Administrative Appeals Tribunal.*

*The treatment of a Whistleblower by the Federal Court who is seeking to ensure the widows of his former work colleagues receive their lawful death benefits in the form of a survivorship pension is now a matter of public interest.*

*The failure to properly administer evidence and interlocutory applications lodged with the Federal Court unless properly explained will have a tendency to bring the administration of justice in the Federal Court into disrepute.*

*A full history of my FOI request and all correspondence is available on the Internet at this address: [https://www.righttoknow.org.au/request/instructions\\_to\\_return\\_contempt](https://www.righttoknow.org.au/request/instructions_to_return_contempt)*

## **Decision**

Having considered your access request afresh; taking further steps to find copies of any emails, phone logs, orders or other documents related to the receipt by the Court of an Interlocutory Application by you dated 16 September 2019, accompanying Statement of Charge also dated 16 September 2019 and a supporting affidavit by you affirmed on 16 September 2019, any decision not to file the Affidavit and any instructions to a junior staff member to return the Interlocutory Application and supporting documents; and taking into

account the reasons and other information you advanced in your internal review request, I have decided, under subsection 24A(1) of the FOI Act, to refuse your access request. This is because I am satisfied that all reasonable steps to find documents that are within scope of your access request have been taken and no such documents exist.

### ***Material taken into account***

I have taken the following material into account in making my decision:

- your access request
- the access refusal decision
- your internal review request
- the FOI Act
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- relevant caselaw.

### ***Reasons for decision***

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

In the access refusal decision, Registrar Tredwell explained the limited application that the FOI Act has to the Federal Court. In particular, he explained that that Act does not apply to Judicial Officers<sup>1</sup> or any documents relating to the handling of complaints about Judicial Officers<sup>2</sup> and that the only request that can validly be made to the Federal Court under the FOI Act is to access a document that relates to “matters of an administrative nature”<sup>3</sup>. He also explained that the High Court of Australia (High Court) has considered the meaning of “matters of an administrative nature” in *Kline v Official Secretary to the Governor-General Of Australian & Anor*<sup>4</sup> (*Kline*) and held that the phrase refers to documents “relating to the management and administration of registry and office resources”<sup>5</sup>.

I agree with and adopt Registrar Tredwell’s more detailed explanation of this limited application of the FOI Act to the Federal Court. As this is set out in the access refusal decision included on the Right to Know webpage for your relevant access request which you reference as above, I will not repeat that detailed explanation in this letter.

#### Searches and enquiries undertaken

Registrar Tredwell explains in the access refusal decision the enquiries and searches he undertook in an attempt to find any documents that were within the scope of your request.

On 13 November 2019, over 45 minutes, I searched the Federal Court’s electronic file for Proceeding NSD1654/2018 for the period from 16 September 2019, when you prepared the relevant documents and affirmed the affidavit, up to and including the time of that search. I was familiar with that file having searched it comprehensively on 21 October 2019 and again, although less comprehensively, on 5 November 2019 in undertaking internal reviews of other access refusal decisions in relation to earlier access requests from you and was thus able to

---

<sup>1</sup> Paragraph 5(1)(b) FOI Act

<sup>2</sup> Subsection 5(1A) FOI Act

<sup>3</sup> Section 5(1) FOI Act – see also paragraph 2.8 FOI Guidelines

<sup>4</sup> [2013] HCA 52

<sup>5</sup> At [47] – see also paragraph 2.9 FOI Guidelines

focus quickly and specifically on searching for any document within scope of your access request under internal review here. I found no emails, phone logs, orders or other documents related to the receipt by the Court of an Interlocutory Application by you dated 16 September 2019, accompanying Statement of Charge also dated 16 September 2019 and a supporting affidavit by you affirmed on 16 September 2019, any decision not to file the Affidavit and any instructions to a junior staff member to return the Interlocutory Application and supporting documents.

Later that day, I spoke to all staff in the Federal Court's NSW District Registry who I identified from my searching of the electronic file as having, in the same period as above, been involved in dealing with correspondence, queries and documents received from you and in responding to such communications and queries. I had them undertake searches of all email accounts and other repositories (electronic or otherwise) in which any such document, if it existed, could have been stored and placed. I was subsequently informed by those staff that no relevant emails, phone logs, orders or other documents was found.

I am satisfied that all reasonable steps have been undertaken to find any such documents, if they existed, but that no document within the scope of your access request exists.

Documents that do not exist – subsection 24A FOI Act

As Registrar Tredwell explained in his access refusal decision, section 11 of the FOI Act provides:

- (1) *Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:*
  - (a) *a document of an agency, other than an exempt document; or*
  - (b) *an official document of a Minister, other than an exempt document.*
- (2) *Subject to this Act, a person's right of access is not affected by:*
  - (a) *any reasons the person gives for seeking access; or*
  - (b) *the agency's or Minister belief as to what are his or her reasons for access.*

As Registrar Tredwell also noted in that decision, as a result of the operation of this section the FOI Act provides a legally enforceable right to obtain access to various documents. This entitlement is, as section 11 makes clear, "subject to the Act" and as I (and Registrar Tredwell in his access refusal decision) have explained, in the case of the Federal Court, it applies only to a document that relates to "matters of an administrative nature" as narrowly interpreted by the High Court in *Kline*.

However, as also explained in the access refusal decision, subsection 24A(1) of the FOI Act provides:

- (1) *An agency or Minister may refuse a request for access to a document if:*
  - (a) *all reasonable steps have been taken to find the document; and*
  - (b) *the agency or Minister is satisfied that the document:*
    - (i) *is in the agency's or Minister's possession but cannot be found; or*
    - (ii) *does not exist.*

As detailed above, the searches and enquiries that I have made in attempting to find any documents that are within the scope of your access request have been comprehensive (as were those undertaken by Registrar Tredwell before making his access refusal decision). I am not aware of any further step that could be taken to locate any such document, if it existed, or any other Court staff who may be able to assist in locating any such document.

I am satisfied that no document exists that is within the scope of your access request.

For these reasons, I decided under subsection 24A(1) of the FOI Act to refuse your access request.

***Your review rights***

If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. 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](mailto:enquiries@oaic.gov.au)  
post: GPO Box 2999, Canberra ACT 2601  
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews).

***Questions about this decision***

If you wish to discuss this decision, you can contact me by email at [foi@fedcourt.gov.au](mailto:foi@fedcourt.gov.au).

Yours sincerely



John Mathieson

**Deputy Principal Registrar**