



Telephone: (02) 9230 8567
DX 613 SYDNEY

FEDERAL CIRCUIT COURT OF AUSTRALIA

Your Ref:
Our Ref:

LEVEL 17
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

9 December 2019

Tesi (via Right to Know website)

By email: foi+request-5932-f74352a8@righttoknow.org.au

Dear Tesi,

Request made under the Freedom of Information Act

I refer to your email of 21 November 2019, sent to the Customer Service mailbox of the Federal Circuit Court of Australia (**Court**) requesting information (**FOI request**) under the *Freedom of Information Act 1982* (Cth) (**FOI Act**).

Specifically, you have made the following request:

I am seeking information in relation to the complaint referral process of the Federal Circuit Court of Australia and the Jurisdiction of the AFP to accept any such referrals. Does the Federal Circuit court refer 'complaints' from members of the public or is there a process involving referrals to the AFP from the Court. If the answer is yes, in what lawful capacity can they act?. The Courts independence from the Government does not make it Government Entity, Agency or Commonwealth Place, how can the AFP have any involvement without being in breach of their lawful jurisdiction?.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Decision

The request you have made to the Court does not constitute a valid request under the FOI Act because it does not seek access to a 'document of an agency' in accordance with the relevant provisions of the FOI Act and it does not provide sufficient information to identify a 'document' in accordance with the requirements of the FOI Act.

In making my decision I have had regard to:

- a. the terms of your requests;

- b. the relevant provisions of the FOI Act; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner (**FOI Guidelines**).

I note that it is open to you to amend your request or to make a new request to the Court that specifically requests access to a ‘document’ and provides sufficient information to identify that ‘document’ in accordance with the requirements of the FOI Act.

For your information, I also note that general information regarding the Court’s handling of complaints is contained in the Court’s complaints policy which can be found here: <http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/about/policies-and-procedures/complaints>. The Court does not have any policies or similar documents concerning the referral of complaints from members of the public to the AFP.

Reasons for Decision

Relevantly to your request, section 11 of the FOI Act provides that:

(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;

Subsection 4(1) of the FOI Act stipulates that a document is a ‘document of an agency’ if:

(a) the document is in the possession of the agency, whether created in the agency or received in the agency.

The FOI Guidelines elaborate on the above legislative provisions by explaining, at paragraph 2.33, that the “*right of access under the FOI Act is to existing documents, rather than to information*”. The FOI Guidelines further explain that the FOI Act does not require an agency to create a new document in order to provide information that might be sought in a request; the document must exist at the time the FOI request was made.

In addition, subsection 15(2)(b) of the FOI Act relevantly provides that a request made under the FOI Act must “*provide such information concerning the document as is reasonably necessary to enable a responsible officer of the agency, or the Minister, to identify it*”. Therefore, even if your FOI request had specifically asked for a ‘document’, you would need to have provided sufficient information that would enable the document to be identified.

Given that your FOI request has not asked for access to a document and/or provided sufficient information as would be reasonably necessary to identify a document, I have determined that your FOI request is not a valid request made pursuant to the FOI Act.

Charges

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

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. The decision maker 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 the Federal Circuit Court for an internal review of this decision. The internal review application must be made within 30 days of the date of this letter.

Where possible, please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

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 at: www.oaic.gov.au/freedom-of-information/foi-reviews.

Yours sincerely



Claire Hammerton Cole
Registrar