



FEDERAL CIRCUIT COURT OF AUSTRALIA

Nigel Bowen Commonwealth Law Courts Building
Cnr University Ave & Childers St, Canberra
GPO Box 9991, Canberra ACT 2601

Telephone: 1300 352 000
Email: customer.service@federalcircuitcourt.gov.au

17 February 2020

Tesi (via Right to Know website)
by email: foi+request-5932-f74352a8@righttoknow.org.au

Dear Tesi

Re. Your correspondence dated 18 January 2020

I refer to your email dated 18 January 2020 sent to the Customer Service Mailbox of the Federal Circuit Court of Australia (the Court), in which you request documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

In your email you request the following category of documents:

- *'referral documents' for all investigation referrals/requests sent to the AFP from the Court/Court Marshal/Court for the 17/18 and 18/19 financial years*

Authorised decision maker

I am authorised under s 23 of the FOI Act to make decisions on behalf of the Court in relation to a Freedom of Information request.

Decision

I have decided to refuse access to documents requested pursuant to your FOI request, on the basis that all documents identified as being within the scope of your request are outside the scope of the FOI Act, as they are not document that relate to matters of an administrative nature within the meaning of s 5 of the FOI Act and the decision in *Kline v Official Secretary of the Governor General* (2013) 249 CLR 645 (*Kline*).

In making my decision I have had regard to:

- a. the terms of your request;
- b. the content of 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 under section 93A of the FOI Act.

Reasons for decision

Application of the FOI Act

The FOI Act has a restricted application to the Court (s 5 of the FOI Act and paragraphs 2.8 – 2.10 of the FOI Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines)). The Court is a ‘prescribed authority’ for the purpose of the FOI Act, but the Act does not apply to judicial officers (subsection 5(1) of the FOI Act and para 2.6 of the Guidelines). Although the Court is a ‘prescribed authority’, the Act will only apply to a request for access to a document of the Court that relates to ‘matters of an administrative nature’ (sub-section 5(1) of the FOI Act and paragraph 2.8 of the FOI Guidelines).

The phrase ‘matters of an administrative nature’ was clarified by the High Court in *Kline* at [47]. In the joint judgment given by the then Chief Justice and Justices Crennan, Kiefel (as she then was) and Bell, the phrase ‘matters of an administrative nature’ was described as documents which concern the management and administration of office resources, such as financial and human resources and information technology (see paragraph [41] with examples at paragraph [13]). That judgment also makes it clear that, in the view of those judges, documents held by a federal court relating to individual cases can never be characterised as documents “relating to ‘matters of an administrative nature’” (see paragraph [51]).

Searches undertaken and documents identified

In responding to your FOI request, comprehensive searches have been undertaken for documents within the scope of the request. These include searches of inboxes, sent items and folders of the Court’s Marshal and the Deputy Principal Registrar of the Court. Written requests were made of each Registrar of the Court for any documents that were within the scope of your request. Searches were also made of the electronic network drive used by the office of the Deputy Principal Registrar. Discussions were also undertaken with relevant Court staff to determine if any additional documents existed.

I am satisfied that by conducting these searches the Court has taken all reasonable steps to identify the documents requested.

I am satisfied that all documents identified as coming within the scope of your request relate to proceedings currently before the Court and are accordingly outside the scope of the FOI Act, pursuant to s 5 of the Act and the decision in *Kline*.

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 the decision. You are encouraged to seek internal review as a first step.

1. Internal review

Under s 54 of the FOI Act, you may apply in writing for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. Where possible, attach reasons why you consider a review is necessary. Any internal review will be carried out by another officer within 30 days of receipt of any request for review.

Application for a review of the decision should be addressed to:

The FOI Officer
Family Court of Australia
GPO Box 9991
ADELAIDE SA 5001

2. Information Commissioner review

Under s 54L of the FOI Act you may apply to the Australian Information Commissioner to review the decision. An application under this section must be made in writing within 60 days of the date of this letter in one of the following ways:

- online (www.oaic.gov.au/freedom-of-information/foi-review-process)
- post (Australian Information Commissioner GPO Box 2999 Canberra ACT 2601)
- in person (Level 3, 175 Pitt Street Sydney NSW 2000)

Yours sincerely



Michael Raine
Freedom of Information Officer
Federal Circuit Court of Australia