



AFP
AUSTRALIAN FEDERAL POLICE

Our ref: CRM 2021/94

1 September 2020

Right to Know Compliance Officer

Right to Know

BY EMAIL ONLY: foi+request-6581-09789d61@righttoknow.org.au

Dear Sam,

Freedom of Information Request

I refer to your request dated 07 August 2020 for documents held by the Australian Federal Police (AFP) pursuant to the *Freedom of Information Act 1982* (the Act) in relation to:

"I am seeking information in relation to the complaint referral process in relation to 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, how many investigation referrals/requests were sent to the AFP from the Court/Court Marshal/Court Registrar for the 17/18 and 18/19 financial years?

What lawful capacity can they act? Given that the Separation of Powers relies upon the all Courts being independent from the Government and as such it is not a Government Entity, Agency or Commonwealth Place. How can the AFP have any involvement without being in breach of their lawful jurisdiction?"

The Commissioner of the AFP, being the principal officer of the agency, has authorised me to make decisions on behalf of the agency in respect of the Act.

SEARCHES

In relation to this request, a search was undertaken by the Client Liason Team within Specialist Protective Command for documents within scope. These searches included but were not limited to:

- a) a search of all records held by AFP case officers with responsibility for matters relating to the documents to which you sought access.

- b) a search of all records held by the relevant line areas within the AFP.

Please note, consultation with the relevant line areas has confirmed that distinct statistics for complaints referrals in relation to the Federal Circuit Court are not maintained by the AFP.

As a result of the above information, apart from the file made up for your FOI request, no documents relating to your request have been located in the possession of the AFP. Section 24A states:

“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.”

Therefore, on this basis, your request for access is refused under section 24A(b)(ii) of the Act.

REVIEW AND COMPLAINT RIGHTS

If you are dissatisfied with a Freedom of Information decision made by the Australian Federal Police, you can apply either for internal review of the decision, or for a review by the Information Commissioner (IC). You do not have to apply for internal review before seeking review by the IC.

For complaints about the AFP’s actions in processing your request, you do not need to seek review by either the AFP or the IC in making your complaint.

REVIEW RIGHTS under Part VI of the Act

Internal Review by the AFP

Section 53A of the Act gives you the right to apply for internal review in writing to the AFP within 30 days of being notified of a decision. No particular form is required. It would assist the independent AFP decision-maker responsible for reviewing the file if you set out in the application, the grounds on which you consider that the decision should be reviewed.

Section 54B of the Act provides that the Internal Review submission must be made within 30 days. Applications should be addressed to:

Freedom of Information
Australian Federal Police
GPO Box 401
Canberra ACT 2601

REVIEW RIGHTS under Part VII of the Act

Review by the Information Commissioner

Alternatively, section 54L of the Act gives you the right to apply directly to the IC, or following an Internal Review by the AFP. In making your application you will need to provide an address for notices to be sent (this can be an email address) and a copy of the AFP decision. It would also assist if you set out the reasons for review in your application.

Section 54S of the Act provides the timeframes for an IC Review submission. For an *access refusal decision* covered by subsection 54L(2), the application must be made within 60 days. For an *access grant decision* covered by subsection 54M(2), the application must be made within 30 days.

Applications for IC Review should be addressed to:

Office of the Australian Information Commissioner
GPO Box 5128
Sydney NSW 2001

Further, the OAIC encourages parties to an IC Review to resolve their dispute informally, and encourages agencies to consider possible compromises or alternative solutions to the dispute in this matter. The AFP would be pleased to assist you in this regard.

Information about this process can be found in Part 10 of the Guidelines which are available on the OAIC's website at <http://www.oaic.gov.au/publications/guidelines.html>.

RIGHT TO COMPLAIN under Part VIIB of the Act

Section 70 of the Act provides that a person may complain to the IC about action taken by the Australian Federal Police in relation to your application.

A complaint to the IC may be made in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, but the complaint should set out the grounds on which you consider the action should be investigated.

The IC may be contacted on 1300 363 992.

Yours sincerely,



Jacqueline Ellery
Principal FOI Officer/Team Leader
Freedom of Information and Information Law
Chief Counsel Portfolio