



FEDERAL CIRCUIT COURT OF AUSTRALIA

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

Email: customer.service@federalcircuitcourt.gov.au

1 April 2021

Mr Herbert Williamson

by email: foi+request-7117-2757a0e4@righttoknow.org.au

Dear Mr Williamson,

Re. Your correspondence dated 28 February 2021

I refer to your email dated 28 February 2021 in which you request documents under the *Freedom of Information Act 1982* (Cth) (the FOI Act).

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.

Scope of request

In your email you request the following category of documents:

- *In 2020 for each judge:*
 1. *How many duty list hearings were heard;*
 2. *Of those duty list hearings, how many were urgent parental applications;*
 3. *The timeframe each judge took to deal with interim matters related to urgent parental applications made from the duty list hearing.*

Please provide the information so that the information can be compared for each Judge.

Decision

Under section 5 of the FOI Act, it is only open to you to make a request for documents that relate to matters of an administrative nature.

I have decided to refuse access to documents requested pursuant to your FOI request, on the basis that the documents requested are outside the scope of the FOI Act, as none of the documents requested are, or 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*.

In making my decision I have had regard to:

- a. the terms of your request;
- b. the relevant provisions of the FOI Act and case law considering those provisions; and
- c. the FOI Guidelines issued by the Office of the Australian Information Commissioner under section 93A of the FOI Act.

Application of the FOI Act

Under section 5(1) of the FOI Act, the Act only applies to documents of the Court that relate to matters of an administrative nature. The phrase ‘matters of an administrative nature’ was clarified by the High Court in *Kline v Official Secretary of the Governor General (2013) 249 CLR 645 (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]). Statistics relating to particular judges do not constitute information of a kind referred to above.

Section 17 of the FOI Act applies in circumstances where data relevant to a request is stored by an agency in a computer system and permits, in some circumstances, a report to be generated to provide information in compliance with a FOI request. However, an agency is not required to produce a written document if doing so would ‘substantially and unreasonably divert the resources of the agency from its other operations’ (sub-section 17(2) of the FOI Act).

The FOI Guidelines issued by the Office of the Australian Information Commissioner provide:

2.33 The right of access under the FOI Act is to existing documents, rather than to information. The FOI Act does not require an agency or minister to create a new document in response to a request for access, except in limited circumstances where the applicant seeks access in a different format or where the information is stored in an agency computer system rather than in a discrete form (see Part 3 of these Guidelines). A request may nevertheless be framed by reference to a document that contains particular information.

The Guidelines provide further:

3.204 Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. Examples include a transcript of a sound recording, a written compilation of information held across various agency databases, or the production of a statistical report from an agency's dataset. The obligation to produce a written document arises if:

- the agency could produce a written document containing the information by using a 'computer or other equipment that is ordinarily available' to the agency for retrieving or collating stored information (s 17(1)(c)(i)), or making a transcript from a sound recording (s 17(1)(c)(ii)), and
- producing a written document would not substantially and unreasonably divert the resources of the agency from its other operations (s 17(2)).

If those conditions are met, the FOI Act applies as if the applicant had requested access to it and it was already in the agency's possession.

Search

Following acknowledgment of receipt of your request, consideration was given to the information stored in the Court's computer system and the statistical report that the Court could generate from the relevant dataset.

I am satisfied that all reasonable steps have been taken to produce a configured report within the scope of your FOI request.

Statistical report

The Court's computer system contains a dataset that is configurable to include certain details within the scope of your FOI request, namely a report with statistical information that may be extracted regarding:

- The number of applications for final and interim parenting orders filed in the Canberra registry of the Federal Circuit Court in 2020 (noting that each application would have a duty list hearing);
- The judge to whom each of those matters was docketed; and
- The number of those matters where a party sought a parenting application to be given an urgent listing.

However, the Court's computer system does not contain statistical information that may be extracted regarding the timeframes for each judge to deal with urgent interim parenting applications. Such information is not stored in the Courts' computer system and configurable in a report. To obtain such data would require a manual analysis of each file.

I do not consider that the configurable report, to the extent that it lists judges' names and the applications for final parenting orders and urgent parental applications in their dockets, is a document relating to 'matters of an administrative nature'. Reports relating to the workload of individual judges and the listing of individual judges' names is for the primary purpose of the management of judicial workload by the Chief Judge, and the Court's case management judges. Pursuant to subsection 12(1) of the *Federal Circuit Court of Australia Act 1999*, the Chief

Judge is 'responsible for ensuring the effective, orderly and expeditious discharge of the business of the Federal Circuit Court of Australia'. In doing so, the Chief Judge may make arrangements as to which judges are to sit on particular matters; assign particular caseloads and functions to judges, and temporarily restrict a judge to non-sitting duties (subsection 12(3) of the *Federal Circuit Court of Australia Act 1999*).

Accordingly, I consider the report relating to individual judges relates to the discharge of the business of the Court by the Chief Judge and not to 'matters of an administrative nature'. I consider that to the extent the configurable report details the workload of presiding judicial officers it is used by the Chief Judge, his judicial delegates and individual judges in their capacity as the holders of judicial office, and is exempt from the provisions of the Act pursuant to subsection 5(1) of the Act.

I am not satisfied that it is practicable to redact this exempt material and to provide you with an edited document, which could be viewed as understandable and meaningful despite the redactions (section 22 of the FOI Act).

The development of a document which includes details of the timeframes it took each individual judge to deal with urgent interim parenting applications, is not something that could be achieved merely by using a computer or other equipment that is ordinarily available to the Court for retrieving or collating stored information. A document containing information of this type could only be achieved through a complete physical analysis by Court staff of all relevant Court files in the Canberra registry to which the request relates. Such analysis would substantially and unreasonably divert the resources of the Court. These resources would be substantially and unreasonably diverted in the analysis of documents that are not themselves subject to the FOI Act. The production of a document containing information of this nature would therefore be outside the requirements of section 17 of 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 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
Federal Circuit Court of Australia
GPO Box 9991
CANBERRA ACT 2601
by email: customer.service@federalcircuitcourt.gov.au

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



Virginia Wilson
Deputy Principal Registrar and National Family Law Registrar
Federal Circuit Court of Australia