



14/10812

14 August 2014

Mr Kushra Navartne

By email: [foi+request-733-dcde4fd6@righttoknow.org.au](mailto:foi+request-733-dcde4fd6@righttoknow.org.au)

Dear Mr Navartne

### Freedom of Information Request no. FOI14/165

The purpose of this letter is to give you a decision about access to documents that you requested under the *Freedom of Information Act 1982* (FOI Act).

#### Summary

I, Frances Brown, Director, am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

You requested access to documents relating to statistics on appeals from State and Territory Supreme Courts to the High Court. Specifically you sought access to:

*'Documents that contain the number of cases that:*

*1) were (are) appealing a decision from a state or territory Supreme Court, categorized by state or territory. i.e. Victoria, NSW, WA, NT, TAS, SA, Queensland, ACT and Norfolk Island, with figures per year since 2010 up to now.*

*2) illustrate the outcome of the decision of the High Court, categorized by state or territory Supreme Court and outcome of the High Court appeal. i.e. found in favour of the applicant/plaintiff. [1]*

*3) for the figures in (1), illustrate how many appeals were from parties [2] that were not legally represented at the proceedings in the Supreme Court.*

*4) for the figures in (3), illustrate the outcome of the High Court proceedings. [3]*

*Please provide all data (documents) in spreadsheet (microsoft .xls) format if it more efficient and practical to do so. For all other responses please use Acrobat (.pdf) format.'*

The Department received your request on 8 August 2014. You requested that any charges be waived on the grounds that this information will promote public debate.

I have identified that the Attorney-General's Department has no documents that fall within the scope of your request. I did this by arranging a search of the electronic records management system of the Department and consulting staff from the relevant area of the Department, who may have been aware of documents falling within the scope of your request.

I have accordingly decided to refuse your request for access to the documents. More information, including the reasons for my decision, is set out below.

## Decision and reasons for decision

With regard to the documents requested in your application, I have found that:

- the documents you requested do not exist (subsection 24A(1)(b)(ii)) – information about why they do not exist is given below.

## Material taken into account

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

- the FOI Act (specifically subsection 24A(1)(b)(ii)); and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

My reasons for refusing access are given below.

## 24A Request may be refused if documents cannot be found, do not exist or have not been received

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.*

To further assist in understanding this clause the FOI Guidelines at 8.40 provide:

*An agency or minister can refuse a request for access to a document if they can show they have taken all reasonable steps to locate it and have determined that the document cannot be found or does not exist (s24A(1)).<sup>1</sup>*

Staff of the Department have conducted a search of the electronic filing system and have made enquiries of those who may be able to help locate such documents. These searches have found no documents within the scope of your request. Senior staff in the relevant area of the Department have advised that the Department does not track filings to the High Court on an individual case basis nor does it conduct the type of analysis described in your request. Analysis of case outcomes as described in your request is not within the scope of the work for which the Department is responsible.

The Department provides advice to government on issues about the federal courts, which include:

- the conferral of jurisdiction on courts and related issues;
- the role, structure and administration of the federal courts;
- court operations and resources;
- matters arising under legislation relating to federal courts and judiciary
- judicial and other statutory appointments to federal courts; and
- terms and conditions applying to federal judicial officers.

The High Court may have some of the information you are seeking; for example, the High Court Annual Report provides information on overall filings in a given year. The High Court Annual reports are available at: <http://www.hcourt.gov.au/publications/annual-reports/annual-reports>.

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<sup>1</sup> *Cristovao and Secretary, Department of Social Security* (1998) AATA 787.

### **Your review rights**

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage 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 Attorney-General's Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, and be lodged in one of the following ways:

email:      foi@ag.gov.au  
post:        Freedom of Information and Privacy Section  
              Office of Corporate Counsel,  
              Attorney-General's Department,  
              3-5 National Circuit  
              Barton, ACT 2600

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 Australian 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 Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

### **Questions about this decision**

If you wish to discuss this decision, please contact the Department by telephone: (02) 6141 6666 or by email [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



Frances Brown

Director, Freedom of Information and Privacy Section