



13/8475

10 September 2014

Mr Kushra Navartne

Sent by e-mail only: foi+request-733-dcde4fd6@righttoknow.org.au

Dear Mr Navartne

Freedom of Information Request no. FOI 14/165

I am writing to advise you of my decision in relation to your request for internal review of a decision by the Attorney-General's Department to refuse access to documents you requested under the *Freedom of Information Act 1982* (FOI Act).

Background

2. I am an officer authorised under section 23(1) of the FOI Act to make decisions on behalf of the Attorney-General's Department in relation to FOI requests.

3. On 8 August 2014 you made the following request to the Department [footnotes omitted]:

This is a request under the Freedom of Information Act 1982 (Cth) for 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.

3) for the figures in (1), illustrate how many appeals were from parties 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.

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.

4. On 14 August 2014 the Department advised you that – following an electronic search of documents and making inquiries of staff – it had no documents that fell within the scope of your request. The Department determined that the documents you described did not exist, and decided to refuse your request for access in accordance with subsection 24A(1) of the FOI Act.

5. In your email of 26 August 2014 requesting an internal review of the decision you indicated you did not accept the reasons provided for refusal. Your email stated [footnotes omitted]:

The advice about the High Court Annual Reports was useful.

I note that 'Access to justice' is one of your responsibilities.

My request was based on this particular element, which was not addressed or mentioned in your reply.

Your reply did however, mention the responsibilities (advisory) that you owe to government.

The website 'access to justice' has information on the law societies of each state and territory, which in itself is providing access to justice.

My request was more inclined towards access to justice beyond the state and territory Courts. Presumably, the state/territory department of Justice and Legal Aid will record the number of applicants that they have provided legal aid for a High Court appeal, but will not record any instances where an unrepresented litigant has filed an action in the High Court. Although, the High Court Annual reports contain this data, we are not able to link this data to State/territories.

Of course a reduction in the number of self-represented (un-represented) litigants could indicate:

a) that most litigants are seeking professional paid-for legal assistance.

b) They are not pursuing appeals to the High Court.

c) they are represented through the multitude of legal aid/community legal advice, pro bono schemes.

Amongst other factors.

I note from your annual report of 2012-13, Strategic Plan for 2012-2015 section that promoting equity and efficiency to improve access to justice is one of The department's six priorities.

Analysis of case outcomes, as you put it, is only needed to the extent so as to monitor the efficiency and consistency of processes.

The Victoria Supreme Court "Self-Represented Litigants Information Pack Supreme Court—Court of Appeal" (updated June 2014) has provided (indicated) some evidence that outcomes by self-represented parties are often unfavourable.

Analysis done using the 2002 Annual report of the High Court has found only 0.7% of applications for special leave were successful in comparison to 21% for represented parties.

Decision

6. I have reviewed the earlier decision in this matter. In the course of doing so I have arranged further searches of the records held by this Department.

7. I have decided to affirm the decision to refuse access on the basis I am satisfied that the documents you requested do not exist.

Reasons for decision

8. The reasons for this decision are that I consider that all reasonable steps have been taken to find documents that may fall within the scope of your request and no such documents have been found. In summary, the Attorney-General's Department does not hold spreadsheets or other documents which detail the statistical information sought in your request. I have sought to explain the position in further detail below.

9. You appear to be under the impression that – because the Attorney-General’s Department deals with matters relating to access to justice – it necessarily follows that this Department must hold documents which include the statistical information which you are seeking. I do not believe this proposition to be correct, either as a matter of logic or one of practical fact.

10. As I understand your application for internal review, you consider access to such information could facilitate informed consideration of issues relating to self-represented litigants. For what it is worth, I agree with your view that access to consistent and reliable data regarding persons who use the Australian civil justice system is a worthwhile objective. Indeed, this Department has been engaged in a long term project to create an evidence base to address this issue. Details regarding the project are publicly available on this Department’s website at the following link:

<http://www.ag.gov.au/LegalSystem/Pages/Anevidencebasefortheciviljusticesystem.aspx>

11. In relation to your specific area of interest, you will note that the above website address includes a link to a report published in June 2012 by the Australian Centre for Justice Innovation at Monash University. The report (entitled *Self-Represented Litigants: Gathering Useful Information*) relevantly states (see the executive summary at page v):

Overall, this study shows that in the Australian Commonwealth civil justice system only limited data is collected about SRLs [self-represented litigants].

12. Having perused the report (which may, incidentally, be relevant in relation to your own research) I appreciate your view that the precise statistics you are seeking would assist you in considering access to justice issues. However, this of itself does not alter the fact that – having taken all reasonable steps to find any documents which fall within the scope of your request – the Department has not found any such documents. Following further searches, and taking into account advice regarding the nature of records held by this Department for its operations in relation to its responsibilities for law and justice matters, I am satisfied that the documents you have requested do not exist.

Creation of documents

13. You stated in in your application for internal review that:

A full history of my FOI request and all correspondence is available on the Internet at this address:

https://www.righttoknow.org.au/request/appeals_from_a_supreme_court_to

14. I have reviewed the relevant correspondence, including your annotation dated 30 August 2014 which states:

Without even looking at the FOI Act 1982 (Cth) I would say that the AG’s department must take all reasonable steps to locate the documents (data, if they are held in computer storage) and create a fresh document where it is necessary.

15. Should you be interested in looking at it, a full copy of the FOI Act is available at the Australian Government’s ComLaw website, which is accessible via the following link:

<http://www.comlaw.gov.au/>

16. Further guidance on the FOI Act is available in Guidelines issued by the Australian Information Commissioner under section 93A of that Act, which are accessible via the following link:

<http://www.oaic.gov.au/freedom-of-information/applying-the-foi-act/foi-guidelines/>

17. In relation to the specific issue you have raised, the Guidelines relevantly state at [3.12]:

The right of access 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 (see Part 8 of these Guidelines) or where the information is stored in an agency computer system rather than in discrete form.

Material taken into account

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

- the representations included in your email requesting an internal review
- the provisions of the FOI Act (and, in particular, section 24A of that Act)
- the results of searches conducted of documents held by the Department
- advice from the relevant line area confirming that the Department does not hold records of the nature you are seeking, and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

Information Commissioner review

19. If you are dissatisfied with my decision, you may apply to the Australian Information Commissioner for review. 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

20. Further information about Information Commissioner review is available on the Office of the Australian Information Commissioner website at the following link:

<http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

Questions about this decision

21. I hope the above information clarifies the position. If you wish to discuss this decision, please contact the Department by email at foi@ag.gov.au.

Yours sincerely



Steven Marshall
Acting Corporate Counsel
Attorney-General's Department