



**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

27 October 2021

Shaun
Right to Know

By email: foi+request-8004-3b1cc45a@righttoknow.org.au

Dear Sir/Madam,

Request under the Freedom of Information Act

I acknowledge receipt of your email to the Federal Court of Australia (the **Court**) dated 22 October 2021. The subject line to your email reads “Freedom of Information request – A Court of Law”. The body of your email reads as follows:

I require the answer to the following:

The Federal Court of Australia is a Court of Law and the Law of the land is common law and there is no public Federal legislation, law, rule (or other) to the contrary. Is there an internal policy, directive, rule, law (or other) that:

1. deny or defer a man (or woman) right to justice? and, 2. deny or defer a man (or woman) right to access to the Federal Court of Australia - a Court of Law, to prosecute a claim in common law?

i, require the internal policy or directive or law or rule (or other) that makes the above (or similar) claim/statement (point 1 and 2) that a PUBLIC SERVANT or qualified employee or assign of the said Court would depend on to: deny or defer a man (or woman) right to justice, and, deny or defer a man (or woman) right to access the said Court, and, the name of the qualified employee, PUBLIC SERVANT or assign (or other) that made it.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the *Freedom of Information Act 1982 (Cth)* (**FOI Act**).

Decision

I am of the view that the request you have made does not constitute a valid request under the FOI Act because it does not seek access to “a document of an agency” in accordance with subsection 11(1) of the FOI Act.

In the event that your request is considered a valid request, I am unable to provide you with the documents requested pursuant to subsection 24A(1) of the FOI Act, because such documents cannot be found or do not exist.

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

- your request;
- the FOI Act and relevant case law; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (**FOI Guidelines**).

Reasons for Decision

Access to documents – subsection 11(1)

Relevantly to your request, subsection 11(1) of the FOI Act provides that:

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:*
- (a) a document of an agency, other than an exempt document;*

Subsection 4(1) of the FOI Act stipulates that a document is “a document of an agency” if:

- (a) the document is in the possession of the agency, whether created in the agency or received in the agency.*

Subsection 4(1) of the FOI Act also contains the following definition of a “document”:

document includes:

- (a) any of, or any part of any of, the following things:*
- (i) any paper or other material on which there is writing;*
 - (ii) a map, plan, drawing or photograph;*
 - (iii) any paper or other material on which there are marks, figures, symbols or perforations having a meaning for persons qualified to interpret them;*
 - (iv) any article or material from which sounds, images or writings are capable of being reproduced with or without the aid of any other article or device;*
 - (v) any article on which information has been stored or recorded, either mechanically or electronically;*
 - (vi) any other record of information; or*
- (b) any copy, reproduction or duplicate of such a thing; or*
- (c) any part of such a copy, reproduction or duplicate;*
- but does not include:*
- (d) material maintained for reference purposes that is otherwise publicly available; or*
 - (e) Cabinet notebooks.*

The FOI Guidelines elaborate on the above relevant legislative provisions at paragraph 2.33 which provides that the “*right of access under the FOI Act is to existing documents, rather than to information*”.

In your email, you say that you “require the answer” to certain questions. You also ask “[i]s there an internal policy, directive, rule, law (or other)”. In my view, these parts of your email seek answers as to the existence of certain information. These parts of your email do not, however, seek access to “a document of an agency”.

In relation to the part of your request that seeks access to a certain “rule” or “law”, rules and laws are publicly available and captured by paragraph 4(1)(d) of the FOI Act, being “material maintained for reference purposes that is otherwise publicly available”. Information captured by paragraph 4(1)(d) of the FOI Act falls outside the definition of a “document” under the FOI Act. Accordingly, the part of your request that seeks access to the rule or law does not properly seek access to “a document of an agency”.

In accordance with the legislative provisions outlined above, I have decided that your FOI request is not a valid request in accordance with the FOI Act because your request does not seek access to “a document of an agency”.

Documents that cannot be found or do not exist – subsection 24A(1)

The second part of your email says that you “require the internal policy or directive or law or rule (or other)” that would be relied upon by public servants including to deny a person right to justice and access to the Court. To the extent that your request – or at least this part of your request – does seek access to “a document of an agency”, I am unable to provide you with any such documents, because those documents cannot be found or do not exist.

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.*

Searches were undertaken by staff of the Court to identify all documents falling within the scope of your request. These searches involved discussions with various employees, searches of the Court’s intranet pages, and searches of the Court’s national network drive. As a result of the searches undertaken, no documents could be found that answered the terms of your request.

For these reasons, I am satisfied that all reasonable steps have been taken to find any documents within the ambit of your request, and that the documents cannot be found or do not exist. As there are no documents to provide you, I must refuse access under subsection 24A(1) 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 those decisions. I 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 Federal Court 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 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 Australia 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 the Information Commissioner review is available on the Officer of the Australian Information Commissioner website. Go to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Rohan Muscat', written over a faint circular stamp or watermark.

Rohan Muscat
National Registrar