



**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

16 March 2022

George Costanza
Right to Know

By email: foi+request-8422-6954baa5@righttoknow.org.au

Dear Mr Costanza,

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) dated 14 February 2022 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you have requested the following:

I request documents that show what the SES Cap of the Federal Court Agency is at the date of this request.

I request documents that show the standard level of pay for Legal 2 employees at the date of this request.

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 FOI Act.

Searches undertaken

Extensive searches were undertaken by staff of the Court, including senior staff of the Court's People and Culture team, to identify all documents falling within the scope of your request. This included searches of the Court's human resources shared drive and records management and information systems.

As a result of the searches undertaken, one document was identified as falling within the scope of your FOI request, being *Federal Court of Australia Enterprise Agreement 2018-2021 - Legal salary rates*. There was also information found from these searches that was relevant to your request but did not exist in a discrete written form. This is discussed further below.

Decision

In relation to the first part of your request, for access to documents that show the SES Cap of the Federal Court Agency, I have decided to grant you access to the information sought by providing you with a written compilation of that information.

In relation to the second part of your request, for access to documents that show the standard level of pay for Legal 2 employees, I have decided to grant you access in full to the document found, being *Federal Court of Australia Enterprise Agreement 2018-2021 - Legal salary rates*.

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

- the terms of your request;
- the relevant provisions of the FOI Act and relevant case law;
- the *Freedom of Information (Charges) Regulations 2019*; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner (**FOI Guidelines**).

Reasons for Decision

Section 17 of the FOI Act provides:

- (1) *Where:*
 - (a) a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;
 - (b) it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and
 - (ba) it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and
 - (c) the agency could produce a written document containing the information in discrete form by:
 - (i) the use of a computer program or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or
 - (ii) the making of a transcript from a sound recording held in the agency;the agency shall deal with the request as if it were a request for access to a written document so produced and containing that information and, for that purpose, this Act applies as if the agency had such a document in its possession.
- (2) An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.

The FOI Guidelines provide:

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 ...

Based on the searches conducted by staff of the Court's People and Culture team and discussions had with those staff members, I have determined that there is information relevant to the first part of your request that does not exist in a discrete written form. Rather, the SES cap of the Federal Court Statutory Agency, which includes all officers and staff of this Court as well as of the Federal Circuit and Family Court of Australia and National Native Title Tribunal, is held in an online platform utilised by the human resources team and would need to be retrieved and collated to fulfil your FOI request.

As paragraph 2.33 of the FOI Guidelines explains, the FOI Act does not ordinarily "require any agency to create a new document in response to a request for access". However, given

the application of section 17, I have decided that you should be provided with a written compilation of the information sought.

As outlined above, in relation to the second part of your request, for access to documents that show the standard level of pay for Legal 2 employees, I have decided to grant you access in full to the document found.

Access Format

Given your FOI request was made by email, I assume that you would prefer access to the information in the form of electronic copies of documents being emailed to you. I have therefore decided to grant you access to the following two documents in PDF format and release those documents to you by email:

- Written compilation of information that shows what the SES cap of the Federal Court Statutory Agency was at the date of the FOI request; and
- Document labelled: *Federal Court of Australia Enterprise Agreement 2018-2021 - Legal salary rates.*

The two documents listed above accompany this letter.

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 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 as to 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 Office of the Australian Information Commissioner website at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C Hammerton Cole', written in a cursive style.

C Hammerton Cole
Registrar