



**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

5 May 2022

Marek
Right to Know

By email: foi+request-8564-79ab1d54@righttoknow.org.au

Dear Sir/Madam,

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) dated 6 March 2022 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you have requested the following:

Kerryn Vine Camp was the Australian Public Service Commissioner's representative on the selection panels SES1 and SES2 positions in the Federal Court in 2018 (see – https://www.righttoknow.org.au/request/veto_powers_of_representatives_o#incoming-24416).

Under the FOI Act, I want access to the following documents:

- i. the certification issued by Kerryn Vine Camp that the selection processes for the “National Judicial Registrar & District Registrar – QLD (SES1)” complied with the Public Service Act 1999 and the Australian Public Service Commissioner’s Directions 2016; and*
- ii. the certification issued by Kerryn Vine Camp that the selection processes for the “National Judicial Registrar & District Registrar – WA (SES1)” complied with the Public Service Act 1999 and the Australian Public Service Commissioner’s Directions 2016; and*
- iii. the certification issued by Kerryn Vine Camp that the selection processes for the “National Judicial Registrar & District Registrar – VIC (SES1)” complied with the Public Service Act 1999 and the Australian Public Service Commissioner’s Directions 2016; and*
- iv. the certification issued by Kerryn Vine Camp that the selection processes for the “Senior National Judicial Registrar (SES2)” complied with the Public Service Act 1999 and the Australian Public Service Commissioner’s Directions 2016.*

I also want access to the following documents:

- v. *the certifications issued by the Australian Public Service Commissioner's representative noting compliance with the Public Service Act 1999 and the Australian Public Service Commissioner's Directions 2016 for the National Judicial Registrar positions Susan O'Connor, Claire Gitsham and Matthew Benter were recruited to fill.*

Please provide the certifications by return email.

On 21 March 2022, the Court acknowledged receipt of your FOI request and advised you that, because your request covered documents that contained personal information about individuals, under section 27A of the FOI Act the Court was required to consult with the persons concerned before making a decision about the release of the documents. For that reason, the period for processing your request was extended by a further period of 30 days in accordance with subsection 15(6) of the FOI Act.

Searches undertaken

Extensive searches were undertaken by staff of the Court to identify any documents falling within the scope of your request. These searches included consultations with senior staff in the Court's People and Culture team, searches of the Court's human resources and recruitment inboxes, searches of staff emails, searches of the human resources shared drive, and searches of the Court's electronic document, records management and information systems. I am not aware of any other steps that could reasonably have been taken to identify the documents you have requested.

As a result of the searches undertaken, four (4) documents were identified as falling within the scope of your FOI request. The table below lists those documents, in accordance with the relevant paragraphs of your request.

Paragraph (i)	<ul style="list-style-type: none"> • Commissioner's Representative Certificate – National Judicial Registrar and District Registrar, QLD
Paragraph (ii)	<ul style="list-style-type: none"> • Commissioner's Representative Certificate – National Judicial Registrar and District Registrar, WA
Paragraph (iii)	<ul style="list-style-type: none"> • Commissioner's Representative Certificate – National Judicial Registrar and District Registrar, VIC
Paragraphs (iv) and (v)	<ul style="list-style-type: none"> • Commissioner's Representative Certificate – Senior National Judicial Registrar

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.

Decision

I have decided to grant you access to the documents you have sought, with minor redactions made to those documents with respect to information that is conditionally exempt under section 47F of the FOI Act and for which disclosure would be contrary to the public interest under subsection 11A(5) of the FOI Act.

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

- the terms of your request;
- the nature and content of the documents sought by your request;
- the relevant provisions of the FOI Act and relevant case law;
- the third party submissions received following consultations under section 27A of the FOI Act;
- 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

Personal information – s 47F of the FOI Act

Subsection 47F(1) of the FOI Act prescribes that:

A document is conditionally exempt if its disclosure under this Act would involve the unreasonable disclosure of personal information about any person (including a deceased person).

The term “*personal information*” is defined in subsection 4(1) of the FOI Act to have the same meaning as in section 6 of the *Privacy Act 1988* (Cth), that is:

...information or an opinion about an identified individual, or an individual who is reasonably identifiable:

(a) whether the information or opinion is true or not; and

(b) whether the information or opinion is recorded in material form or not.

I consider that each of the certificates issued under section 21 of the *Australian Public Service Commissioner's Directions 2016* contain personal information about public servants, including their signatures.

In determining whether disclosure of the documents would involve an “*unreasonable disclosure of personal information*”, I am required to have regard to the following under subsection 47F(2) of the FOI Act:

(a) the extent to which the information is well known;

- (b) *whether the person to whom the information relates is known to be (or to have been) associated with the matters dealt with in the document;*
- (c) *the availability of the information from publicly accessible sources;*
- (d) *any other matters that the agency or Minister considers relevant.*

In considering what is unreasonable, the AAT in *Re Chandra and Minister for Immigration and Ethnic Affairs* [1984] AATA 437 at 259 stated that:

...whether a disclosure is 'unreasonable' requires ... a consideration of all the circumstances, including the nature of the information that would be disclosed, the circumstances in which the information was obtained, the likelihood of the information being information that the person concerned would not wish to have disclosed without consent, and whether the information has any current relevance...it is also necessary in my view to take into consideration the public interest recognised by the Act in the disclosure of information ... and to weigh that interest in the balance against the public interest in protecting the personal privacy of a third party...

In relation to the four (4) Commissioner's Representative Certificates listed on page 2 of this decision, I note that each of these certificates includes the name, position and signature of a public servant. In my view, it would not be unreasonable to disclose the name and position of the public servant contained in each certificate. Furthermore, the public servant consulted in relation to these certificates did not object to the disclosure of their name or position.

However, with respect to the signature of the public servant contained in each certificate, this information is not well known nor available from publicly accessible sources, as far as I am aware. In my view, disclosure of the signature of an individual public servant in this context increases the risk of the misuse of that signature which, if it occurred, would likely cause substantial distress and/or harm to that individual.¹

In the decision of *Colin James Corkin and Department of Immigration and Ethnic Affairs* [1984] AATA 448 (16 October 1984), the Hon. Sir William Prentice (Senior Member) found at paragraph [14] as follows:

The signature is of paramount importance in one's activities in banking and financial matters, correspondence, the making of applications, the giving of receipts... The maker of a signature does not readily make it available to others who might take advantage of its possession to imitate it without permission. It is I consider, in an especially marked way - private to the individual, one's own. Its making, its characteristics, its privacy constitute part of the individual's pursuits of life, his commercial, professional and public business. I take it to be part of his "personal affairs" as much as the contents of his wallet, his credit cards, his private correspondence; and I find therefore that its release to the applicant would amount to the disclosure of information relating to the personal affairs of the person named.

¹ See 'FG' and *National Archives of Australia* [2015] AICmr 26 at [47] where "detriment that disclosure may cause to the person to whom the information relates" is listed as a matter to consider in determining whether disclosure would be unreasonable.

Having regard to the above, I consider that, in these circumstances, disclosure of the signature of the public servant in each certificate would be an unreasonable disclosure of personal information and that, as a result, the documents are conditionally exempt under section 47F of the FOI Act.

Public interest test

In finding that the documents are conditionally exempt, I am required to consider whether it would be contrary to the public interest to give you access at this time.

Subsection 11A(5) of the FOI Act provides:

The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Subsection 11B(3) of the FOI Act lists factors that must be taken into account in considering the public interest test, as follows:

Factors favouring access to the document in the public interest include whether access to the document would do any of the following:

- (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);*
- (b) inform debate on a matter of public importance;*
- (c) promote effective oversight of public expenditure;*
- (d) allow a person to access his or her own personal information.*

Subsection 11B(4) of the FOI Act lists factors that must not be taken into account in deciding whether access would be in the public interest. I have not considered those factors.

The FOI Guidelines provide non-exhaustive lists of other factors favouring disclosure (see paragraph 6.19) and against disclosure (see paragraph 6.22) that may be relevant in certain circumstances. In relation to the factors weighing against disclosure and the potential harm that may result from disclosure, the FOI Guidelines state the following:

6.20 The FOI Act does not list any factors weighing against disclosure. These factors, like those favouring disclosure, will depend on the circumstances. However, the inclusion of the exemptions and conditional exemptions in the FOI Act recognises that harm may result from the disclosure of some types of documents in certain circumstances; for example, where disclosure could prejudice an investigation, unreasonably affect a person's privacy or reveal commercially sensitive information. Such policy considerations are reflected in the application of public interest factors that may be relevant in each particular case.

*6.21 Citing the specific harm defined in the applicable conditional exemption is not itself sufficient to conclude that disclosure would be contrary to the public interest. **However, the harm is an important consideration that the decision maker must weigh when seeking to determine where the balance lies [emphasis added].***

Having regard to the relevant factors, I accept that the public interest factor favouring disclosure of the signature would be to promote the objects of the FOI Act. However, in my view, the release of the signature would not inform debate on a matter of public importance or promote effective oversight of public expenditure.

In my view, the factors weighing against disclosure of the signature of the public servant are:

- disclosure could reasonably be expected to prejudice the protection of the public servant's right to privacy generally;
- disclosure could deter public servants in the future from participating in recruitment processes with the Court as Australian Public Service Commissioner's representatives, thereby undermining the Court's recruitment processes; and
- disclosure could lead to the misuse of the public servant's signature which, if it occurred, would likely result in considerable harm to the public servant.

For these reasons, I give the factors against disclosure of the signature of the public servant greater weight than the factors favouring disclosure. I am satisfied that disclosure of the signature in the documents would, on balance, be contrary to the public interest.

Deletion of exempt matter or irrelevant material – s 22 of the FOI Act

Section 22 of the FOI Act requires an agency to provide access to an edited version of a document where it is reasonably practicable to edit the document to delete exempt or irrelevant material.

In relation to the four (4) documents that fall within the scope of your FOI request, I have decided that the exempt material, being the signature of a public servant contained in each certificate, can be protected with redaction. On this basis, I have decided to grant you access to redacted copies of those documents. This allows exempt material to be protected while, at the same time, promoting the objects of the FOI Act by providing you with access to meaningful information.

Access Format

Your request asks that the Court “*provide the certifications by return email.*” I note that each of the documents requested have already been provided on the Court's disclosure log and are therefore already available to you. I refer you to the following link where you can access those documents: <https://www.fedcourt.gov.au/disclosurelog> (see PA2925-06/13, PA2925-06/20 and PA2925-06/23).

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

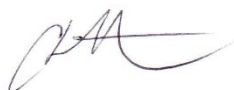
in person: Level 3, 175 Pitt Street, Sydney NSW

More information about the Information Commissioner review is available on the Officer of the Australian Information Commissioner (**OAIC**) website at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>.

Complaints

If you are dissatisfied with the way the Court has handled your FOI request, you may complain to the Information Commissioner in writing. There is no fee for making a complaint. More information about making a complaint is available on the OAIC website, including a link to the online complaints form which the OAIC recommends using for complaints, at: <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/make-an-foi-complaint>.

Yours sincerely,



C Hammerton Cole
Registrar