



**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

LEVEL 16
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

6 June 2022

Marcus
Right to Know

By email: foi+request-8865-0e22c4bb@righttoknow.org.au

Dear Marcus,

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) dated 7 May 2022 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you have requested the following:

Under the FOI Act I request access to the following documents:

- a) *the position description for the National Judicial Registrar role that Claire Gitsham applied for and succeeded in being selected to fill;*
- b) *the classification evaluation for the National Judicial Registrar role that Claire Gitsham applied for and succeeded in being selected to fill;*
- c) *the vacancy notice for the National Judicial Registrar role, published in the Public Service Gazette or elsewhere, that Claire Gitsham applied for and succeeded in being selected to fill;*
- d) *the position description for the National Judicial Registrar role that Matthew Benter applied for and succeeded in being selected to fill;*
- e) *the classification evaluation for the National Judicial Registrar role that Matthew Benter applied for and succeeded in being selected to fill; and*
- f) *the vacancy notice for the National Judicial Registrar role, published in the Public Service Gazette or elsewhere, that Matthew Benter applied for and succeeded in being selected to fill.*

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 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, five (5) documents were identified as falling within the scope of your request, including gazette notices and position descriptions. The searches undertaken did not identify any classification evaluations.

- Gazette Notice – National Judicial Registrar & District Registrar;
- Gazette Notice – Judicial Registrar;
- Position Description – National Judicial Registrar & District Registrar;
- Position Description – National Judicial Registrar;
- Position Description – Judicial Registrar.

Decision

With respect to the parts of your request that seek vacancy notifications and position descriptions, I have decided to grant you access in full to the documents found.

With respect to the parts of your request that seek classification evaluations, I have decided, pursuant to subsection 24A(1) of the FOI Act, to refuse those parts of your request for access to documents as I am satisfied that all reasonable steps have been taken to find the documents you have requested, but the documents cannot be found or do not exist.

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 *Freedom of Information (Charges) Regulations 2019*; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

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

Classification evaluations

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.*

As mentioned above, extensive searches were undertaken by staff of the Court to identify any documents falling within the scope of your request. I am satisfied that all reasonable steps have been taken to find any classification evaluations within the ambit of your FOI request and that, as a result of the searches undertaken, no documents could be found that fell within those paragraphs of your request. I am not aware of any other steps that could reasonably have been taken to identify the documents you have requested in those paragraphs of your request. As there are no documents to provide to you, I have decided to refuse access to the classification evaluations requested in paragraphs (b) and (e) of your request under subsection 24A(1) of the FOI Act.

Access Format

The five (5) documents to which I have decided to grant you access are listed below:

1. Gazette Notice – National Judicial Registrar & District Registrar;
2. Gazette Notice – Judicial Registrar;
3. Position Description – National Judicial Registrar & District Registrar;
4. Position Description – National Judicial Registrar;
5. Position Description – Judicial Registrar.

I note that each of the documents listed above has 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 PA2925-06/35, PA2925-06/31, PA2925-06/30 and PA2925-06/22).

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 (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