



**FEDERAL COURT OF AUSTRALIA
REGISTRY**

COMMONWEALTH LAW COURTS
3 ANGAS STREET
ADELAIDE SA 5000

GPO BOX 1350
ADELAIDE SA 5001

18 August 2022

Julie-Anne
Right to Know

By email: foi+request-8899-6f26eeb9@righttoknow.org.au

Dear Julie-Anne

Request for an internal review under the Freedom of Information Act

I refer to your email correspondence of 19 July 2022 (9:32AM) seeking an internal review of the decision made on 13 July 2022.

Authorised decision-maker

I am authorised to make a decision on behalf of the Federal Court of Australia (**Court**) in relation to your internal review request. In conducting the internal review, I acknowledge that an internal review is a merit review process and that I am required to bring a fresh, independent and impartial mind to the review.

Material taken into Account

In making my decision on internal review, I have considered the following material:

- your FOI request received on 14 May 2022 (9:03PM) (**FOI request**);
- the decision letter to you dated 13 July 2022;
- your request for internal review received on 19 July 2022 (9:32AM) (**review request**);
- the documents identified as falling within the scope of your request;
- the records of the searches conducted by Court staff;
- the third party submissions received following consultations under s 27A of the *Freedom of Information Act 1982 (Cth)* (**FOI Act**);
- the FOI Act and relevant case law; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

Decision on Internal Review

Your FOI request seeks access to all documentation relating to the ADR accreditation of Registrar Peter Schmidt. Your review request clarifies that “all I am essentially seeking is documentation which evidences that Peter Schmidt has been accredited as a mediator.”

Based on this clarification, I interpret your FOI request as a request to access documents that evidence Mr Schmidt’s accreditation, and not for documents that simply relate to it. Only one of the documents identified by the original decision maker comes within the scope of your FOI request, as clarified. This is a letter dated 2 September 2021 (the **letter**).

That said, the FOI Act does not apply to a request to access the letter because the mediation accreditation of a Registrar does not relate to “matters of an administrative nature” (see s 5(1) of the FOI Act). It is therefore not open to you to request the letter under the FOI Act.

While the letter cannot be requested under the FOI Act, I refer you to the Court’s Annual Report, which states “The FCMAS [Federal Court Mediator Accreditation Scheme] incorporates the National Mediator Accreditation Standards and the majority of court-ordered mediations are conducted by registrars who are trained and accredited by the Court under the FCMAS.”¹ Mr Schmidt is a Registrar of the Court who conducts mediations, and the statement that “mediations are conducted by registrars who are...accredited by the Court” applies to Mr Schmidt accordingly.

Reasons

In providing these reasons, I note that the decision letter dated 13 July 2022 includes the text of sections of the FOI Act and FOI Guidelines. I do not propose to repeat the text in this internal review.

Searches Undertaken

Prior to the decision dated 13 July 2022, extensive searches were undertaken by staff of the Court to identify any documents falling within the scope of your request. I have reviewed these searches and spoken to Court personnel who were involved in this process. The process for undertaking the searches involved consultations with senior staff of the Court, searches of the Court’s human resources and recruitment inboxes, searches of staff emails, as well as searches of the Court’s human resources shared drive, the Court’s electronic documents, records management and information systems. The searches utilised key words based on Court staff’s knowledge of document titling practices in the Court. Staff engaged in extensive consultations to determine appropriate key word searches by reference to the description of the documents in your FOI request.

¹ [Annual report 2020-2021 \(fedcourt.gov.au\)](https://www.fedcourt.gov.au/annual-report/2020-2021)

I am satisfied that the searches undertaken were thorough and comprehensive. I do not believe any further reasonable search or enquiry would find additional documents within the scope of your request. I am satisfied that, other than the documents already found, no other documents exist or they cannot be found.

Letter dated 2 September 2021

I am of the view that the letter does not relate to “matters of an administrative nature” and therefore it is not open to you to request this document under the FOI Act.

The FOI Act has limited application to courts and court registries. It does not apply to a request for access to a document of a court or registry unless the document relates to “matters of an administrative nature” (see s 5 of the FOI Act).²

The phrase “matters of an administrative nature” is not defined in the FOI Act. However, the High Court of Australia has held that the phrase refers to documents that concern “the management and administration of office resources, such as financial and human resources and information technology.”³ The High Court has also observed that the FOI Act does not apply to documents relating to the discharge of the substantive powers and functions of adjudication or tasks that are referable to the exercise of judicial, rather than administrative, powers and functions.⁴

The letter is not a document that relates to “matters of an administrative nature.” It concerns the mediation accreditation of a Registrar of the Court. Mediations conducted by Registrars are referable to the substantive powers and functions of a Registrar in the Court, and are conducted pursuant to orders made by the Court.⁵ The letter does not relate to the management and administration of registry and office resources, and therefore does not relate to “matters of an administrative nature.”

As FOI requests can only be made for documents relating to “matters of an administrative nature”, I am of the view that the FOI Act does not apply and the letter cannot be accessed under the FOI Act.

Your review rights

If you are dissatisfied with my decision, under section 54L of the FOI Act 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.

² See also FOI Guideline 2.8

³ *Kline v Official Secretary to the Governor General of Australia & Anor* [2013] HCA 52 (**Kline**) at [13], [41].

⁴ *Kline* at [45], [47]. See also FOI Guideline 2.10.

⁵ See generally s 53A of the *Federal Court of Australia Act 1976* (Cth) and Part 28 of the *Federal Court Rules 2011* (Cth).

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website. Go to [Information Commissioner review - Home \(oaic.gov.au\)](#)

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. Go to [Make an FOI complaint - Home \(oaic.gov.au\)](#)

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nicola', with a long horizontal flourish extending to the right.

Nicola Colbran
National Judicial Registrar &
District Registrar