



Australian Government
Australian Public Service Commission

Anonymous

By email: foi-request-8422-01aa813b.bk3rr@aleeas.com

Our reference: LEX 510

Dear Anonymous

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on 11 March 2023 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents in the following terms:

Under the FOI Act, I request access to the documents, in the possession of the APSC, containing logically probative and relevant evidence demonstrating that the SES Band 1 classified National Judicial Registrar & District Registrar role in Western Australia was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000 (Cth).

4. The context you provided for the scope of your request is too lengthy to reproduce here, noting it is contained in your email request.
5. In reviewing the context, I understand this request concerns documents that an individual, Ms Kate McMullan, considered as part of a Public Interest Disclosure (PID) investigation.
6. As decision-maker for this FOI request, I note that I had no involvement in this specific PID investigation which occurred in 2020. Therefore, as an unrelated third party, I am unable to assess whether documents considered by Ms McMullan during this specific PID investigation were 'logically probative' or 'relevant.'

7. In light of the above, I believe there is sufficient basis to be satisfied your request does not provide such information concerning the document/s as is reasonable necessary to enable me to identify it (paragraph 24AA(1)(b) of the FOI Act).
8. However, in consideration of the objects of the FOI Act, being the promotion of transparency and facilitation of access to information held by government, I have interpreted your request to mean documents Ms McMullan considered that might contain logically probative and relevant evidence that demonstrates that ‘the SES Band 1 classified National Judicial Registrar & District Registrar role in Western Australia was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the Public Service Classification Rules 2000 (Cth).’
9. I have identified two (2) documents relevant to your request.

Decision on your FOI request

10. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
11. I have decided to refuse access to the documents because I consider they are exempt in full.
12. **Attachment A** sets out the grounds on which the documents are exempt.
13. My reasons are set out in **Attachment B**.

Deletion of exempt matter or irrelevant material

14. 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 remove exempt material or material that is irrelevant to the scope of the request.
15. Relevant to deleting exempt or irrelevant content from a document, the FOI Guidelines provide:

3.98 Applying those considerations, an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.

16. I consider the objects of the FOI Act will not be served by providing access to an edited version of the documents because extensive editing is required that would leave only a skeleton of the former documents, conveying little content or substance.

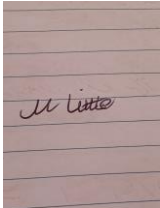
Contacts

17. If you require clarification on matters in this letter please contact the Commission’s FOI Officer by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au.

Review rights

18. You are entitled to seek review of this decision. Your review rights are set out at **Attachment C**.

Yours sincerely

A photograph of a handwritten signature on a piece of lined paper. The signature is written in cursive and appears to read "M Little". The paper is light-colored with horizontal lines.

Mitchell Little

Authorised FOI decision maker

11 April 2023

ATTACHMENT A

SCHEDULE OF DOCUMENTS

Document	Description	Exemptions
1	Email correspondence between the Commission and Federal Court of Australia dated 27 October 2020	Sections 47C and 47E of the FOI Act apply.
2	Word document titled 'Judicial Registrar Recruitment'	Sections 47C, 47E, and 47F of the FOI Act apply.

ATTACHMENT B

Reasons for decision

1. In making my decision on your request, I have had regard to:
 - the terms of your request;
 - the contents of the documents;
 - the *Public Interest Disclosure Act 2013* (PID Act);
 - the *Public Service Act 1999* (PS Act);
 - the FOI Act; and
 - the FOI Guidelines issued by the Australian Information Commissioner.

Section 47E – Certain operations of agencies

2. Subsection 47E(d) of the FOI Act provide that a document is conditionally exempt from disclosure if its disclosure would, or could be reasonably expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
3. The Australian Public Service Commissioner (the Commissioner) and his delegates have a number of inquiry functions under the PS Act, including in relation to the investigation of certain public interest disclosures under the PID Act.
4. It is important that the Commissioner and his delegates are able to properly undertake activities under the PID Act. The PID scheme promotes integrity and accountability across the Commonwealth public sector and provides a protected space for all current and former public officials ('disclosers') to make disclosures relating to suspected wrongdoing or misconduct.
5. I have considered that under the PID scheme, information collected during the course of a PID investigation is protected under section 65 of the PID Act.
6. I have decided that release of both documents under the FOI Act would likely undermine the protections provided under the PID scheme, and likely discourage current and former public officials to make PID disclosures or to involve themselves in PID investigations. The success of any PID investigation process relies heavily on the willingness of individuals to participate in the PID scheme in a frank and candid manner.
7. Further, I consider that the release of both documents would also likely have a larger effect of inhibiting or discouraging Commission staff to freely and effectively communicate on matters relating to the PID Act, including in the consideration and assessment of material subject to a PID investigation.
8. Should individuals be unwilling or unable to effectively participate in the PID scheme, this would ultimately have a substantial adverse effect on the Commission's ability to carry out its obligations under the PID Act, including its ability to ensure that allegations of misconduct are being investigated and where necessary take appropriate action in a proper and efficient manner.

9. I note that the importance of protecting information collected during a PID investigation process was upheld in the recent Information Commissioner (IC) decision of ‘*YU’ and Bureau of Meteorology (Freedom of Information)* [2021] AICmr75 (29 November 2021), where the IC accepted the relevant department’s submissions that certain operations of the agency could be undermined if the confidentiality established under the PID Act was circumvented by an access application made under the FOI Act.
10. Therefore, I have decided to conditionally exempt both documents in full because disclosure of both documents would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the Commission’s operations.
11. My consideration of the public interest test in respect of the application of section 47E to Documents 1 and 2 is outlined further at paragraphs 26-30.

Section 47C – Documents subject to deliberative processes

12. Section 47C of the FOI Act conditionally exempts documents containing deliberative matter. Deliberative matter generally consists of:
 - an opinion, advice or recommendation that has been obtained, prepared or recorded; or
 - a deliberative process of the Commission.
13. A deliberative process includes the recording or exchange of opinions, advice, recommendations, a collection of facts or opinions and interim decisions and deliberations.
14. On review, both documents contain material which record the deliberative processes of the Commission and the Federal Court of Australia. This deliberative material relates to how the PID investigation was conducted by the Commission, and contains material prepared or recorded as part of the deliberative PID process.
15. For the reasons outlined above, I am of the view that both documents contain deliberative matter and parts are therefore conditionally exempt under section 47C of the FOI Act.
16. Given I have already conditionally exempted both documents in full under subsection 47E(d), I have not elaborated further on which specific parts of the documents I consider exempt under section 47C.
17. My consideration of the public interest test in respect of the application of section 47C to Documents 1 and 2 is outlined further at paragraphs 26-30.

Section 47F – personal information

18. Section 47F of the FOI Act provides that a document is conditionally exempt if it would involve the unreasonable disclosure of personal information about any person.
19. Personal information means information or an opinion about an identified individual, or an individual who is reasonably identifiable whether:

- the information or opinion is true or not; and
 - the information or opinion is recorded in a material form or not.
20. I consider that Document 2 contains personal information of third parties, including information about their qualifications and employment history.
21. I have had regard to the matters I must consider under subsection 47F(2) of the FOI Act in determining whether the disclosure of the document, in absence of consent from those third parties, would involve the unreasonable disclosure of personal information.
22. I have identified the following factors that, in my view, do not support the release of personal information under section 47F of the FOI Act:
- the third party individuals' personal information, in particular their names, will identify them;
 - the personal information is unique and relates specifically to the third party individuals, and is generally not well known or publicly available;
 - some of the personal information is qualitative assessments of third party individuals which is extremely personal and sensitive;
 - the release of some of the third party individuals' personal information may cause stress for them or other detriment; and
 - disclosure would prejudice the third party individuals' right to privacy.
23. I have therefore decided to the extent that the documents include personal information of third parties, those parts are conditionally exempt from disclosure under section 47F of the FOI Act because disclosure would involve the unreasonable disclosure of multiple persons' personal information.
24. Given I have already conditionally exempted Document 2 in full under subsections 47E(c) and (d), I have decided it would not be appropriate for me to undertake consultations with the third party individuals on section 47F at this time.
25. My consideration of the public interest test in respect of the application of section 47F to Document 2 is outlined further at paragraphs 26-30.

Section 11A – public interest test

26. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access to the document would, on balance, be contrary to the public interest.
27. I have considered the public interest exemption factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the document would promote the objects of the FOI Act and inform debate on a matter of public importance.

28. I have identified the following factors as weighing against disclosure:

- disclosure of third party individuals' personal information will not advance any scrutiny of any decisions falling within the scope of your FOI request;
- disclosure would prejudice the third party individuals' right to privacy;
- disclosure would undermine the confidentiality and secrecy provisions fundamental to the PID Scheme;
- disclosure would hinder the Commission's future deliberative processes and efficiency with which the Commission can support the functions of the Commissioner;
- the disclosure of certain information have a substantial adverse effect on the proper and efficient conduct of the operations of the Commission; and
- disclosure would undermine the Commission's relationship with other agencies and third party individuals.

29. Subsection 11B(4) of the FOI Act lists factors that are irrelevant to determining whether access would be in the public interest. I have not considered these factors.

30. Accordingly, I am satisfied disclosure of the conditionally exempt documents is contrary to the public interest.

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au

Post: The FOI Officer
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply

in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au



Australian Government
Australian Public Service Commission

Anonymous

By email: foi-request-4986-fa9593b0.dbung@aleeas.com

Our reference: LEX 511

Dear Anonymous

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on 11 March 2023 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au

Documents relevant to your request

3. You requested access to documents in the following terms:

a) any and all documents demonstrating that Statutory Agencies, as distinguished from the APS employees, Agency Heads and Statutory Office Holders that make them up, are bound by the legal obligations set out in subsection 10A(2) of the Public Service Act 1999 (Cth);

b) any and all documents demonstrating that Statutory Agencies, as distinguished from the APS employees, Agency Heads and Statutory Office Holders that make them up, are legally capable of contravening the legal obligations set out in subsection 10A(2) of the Public Service Act 1999 (Cth);

c) any and all documents, including notes and reasons, that might shine a light on why Kate McMullan found, on the balance of probabilities, and in the light of her duty to make findings of fact on logically probative and relevant evidence, the “FCA”, a Statutory Agency, responsible for “promoting Ms Wu into this position” and, thus, “not ... comply[ing] with the APS Employment Principles under subsection 10A(2) of the PS Act ...”, even though the logically probative and relevant evidence demonstrates that:

i) Caitlin Wu was selected for promotion to the Executive Level 1 classified National Court Framework Registrar role in the Federal Court of Australia, ahead of “a field of candidates all of whom were admitted as legal practitioners”, by Sia Lagos, David Pringle and Andrea Jarratt on 2 December 2016; and

ii) Sia Lagos, as the Agency Head's delegate, endorsed the selection panel's recommendation and "[a]pprove[d] Caitlin Wu as the successful candidate" on 2 December 2016.

4. The context you provided for the scope of your request is too lengthy to reproduce here, noting it is contained in your email request.

Decision on your FOI request

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
6. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist.
7. As such, I refuse your request for access to documents pursuant to section 24A of the FOI Act.

Reasons for decision

Section 24A – documents that cannot be found or do not exist

8. 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 or Minister's possession but cannot be found; or
 - (ii) does not exist.
9. The Office of the Australian Information Commissioner (OAIC) has issued guidelines pursuant to section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term 'all reasonable steps' in subsection 24A(1).
10. Having regard to OAIC's guidance, I have taken into account the subject matter of your request and consulted with colleagues in the Employment Policy team within the Commission.
11. The Employment Policy team conducted searches in the Commission's record management systems (TRIM, ShareHub, and Outlook) using the terms 'statutory agency 10A' and 'statutory agency section 10A.' No relevant documents were identified.
12. Accordingly, I have decided to refuse your request for access under section 24A of the FOI Act.

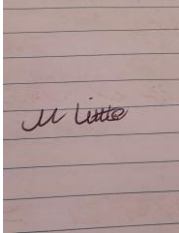
Contacts

13. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3500 or by email at foi@apsc.gov.au

Review rights

14. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A.**

Yours sincerely

A photograph of a handwritten signature on a piece of lined paper. The signature is written in cursive and appears to read "M Little". The paper has horizontal lines and a light brown or tan color.

Mitchell Little

Authorised FOI decision maker

11 April 2023

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

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B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application:**

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Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

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Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au



Australian Government
Australian Public Service Commission

GIPAgal

By email: foi-request-5017-bca7303a.s448a@aleeas.com

Our reference: LEX 520

Dear GIPAgal

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made 25 March 2023 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents on the following terms:

Part A – invitations for interview

Under the FOI Act, I request access to any and all documents sent to the following persons by officials in the APSC, inviting them to interviews as part of Kate McMullan’s investigation into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia:

- a) the Hon James Leslie Bain Allsop, Chief Justice of the Federal Court of Australia;*
- b) the Hon Andrew Peter Greenwood, Judge of the Federal Court of Australia;*
- c) Warwick Soden (of the Federal Court of Australia Statutory Agency);*
- d) David Pringle (of the Federal Court of Australia Statutory Agency);*
- e) Darrin Moy (of the Federal Court of Australia Statutory Agency);*
- f) Andrea Jarratt (of the Federal Court of Australia Statutory Agency);*
- g) Murray Belcher (of the Federal Court of Australia Statutory Agency);*
- h) Russell Trott (of the Federal Court of Australia Statutory Agency);*
- i) Susan O’Connor (of the Federal Court of Australia Statutory Agency);*
- j) Claire Gitsham (of the Federal Court of Australia Statutory Agency);*
- k) Matthew Benter (of the Federal Court of Australia Statutory Agency);*
- l) Phillip Allaway (of the Federal Court of Australia Statutory Agency);*
- m) Rupert Burns (of the Federal Court of Australia Statutory Agency);*
- n) Tuan Van Le (of the Federal Court of Australia Statutory Agency);*
- o) Rohan Muscat (of the Federal Court of Australia Statutory Agency); and*

p) Kerryn Vine-Camp (formerly the First Assistant Commissioner of the APSC and, for the purposes of the recruitment of several Senior Executive classified registrar roles in the Federal Court, the Australian Public Service Commissioner's representative).

Part B – submissions and information about the allegations of contraventions of the Code of Conduct

Under the FOI Act, I request access to any and all documents setting out the submissions of, or containing information received from, each of the following persons in response to requests for information issued as part of Kate McMullan's investigation into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia:

- a) the Hon James Leslie Bain Allsop, Chief Justice of the Federal Court of Australia;*
- b) the Hon Andrew Peter Greenwood, Judge of the Federal Court of Australia;*
- c) Warwick Soden (of the Federal Court of Australia Statutory Agency);*
- d) David Pringle (of the Federal Court of Australia Statutory Agency);*
- e) Darrin Moy (of the Federal Court of Australia Statutory Agency);*
- f) Andrea Jarratt (of the Federal Court of Australia Statutory Agency);*
- g) Murray Belcher (of the Federal Court of Australia Statutory Agency);*
- h) Russell Trott (of the Federal Court of Australia Statutory Agency);*
- i) Susan O'Connor (of the Federal Court of Australia Statutory Agency);*
- j) Claire Gitsham (of the Federal Court of Australia Statutory Agency);*
- k) Matthew Benter (of the Federal Court of Australia Statutory Agency);*
- l) Phillip Allaway (of the Federal Court of Australia Statutory Agency);*
- m) Rupert Burns (of the Federal Court of Australia Statutory Agency);*
- n) Tuan Van Le (of the Federal Court of Australia Statutory Agency);*
- o) Rohan Muscat (of the Federal Court of Australia Statutory Agency); and*
- p) Kerryn Vine-Camp (formerly the First Assistant Commissioner of the APSC and, for the purposes of the recruitment of several Senior Executive classified registrar roles in the Federal Court, the Australian Public Service Commissioner's representative).*

Part C – correspondence sent or received

To the extent not covered by Parts A or B, under the FOI Act, I request access to any and all documentary correspondence sent to, or received from, each of the following persons in the course of, and for the purpose of, Kate McMullan's investigation into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia:

- a) the Hon James Leslie Bain Allsop, Chief Justice of the Federal Court of Australia;*
- b) the Hon Andrew Peter Greenwood, Judge of the Federal Court of Australia;*
- c) Warwick Soden (of the Federal Court of Australia Statutory Agency);*
- d) David Pringle (of the Federal Court of Australia Statutory Agency);*
- e) Darrin Moy (of the Federal Court of Australia Statutory Agency);*
- f) Andrea Jarratt (of the Federal Court of Australia Statutory Agency);*
- g) Murray Belcher (of the Federal Court of Australia Statutory Agency);*
- h) Russell Trott (of the Federal Court of Australia Statutory Agency);*

*i) Susan O'Connor (of the Federal Court of Australia Statutory Agency);
j) Claire Gitsham (of the Federal Court of Australia Statutory Agency);
k) Matthew Benter (of the Federal Court of Australia Statutory Agency);
l) Phillip Allaway (of the Federal Court of Australia Statutory Agency);
m) Rupert Burns (of the Federal Court of Australia Statutory Agency);
n) Tuan Van Le (of the Federal Court of Australia Statutory Agency);
o) Rohan Muscat (of the Federal Court of Australia Statutory Agency); and
p) Kerryn Vine-Camp (formerly the First Assistant Commissioner of the APSC and, for the purposes of the recruitment of several Senior Executive classified registrar roles in the Federal Court, the Australian Public Service Commissioner's representative).*

Part D – investigation records

Under the FOI Act, I request access to any and all records (including notes, reports, transcripts of interviews etc), prepared by Kate McMullan for the purposes, and as part, of her investigation, setting out information that Kate McMullan garnered as part of requests for information (whether those requests were written or oral) from each of the following people:

*a) the Hon James Leslie Bain Allsop, Chief Justice of the Federal Court of Australia;
b) the Hon Andrew Peter Greenwood, Judge of the Federal Court of Australia;
c) Warwick Soden (of the Federal Court of Australia Statutory Agency);
d) David Pringle (of the Federal Court of Australia Statutory Agency);
e) Darrin Moy (of the Federal Court of Australia Statutory Agency);
f) Andrea Jarratt (of the Federal Court of Australia Statutory Agency);
g) Murray Belcher (of the Federal Court of Australia Statutory Agency);
h) Russell Trott (of the Federal Court of Australia Statutory Agency);
i) Susan O'Connor (of the Federal Court of Australia Statutory Agency);
j) Claire Gitsham (of the Federal Court of Australia Statutory Agency);
k) Matthew Benter (of the Federal Court of Australia Statutory Agency);
l) Phillip Allaway (of the Federal Court of Australia Statutory Agency);
m) Rupert Burns (of the Federal Court of Australia Statutory Agency);
n) Tuan Van Le (of the Federal Court of Australia Statutory Agency);
o) Rohan Muscat (of the Federal Court of Australia Statutory Agency); and
p) Kerryn Vine-Camp (formerly the First Assistant Commissioner of the APSC and, for the purposes of the recruitment of several Senior Executive classified registrar roles in the Federal Court, the Australian Public Service Commissioner's representative).*

When addressing the request for access to documents in your decision letter, please address each Part, and each paragraph, discretely. For example, please note whether or not there is a document that answers the description for Part A, paragraph (a), and then note whether or not access is granted, and if access is not granted, the legislative ground(s) for not granting access to the relevant document.

4. The context you provided for the scope of your request is:

I refer to the public interest disclosure investigation conducted, between May and December 2020, by Kate McMullan of the Australian Public Service Commission into allegations of cronyism and patronage in the Federal Court of Australia Statutory Agency.

The public interest disclosure was allocated to the APSC on 11 May 2020, having been “made with reference to the broad powers available to consider the matter by virtue of an allocation under the PID Act and under the Public Service Act 1999 (PS Act) (in particular s 41(2)(o))”: Attachment [1].

After seeking two extensions of time (Attachment [2]), Kate McMullan finalised her investigations under the Public Interest Disclosure Act 2013 (Cth) on 9 December 2020.

The following request for documents is made pursuant to the Freedom of Information Act 1982 (Cth). The search period for documents should be limited to the following time bracket: 10 May 2020 to 10 December 2020.

5. Following a request consultation process, on 30 March 2023 you limited the scope of your request to only Part A of the original request.

Decision on your FOI request

6. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
7. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist.
8. I have addressed each paragraph discretely as requested:

Part A – invitations for interview

Under the FOI Act, I request access to any and all documents sent to the following persons by officials in the APSC, inviting them to interviews as part of Kate McMullan’s investigation into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia:

Paragraph	Decision
a) The Hon James Leslie Bain Allsop	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
b) The Hon Andrew Peter Greenwood	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.

c) Warwick Woden	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
d) David Pringle	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
e) Darrin Moy	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
f) Andrea Jarratt	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
g) Murray Belcher	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
h) Russell Trott	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
i) Susan O'Connor	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
j) Claire Gitsham	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
k) Matthew Benter	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
l) Phillip Allaway	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
m) Rupert Burns	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.

n) Tuan Van Le	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
o) Rohan Muscat	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
p) Kerryn Vine-Camp	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.

9. As such, I refuse your request for access to documents pursuant to section 24A of the FOI Act.

Reasons for decision

Section 24A – documents that cannot be found or do not exist

10. 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 or Minister’s possession but cannot be found; or
 - (ii) does not exist.

11. The Office of the Australian Information Commissioner (OAIC) has issued guidelines pursuant to section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term ‘all reasonable steps’ in subsection 24A(1).

12. I note all individuals listed in your request are either no longer working at the Commission or are third parties. Having regard to OAIC’s guidance, I requested the ICT Service Delivery Section undertake a search of the Commission’s email system using the following search parameters for emails and calendar invitations:

- sent between the dates 10 May 2020 – 10 December 2020;
- sent from Kate McMullan’s work email address;
- sent to the 16 individuals listed in your request (using full names followed by @fedcourt.gov.au or @apsc.gov.au); and
- containing the words ‘investigation’ and ‘interview.’

13. The ICT Service Delivery Section conducted searches using the above search parameters. No relevant documents were identified.

14. Accordingly, I have decided to refuse your request for access under section 24A of the FOI Act.

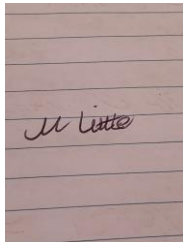
Contacts

15. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3720 or by email at foi@apsc.gov.au.

Review rights

16. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely

A photograph of a handwritten signature on a piece of lined paper. The signature is written in cursive and appears to read "M Little".

Mitchell Little

Authorised FOI decision maker

24 April 2023

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au

Post: The FOI Officer
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au



Australian Government
Australian Public Service Commission

s.47F

By email: s.47F

Our reference: LEX 521

Dear s.47F,

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made on Monday 27 March 2023 for access to documents held by the Australian Public Service Commission (the Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents on the following terms:
 - a) *any briefing, talking points or other papers provided to or used by Mr Peter Woolcott AO, Commissioner of the APSC to update the Secretaries Board, at its meeting on 8 March 2023, on public service issues being canvassed in the Royal Commission into the Robodebt Scheme; and*
 - b) *any record, draft or final, of Mr Woolcott's remarks relating to the Royal Commission at the Secretaries Board meeting on 8 March 2023.*

I do NOT seek access to:

- *Duplicates of any document captured within the scope of the request.*
- *Drafts, unless there is no final, in which case I seek the most recent draft.*
- *The mobile numbers or full email addresses of government officials, nor the names and contact details of government officials not in the Senior Executive Service or equivalent. I do ask that junior official's position or titles be left unredacted, along with email domains that provide useful information as to the origin and destination of communication e.g. [redacted]@industry.gov.au.*

4. I have identified four (4) documents in scope of Part (a) of your request.
5. All reasonable steps were taken to identify any documents in scope of Part (b) of your request. No documents were found.

Decision

6. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
7. I have decided to refuse access to all four documents because I consider they are exempt in full under the FOI Act.
8. **Attachment A** sets out the grounds on which the documents are exempt.
9. My reasons are set out in **Attachment B**.

Deletion of exempt matter or irrelevant material

10. 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 remove exempt material or material that is irrelevant to the scope of a request.
11. Relevant to deleting exempt or irrelevant content from a document, the FOI Guidelines provide:

3.98 Applying those considerations, an agency or minister should take a common sense approach in considering whether the number of deletions would be so many that the remaining document would be of little or no value to the applicant. Similarly, the purpose of providing access to government information under the FOI Act may not be served if extensive editing is required that leaves only a skeleton of the former document that conveys little of its content or substance.

12. I consider the objects of the FOI Act will not be served by providing access to edited versions of the documents because extensive editing is required that would leave only a skeleton of the former documents, conveying little content or substance.
13. I also consider it is not reasonably practicable to prepare edited versions of the documents, having regard to the nature and extent of the modifications required, and the resources available to modify the documents.

Contacts

14. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3720 or by email at foi@apsc.gov.au.

Review rights

15. You are entitled to seek review of this decision. Your review rights are set out at **Attachment C**.

Yours sincerely



Mitchell Little

Authorised FOI decision maker

26 April 2023

SCHEDULE OF DOCUMENTS

Document	Description	Exemption grounds
1	Correspondence from Secretary Ray Griggs AO CSC and CEO Rebecca Skinner PSM to Commissioner Peter Woolcott AO and Secretary Glyn Davis AC dated 8 February 2023	Sections 47C (deliberative processes) and 47E (certain operations of agencies) apply.
§	§.22 [REDACTED] [REDACTED] [REDACTED]	§.22 [REDACTED] [REDACTED]
§	§.22 [REDACTED] [REDACTED]	§.22 [REDACTED] [REDACTED]
4	Talking Points for the Commissioner	Sections 47C (deliberative processes) and 47E (certain operations of agencies) apply.

Reasons for decision

1. I have decided to refuse access to the documents because I consider that they are exempt in full.
2. In making my decision I have had regard to:
 - the terms of your request;
 - the content of the documents;
 - the *Public Service Act 1999* (PS Act);
 - the FOI Act; and
 - the FOI Guidelines issued by the Australian Information Commissioner.

Subsection 47E(d) – Certain operations of agencies – substantial adverse effect on the proper and efficient conduct of the operations of an agency

3. Subsection 47E(d) of the FOI Act provides that a document is conditionally exempt from disclosure if its disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of an agency.
4. For this exemption to apply, it is necessary that the predicted effect ‘would, or could reasonably be expected to’ occur.
5. The term ‘could’ in this instance, as the FOI Guidelines state at 5.17, requires an analysis of whether there exists a reasonable expectation that an event, effect or damage could occur. This ‘reasonable expectation’ cannot be a mere risk, possibility or chance of prejudice. It must be, based on reasonable grounds, a real, significant or material possibility of prejudice; as the FOI Guidelines at 5.18 state.
6. One of the Australian Public Service Commissioner’s (and by extension, the Commission’s) critical functions under the PS Act is to uphold high standards of the integrity and conduct in the Australian Public Service (APS). This includes, but is not limited to, supporting quality public service workforce management, building leadership and public service capability, promoting APS Values, inquiring into alleged breaches of the Code of Conduct, evaluating adequacy of systems and procedures for ensuring compliance with the Code of Conduct, and providing advice to other APS agencies on public service matters (such as through the Ethics Advisory Service).
7. The Commissioner is also a member of the Secretaries Board under the PS Act, with various functions including responsibility of stewardship of the APS.
8. I am satisfied the disclosure of information contained in all four documents would have a substantial adverse effect on the proper and efficient conduct of Commission’s operations in relation to its critical function of upholding the integrity of the APS. Specifically, the information relates to the Commission’s options and potential courses of action following release of findings and recommendations made by the ongoing Royal Commission into the Robodebt Scheme (the Royal Commission).

9. I consider there is a reasonable expectation of prejudice if this information were disclosed. Given the high profile nature and sensitivities of the ongoing Royal Commission, it is crucial that the options and potential courses of action to take in response to the Royal Commission's findings and recommendations can be canvassed in a frank and discrete manner by the Commissioner/Commission; accompanied by an appropriately confidential treatment of sensitive information with other relevant agencies and members of Secretaries Board. Public knowledge of what the specific potential matters considered by, and potentially available response options open to, the Commission are at this time would severely compromise the administrative decision-making efficacy of the Commission, as well as its relationships with relevant stakeholders.
10. The information supporting these options and proposed courses of action are of a sensitive, confidential nature. The maintenance of this confidentiality is essential in upholding trust between the Commissioner and relevant agencies and stakeholders; not just in respect of this Royal Commission but for similar, potential functions that may need to be undertaken in the future.
11. For this purposes of this decision, however, I believe that disclosure of the documents at this time, during such a sensitive Royal Commission, would reasonably be expected to result in the compromises and consequences detailed above.
12. Thus, in my view, the test of assessing the likelihood of a predicted or forecast event, effect or damage following the release of the document, as outlined in 5.16 of the FOI Guidelines, is broadly satisfied in this instance.
13. Additionally, the exemption requires that the predicted effect be of a 'substantial adverse' nature. Broadly, the term means, according to *Re Thies and Department of Aviation* [1986] AATA 141 at [24], that the predicted effect must be adverse and:

Sufficiently serious or significant to cause concern to a properly informed reasonable person.
14. I consider that the prejudicing of the options and potential courses of action by Commission in response to findings and recommendations made by the Royal Commission constitute such a 'substantial adverse' nature. These potential courses of action relate fundamentally to the Commission's statutory functions, as well as its broader role in the Commonwealth, in ensuring the integrity of the APS. To disclose information contained in these documents would severely complicate such pathways to the extent that they would not be carried out as efficiently as they could be during an ongoing sensitive Royal Commission.
15. The main consequence of disclosure in this respect would be the substantial adverse impact on agency and external stakeholder trust in the Commission and its ability to ensure integrity. This could result in the withdrawal of information supplied to the Commission in future, as well as overall greatly diminished confidence in the Commissioner and the ability to ensure integrity in the APS.

16. In light of my findings, I have therefore decided that all four documents are conditionally exempt from disclosure in full under this section.

Section 47C – Documents subject to deliberative processes

17. Section 47C of the FOI Act conditionally exempts documents containing deliberative matter. Deliberative matter generally consists of:

- an opinion, advice or recommendation that has been obtained, prepared or recorded; or
- a consultation or deliberation that has taken place

in the course of, or for the purposes of, the deliberative processes involved in the functions of an agency, Minister or the Commonwealth Government.

18. A deliberative process includes the recording or exchange of opinions, advice, recommendations, a collection of facts (including the pattern of facts or opinions considered) and interim decisions or deliberations.

19. On review, I am satisfied all four documents contain material which record the deliberative processes of the Commission and other APS agencies. Specifically, consultation about options and potential courses of action by the Commission, and other agencies, following the potential findings and recommendations that may be made by the Royal Commission.

20. For the reasons outlined above, I am of the view that all four documents contain deliberative matter and are therefore conditionally exempt in full under section 47C of the FOI Act.

Section 11A – public interest test

21. Subsection 11A(5) of the FOI Act provides that an agency must give access to a document if it is conditionally exempt unless access to the document would, on balance, be contrary to the public interest.

22. I have considered the public interest exemption factors in favour of disclosure at subsection 11B(3) of the FOI Act, including the extent to which access to the documents would promote the objects of the FOI Act and inform debate on a matter of public importance.

23. I have identified the following factors as weighing against disclosure:

- disclosure could interfere with the providing of frank and candid advice to the Commissioner as a member of the Secretaries Board;
- disclosure could reasonably be expected to interfere with the ongoing Royal Commission, and potential response actions that could be taken by the Commission, following the release of the Royal Commission findings and recommendations in due course;

- disclosure could reasonably be expected to prejudice the ability of the Commission to obtain valuable information regarding APS integrity matters in the future; and
- disclosure could reasonably be expected to harm the operational capacities of the Commission to fulfil statutory functions, including for vital matters of integrity and accountability.

24. Subsection 11B(4) of the FOI Act lists factors that are irrelevant to determining whether access would be in the public interest. I have not considered these factors.

25. On balance, I find disclosure of the documents would be contrary to the public interest.

Rights of Review

Asking for a full explanation of a Freedom of Information decision

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1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

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If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au

Post: The FOI Officer
Australian Public Service Commission
B Block, Treasury Building
GPO Box 3176
Parkes Place West
PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

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Telephone: 1300 363 992
Website: www.oaic.gov.au

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Phone: 1300 362 072
Website: www.ombudsman.gov.au



Australian Government
Australian Public Service Commission

GIPAgal

By email: foi-request-5017-bca7303a.s448a@aleeas.com

Our reference: LEX 547

Dear GIPAgal

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made 23 April 2023 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents on the following terms:

Search period

The search period for documents should be limited to the following time bracket: 1 May 2020 to 31 December 2020.

Request

Keeping the identified search period in mind, under the FOI Act, I request access to any and all:

a) correspondence between (i.e. sent to or received from) Kate McMullan and the following people for the purposes of the PID Investigation conducted by Kate McMullan into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia:

- i) the Hon James Leslie Bain Allsop, Chief Justice of the Federal Court of Australia;*
- ii) the Hon Andrew Peter Greenwood, Judge of the Federal Court of Australia;*
- iii) Warwick Soden (of the Federal Court of Australia Statutory Agency);*
- iv) David Pringle (of the Federal Court of Australia Statutory Agency);*
- v) Darrin Moy (of the Federal Court of Australia Statutory Agency);*
- vi) Andrea Jarratt (of the Federal Court of Australia Statutory Agency);*
- vii) Murray Belcher (of the Federal Court of Australia Statutory Agency);*

viii) Russell Trott (of the Federal Court of Australia Statutory Agency);
ix) Susan O'Connor (of the Federal Court of Australia Statutory Agency);
x) Matthew Benter (of the Federal Court of Australia Statutory Agency);
xi) Claire Gitsham (of the Federal Court of Australia Statutory Agency);
xii) Phillip Allaway (of the Federal Court of Australia Statutory Agency);
xiii) Rupert Burns (of the Federal Court of Australia Statutory Agency);
xiv) Tuan Van Le (of the Federal Court of Australia Statutory Agency);
xv) Kerryn Vine-Camp (formerly the First Assistant Commissioner of the Australian Public Service Commission and, for the purposes of the recruitment of several Senior Executive classified registrar roles in the Federal Court, the Australian Public Service Commissioner's representative); and

b) documents exchanged by Kate McMullan and the following people for the purposes of the PID Investigation conducted by Kate McMullan into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia:

i) the Hon James Leslie Bain Allsop, Chief Justice of the Federal Court of Australia;
ii) the Hon Andrew Peter Greenwood, Judge of the Federal Court of Australia;
iii) Warwick Soden (of the Federal Court of Australia Statutory Agency);
iv) David Pringle (of the Federal Court of Australia Statutory Agency);
v) Darrin Moy (of the Federal Court of Australia Statutory Agency);
vi) Andrea Jarratt (of the Federal Court of Australia Statutory Agency);
vii) Murray Belcher (of the Federal Court of Australia Statutory Agency);
viii) Russell Trott (of the Federal Court of Australia Statutory Agency);
ix) Susan O'Connor (of the Federal Court of Australia Statutory Agency);
x) Matthew Benter (of the Federal Court of Australia Statutory Agency);
xi) Claire Gitsham (of the Federal Court of Australia Statutory Agency);
xii) Phillip Allaway (of the Federal Court of Australia Statutory Agency);
xiii) Rupert Burns (of the Federal Court of Australia Statutory Agency);
xiv) Tuan Van Le (of the Federal Court of Australia Statutory Agency);
xv) Kerryn Vine-Camp (formerly the First Assistant Commissioner of the Australian Public Service Commission and, for the purposes of the recruitment of several Senior Executive classified registrar roles in the Federal Court, the Australian Public Service Commissioner's representative).

4. The context you provided for the scope of your request is:

I refer to the public interest disclosure investigation conducted, between May and December 2020, by Kate McMullan of the Australian Public Service Commission into allegations of cronyism and patronage in the Federal Court of Australia Statutory Agency.

The public interest disclosure was allocated to the APSC on 11 May 2020, having been "made with reference to the broad powers available to consider the matter by virtue of an allocation under the PID Act and under the Public Service Act 1999 (PS Act) (in particular s 41(2)(o))": Attachment [1].

After seeking two extensions of time (Attachment [2]), Kate McMullan finalised her investigations under the Public Interest Disclosure Act 2013 (Cth) on 9 December 2020.

Decision on your FOI request

5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
6. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist.
7. I have addressed each paragraph discretely as requested:

a) correspondence between (i.e. sent to or received from) Kate McMullan and the following people for the purposes of the PID Investigation conducted by Kate McMullan into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia

Paragraph	Decision
i) The Hon James Leslie Bain Allsop	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
ii) The Hon Andrew Peter Greenwood	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
iii) Warwick Woden	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
iv) David Pringle	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
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vii) Murray Belcher	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
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xiii) Rupert Burns	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
xiv) Tuan Van Le	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
xv) Kerry Vine-Camp	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.

b) documents exchanged by Kate McMullan and the following people for the purposes of the PID Investigation conducted by Kate McMullan into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia

Paragraph	Decision
i) The Hon James Leslie Bain Allsop	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
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v) Darrin Moy	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
vi) Andrea Jarratt	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
vii) Murray Belcher	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
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xiii) Rupert Burns	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
xiv) Tuan Van Le	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
xv) Kerryn Vine-Camp	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.

8. As such, I refuse your request for access to documents pursuant to section 24A of the FOI Act.

Reasons for decision

Section 24A – documents that cannot be found or do not exist

9. 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 or Minister’s possession but cannot be found; or

(ii) does not exist.

10. The Office of the Australian Information Commissioner (OAIC) has issued guidelines pursuant to section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term ‘all reasonable steps’ in subsection 24A(1).

11. I note all individuals listed in your request are either no longer working at the Commission or are third parties. Having regard to OAIC's guidance, I requested the ICT Service Delivery Section undertake a search of the Commission's email system using the following search parameters for emails and calendar invitations:

- sent between the dates 1 May 2020 – 31 December 2020;
- sent to and from Kate McMullan's work email address;
- sent to and from the 15 individuals listed in your request (using full names followed by @fedcourt.gov.au or @apsc.gov.au); and
- containing the words 'public interest disclosure' or 'PID.'

12. The ICT Service Delivery Section conducted searches using the above search parameters. No relevant documents were identified.

13. Accordingly, I have decided to refuse your request for access under section 24A of the FOI Act.

Contacts

14. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3720 or by email at foi@apsc.gov.au.

Review rights

15. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Barber'.

Kylie Barber

Authorised FOI decision maker

23 May 2023

Rights of Review

Asking for a full explanation of a Freedom of Information decision

If you are dissatisfied with this decision, you may seek review. Before you seek review of a Freedom of Information (FOI) decision, you may contact us to discuss your request and we will explain the decision to you.

Seeking review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (the FOI Act) may give you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by seeking:

1. an internal review by an different officer of the Australian Public Service Commission; and/or
2. external review by the Australian Information Commissioner.

There are no fees applied to either review option.

Applying for a review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be made in writing within 30 days of receiving this letter to:

Email: foi@apsc.gov.au
Post: The FOI Officer
 Australian Public Service Commission
 B Block, Treasury Building
 GPO Box 3176
 Parkes Place West
 PARKES ACT 2600

You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original FOI decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision. You have 60 days to apply in writing for a review by the Office of the Australian Information Commissioner (the OAIC) from the date you received this letter or any subsequent internal review decision.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

The OAIC encourage applicants to apply online. Where possible, to assist the OAIC you should include your contact information, a copy of the related FOI decision and provide details of your reasons for objecting to the decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992

Website: www.oaic.gov.au

Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072

Website: www.ombudsman.gov.au



Australian Government
Australian Public Service Commission

GIPAgal

By email: foi-request-5017-bca7303a.s448a@aleeas.com

Our reference: LEX 550

Dear GIPAgal

Freedom of Information request

1. I am writing about your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* (FOI Act) made 26 April 2023 for access to documents held by the Australian Public Service Commission (Commission).
2. The FOI Act and all other Commonwealth legislation referred to in this letter are publicly available from www.legislation.gov.au.

Documents relevant to your request

3. You requested access to documents on the following terms:

Under the FOI Act, I request access to any and all documents setting out the submissions of, or containing information received from, each of the following persons in response to requests for information issued as part of Kate McMullan's investigation into allegations that senior administrators in the Federal Court of Australia contravened the Code of Conduct when engaging or promoting registrars of the Federal Court of Australia:

- a) the Hon James Leslie Bain Allsop, Chief Justice of the Federal Court of Australia;
- b) the Hon Andrew Peter Greenwood, Judge of the Federal Court of Australia;
- c) Warwick Soden (of the Federal Court of Australia Statutory Agency);
- d) David Pringle (of the Federal Court of Australia Statutory Agency);
- e) Darrin Moy (of the Federal Court of Australia Statutory Agency);
- f) Andrea Jarratt (of the Federal Court of Australia Statutory Agency);
- g) Murray Belcher (of the Federal Court of Australia Statutory Agency);
- h) Russell Trott (of the Federal Court of Australia Statutory Agency);
- i) Susan O'Connor (of the Federal Court of Australia Statutory Agency);
- j) Claire Gitsham (of the Federal Court of Australia Statutory Agency);
- k) Matthew Benter (of the Federal Court of Australia Statutory Agency);
- l) Phillip Allaway (of the Federal Court of Australia Statutory Agency);
- m) Rupert Burns (of the Federal Court of Australia Statutory Agency);
- n) Tuan Van Le (of the Federal Court of Australia Statutory Agency);
- o) Rohan Muscat (of the Federal Court of Australia Statutory Agency);
- p) Caitlin Wu (of the Federal Court of Australia Statutory Agency); and

q) Kerryn Vine-Camp (formerly the First Assistant Commissioner of the APSC and, for the purposes of the recruitment of several Senior Executive classified registrar roles in the Federal Court, the Australian Public Service Commissioner’s representative).

4. The context you provided for the scope of your request is:

I refer to the public interest disclosure investigation conducted, between May and December 2020, by Kate McMullan of the Australian Public Service Commission into allegations of cronyism and patronage in the Federal Court of Australia Statutory Agency.

The public interest disclosure was allocated to the APSC on 11 May 2020, having been “made with reference to the broad powers available to consider the matter by virtue of an allocation under the PID Act and under the Public Service Act 1999 (PS Act) (in particular s 41(2)(o))”: Attachment [1].

After seeking two extensions of time (Attachment [2]), Kate McMullan finalised her investigations under the Public Interest Disclosure Act 2013 (Cth) on 9 December 2020.

Decision on your FOI request

- 5. I am authorised under subsection 23(1) of the FOI Act to make FOI decisions.
- 6. I am satisfied that all reasonable steps have been taken to find documents within scope of your request, and that no such documents meeting the description of what you have asked for can be found or exist.
- 7. I have addressed each paragraph discretely as requested:

Paragraph	Decision
a) The Hon James Leslie Bain Allsop	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
b) The Hon Andrew Peter Greenwood	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
c) Warwick Woden	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
d) David Pringle	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.

e) Darrin Moy	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
f) Andrea Jarratt	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
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k) Matthew Benter	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
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m) Rupert Burns	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
n) Tuan Van Le	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
o) Rohan Muscat	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.

p) Caitlin Wu	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.
q) Kerryln Vine-Camp	I am satisfied all reasonable steps have been taken to find documents within scope of your request and that no such documents meeting the description of what you have asked for can be found or exist.

8. As such, I refuse your request for access to documents pursuant to section 24A of the FOI Act.

Reasons for decision

Section 24A – documents that cannot be found or do not exist

9. Subsection 24A(1) of the FOI Act provides:

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10. The Office of the Australian Information Commissioner (OAIC) has issued guidelines pursuant to section 93A of the FOI Act. At paragraphs 3.88 to 3.93 of these guidelines, the OAIC provides guidance as to the meaning of the term ‘all reasonable steps’ in subsection 24A(1).

11. I note all individuals listed in your request are either no longer working at the Commission or are third parties. Having regard to OAIC’s guidance, I requested the ICT Service Delivery Section undertake a search of the Commission’s email system using the following search parameters for emails and calendar invitations:

- sent between the dates 11 May 2020 – 9 December 2020;
- sent to Kate McMullan’s work email address;
- sent from the 17 individuals listed in your request (using full names followed by @fedcourt.gov.au or @apsc.gov.au); and
- containing the words ‘public interest disclosure’ or ‘PID.’

12. The ICT Service Delivery Section conducted searches using the above search parameters. No relevant documents were identified.

13. Accordingly, I have decided to refuse your request for access under section 24A of the FOI Act.

Contacts

14. If you require clarification on matters in this letter please contact the Commission's FOI Officer by telephone on (02) 6202 3720 or by email at foi@apsc.gov.au.

Review rights

15. You are entitled to seek review of this decision. Your review rights are set out at **Attachment A**.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Barber'.

Kylie Barber

Authorised FOI decision maker

26 May 2023

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