

From: [Waldek](#)
To: [OAIC - FOI DR](#)
Subject: APPLICANT SUBMISSION 03.05.24 Re: OAIC – MR23/01376 - Response required by 7 May 2024 - IC review application about the Attorney-General's Department [SEC=OFFICIAL]
Date: Friday, 3 May 2024 6:45:00 PM

CAUTION: This email originated from outside of the organisation. Do not click links or open attachments unless you recognise the sender and know the content is safe.

Dear Sussan J,

MR23/01375
MR23/01376

Thanks for your email. I wish to proceed with IC review. I will set out some of my reasons below.

A. Materials provided not documents for the purposes of the FOI Act 1982

Section 4 of the FOI Act defines the word “document”. A document does not constitute “materials maintained for reference purposes that is otherwise publicly available”.

The AGD has only granted access to four documents. Those documents are:

- a) Summary of the Federal Court of Australia’s judgment in *Stradford v Judge Vasta* dated 30 August 2023 (document 2)
- b) Federal Court of Australia’s reasons for judgment ([2023] FCA 1020) dated 30 August 2023 (document 3)
- c) Order made by the Federal Court on 31 October 2023 (document 4)
- d) Judgment of the Full Court of the Family Court of Australia in *Stradford & Stradford* [2019] FamCAFC 25 (document 6).

The Federal Court judgment and the judgment summary are available on the websites of the Federal Court. I know that because I drew the attention of staff in the AGD to the judgment on the Federal Court’s website on 30 August 2023 (see:

https://www.righttoknow.org.au/request/stradford_a_pseudonym_v_judge_va_2#comment-3203;
https://www.righttoknow.org.au/request/stradford_a_pseudonym_v_judge_va_3#comment-3204).

When xxxxxxxxxxxx of the AGD wrote to me on 31 August 2023 claiming that “the Commonwealth was not involved in the false imprisonment of the applicant during the relevant family law proceedings ... because the Australian system of government is based on a separation of powers between the Legislature (the Parliament), the Executive (the Government), and the Judiciary (the Courts)”, I again drew xxxxx’s attention to Justice Wigney’s judgment in [2023] FCA 1020:

https://www.righttoknow.org.au/request/stradford_a_pseudonym_v_judge_va_3#outgoing-21157. I also noted, on 31 August 2023, that “those reading the judgment will observe, on the face of the record, that the Commonwealth of Australia was successfully sued as the second respondent in *Stradford* (a pseudonym) v *Judge Vasta* [2023] FCA 1020”:
https://www.righttoknow.org.au/request/stradford_a_pseudonym_v_judge_va_3#comment-3205.

My FOI requests could not extend to Justice Wigney’s judgment in [2023] FCA 1020 because Justice Wigney’s judgment does not constitute “materials maintained for reference purposes that is otherwise publicly available”. Therefore, providing me with the judgment as part of an FOI decision has no basis in law.

The same reasoning applies to the summary of the judgment in [2023] FCA 1020, the Full Court of the Family Court’s judgment from 2019 and the Federal Court’s orders of 31 October 2023. Not one of the documents is a document for the purposes of the FOI Act because all of those documents are materials maintained for reference purposes that are otherwise publicly available (be it on the websites of the Federal Court, on the Commonwealth

Law Courts portal, on Austlii etc).

Not one of these documents is a document for the purposes of the FOI Act. All of these documents are materials maintained for reference purposes that are otherwise publicly available.

B. Order of 31 October 2023 (document 4) not within the scope of my FOI requests

I made my FOI requests to the AGD and the Attorney General on 30 August 2023.

The right of access applies to documents that exist at the time the FOI Request was made: FOI Guidelines, paragraph 2.34.

The order of 31 October 2023 did not exist on 30 August 2023 and, therefore, is not a document within the scope of my request.

Why would officials in the AGD, who took almost 8 months to process my FOI requests, waste time assessing a document that was not even within the scope of my FOI request? Just a waste of taxpayer resources assessing a document that was not within the lawful scope of my request.

C. Federal Court of Australia notices of filing (documents 16, 18 and 19) not capable of being given access to

Aside from the fact that Alice Linacre has advanced the bald assertion (a bald assertion because she does not explain why the exemption applies) that granting access to documents 16, 18 and 19 would constitute a contempt of court, documents 16, 18 and 19 are not documents that the AGD is capable of providing access to under the FOI Act.

Paragraph 12(1)(b) of the FOI Act provides that a person is not entitled to obtain access to a document under Part III of the FOI Act to a document that is open to public access, as part of a public register of otherwise, in accordance with an enactment, where that access is subject to a fee or another charge.

Notices of filing in the Federal Court are documents that are kept on the Court file in the custody of a District Registrar of the Court: Federal Court Rules 2011 (Cth), r 2.31.

A person who is not a party may inspect an originating application or a pleading: Federal Court Rules 2011 (Cth), r 2.32(2).

A person may apply for leave to inspect a document that the person is not otherwise entitled to inspect: Federal Court Rules 2011 (Cth), r 2.32(4).

A person may be given a copy of the originating application or pleading if the person is entitled to inspect the document and has paid the prescribed fee: Federal Court Rules 2011 (Cth), r 2.32(5).

The prescribed fee is set out in the Federal Court and Federal Circuit and Family Court Regulations 2012.

Since the documents in question (documents 16, 18 and 19) are notices of filing, which are documents of the Federal Court capable of being inspected for a fee, there is no lawful entitlement to obtain access to those documents: FOI Act, s 12(1)(b).

Why has Alice Linacre, First Assistant Secretary in the AGD, wasted taxpayers resources assessing documents to which I have no lawful entitlement to access? And that is to say nothing of the bald assertion that granting access to the documents would be a contempt of court.

The decision demonstrates Alice Linacre's sloppy approach to her work. The decision demonstrates inefficiencies. The decision discloses the fact that Alice Linacre has little regard for, and a pathetic command of, the legislation under which she has made her "decision".

Why should I believe that Alice Linacre has applied herself to the decision professionally and according to law? She has not applied herself to the decision according to law.

D. Application of section 22 of the FOI Act

In her decision notice, Alice Linacre has stated that section 22 applies to many of the documents that she claimed were within the scope of my request but she has not explained how section 22 applied to those documents. All she has done is advance the bald assertion that she considers that section 22 applies to those documents and that's that.

Why should I believe that Alice Linacre has applied herself to her decision professionally and according to law? Plainly, for reasons I have identified above, she has not applied herself to the decision according to law. How do I know that she has identified materials as being irrelevant according to law? I don't, but her approach to the other parts of her decision doesn't fill me with confidence.

Therefore, on the basis of her sloppy reasons and plainly baseless claims identified in parts A to C of this email, I challenge the bald assertion that section 22 applies to documents that are within the scope of my request.

E. Application of section 46 of the FOI Act to documents

In her decision notice, Alice Linacre has stated that section 46 applies to certain documents that she claimed were documents that were, but for the exemption, capable of being given access to. Aside from the fact that she has not explained how section 46 applied to those documents, all she has done is advanced the bald assertion that she considers that section 46 applies to those documents and that's that.

Why should I believe that Alice Linacre has applied herself to her decision professionally and according to law? Plainly, for reasons I have identified above, she has not applied herself to the decision according to law. How do I know that she has identified materials as being irrelevant according to law? I don't, but her approach to the other parts of her decision doesn't fill me with confidence.

Therefore, on the basis of her sloppy reasons and plainly baseless claims identified in parts A to C of this email, I challenge the bald assertion that section 46 applies to documents that are within the scope of my request.

F. Application of conditional exemptions

In her decision notice, Alice Linacre has stated that conditional exemptions (e.g. s 47C, s 47E(d), s 47F) apply to certain documents that she claimed were documents that were within the scope of my request but she has not satisfactorily explained how these conditional exemptions apply to those documents. All she has done is advanced the bald assertion that she considers that the conditional exemptions apply to a raft of documents. Does she expect me to take her word on the matter?

Why should I believe that Alice Linacre has applied herself to her decision professionally and according to law? Plainly, for reasons I have identified above, she has not applied herself to the decision according to law. How do I know that she has identified materials as being irrelevant according to law? I don't, but her approach to the other parts of her decision doesn't fill me with confidence.

Therefore, on the basis of her sloppy reasons and plainly baseless claims identified in parts A to C of this email, I challenge the bald assertions that conditional exemptions apply to documents that are within the scope of my request.

G. Other exemptions

Alice Linacre has also claimed that section 42 applies to certain documents. For reasons already articulated, why should I believe her? I challenge the claim.

H. Application of section 7

Alice Linacre claims that section 7 applies in respect of many of the documents listed. How do I know this to be true? Why should I believe that Alice Linacre has applied herself to her decision professionally and according to law? Plainly, for reasons I have identified above, she has not applied herself to the decision according to law. How do I know that she has identified materials as being irrelevant according to law? I don't, but her approach to the other parts of her decision doesn't fill me with confidence.

Therefore, on the basis of her sloppy reasons and plainly baseless claims identified in parts A to C of this email, I challenge the bald assertion that section 7 applies to documents that are within the scope of my request.

I. Prior deception

I have, in past correspondence with the AGD, identified the falsehoods spewed by the AGD's officials:
https://www.righttoknow.org.au/request/stradford_a_pseudonym_v_judge_va_2#outgoing-22118.

By way of two examples:

xxxxx claimed, on 31 August 2023, that "the Commonwealth was not involved in the false imprisonment of the applicant during the relevant family law proceedings ... because the Australian system of government is based on a separation of powers between the Legislature (the Parliament), the Executive (the Government), and the Judiciary (the Courts)":

https://www.righttoknow.org.au/request/stradford_a_pseudonym_v_judge_va_3#incoming-31890. That statement is an obvious falsehood because, as I demonstrated to xxxxx, Justice Wigney of the Federal Court of Australia explicitly found the Commonwealth was involved in the false imprisonment of the applicant in *Stradford v Judge Vasta*:

https://www.righttoknow.org.au/request/stradford_a_pseudonym_v_judge_va_3#outgoing-21157.

xxxxxx claimed, on 7 September 2023, that I had made my FOI requests on 4 September 2023, when it is plain for everybody to see that I made my requests on 30 August 2023:

https://www.righttoknow.org.au/request/stradford_a_pseudonym_v_judge_va_2#incoming-31974.

There are many more.

The AG's officials have demonstrated themselves to be deceptive. They have actively spewed falsehoods in attempts to derail processing my FOI requests according to law.

Why would Alice Linacre be any different?

I have demonstrated that Alice Linacre's handling of my FOI requests has been unprofessional, with scant regard to the legislation under which she made her "decision". Plainly, for reasons I have identified above, she has not applied herself to the decision according to law.

If she applies herself to decisions with scant regard for the law, why would I expect that she would have applied herself to the decision with a scrupulous regard for the truth? Her colleagues have no compunctions about advancing falsehoods on a public access website.

Alice Linacre cannot be trusted to make lawful decisions (for reasons already articulated).

She and her colleagues can't be trusted with taxpayer resources, having fuffed around for almost eight months and, in the process, having identified and assessed documents that were not even in the scope of my request.

I don't trust her to engage with me truthfully.

Given the justifiable lack of trust, I think a trustworthy and sensible official in the OAIC should consider my FOI applications. I doubt officials in the OAIC will be so casual when it comes to legality and the truth.

J. Documents within scope

To justify the extraordinary delays in processing my FOI requests, on 21 December 2023, xxxxxx wrote to me and stated:

"We are writing to you now to confirm that after searching the department's holdings, the department has identified 176 documents, totalling over 3500 pages that are captured by the terms of your request."

After making me wait nearly eight months to process my FOI requests, Alice Linacre stated in her reasons for decision that there were only 27 documents within the scope of my FOI requests.

Alice Linacre's claim that there were only 27 documents within the scope of my FOI requests is nonsense because, as I have demonstrated, documents 2, 3, 4 and 6 are not "documents" for the purposes of the FOI Act, and documents 16, 18 and 19 are not capable of being given access to under the FOI Act. In effect, it took the AGD and Alice Linacre about 8 months to consider 20 documents.

Assuming that xxxxxx did not lie to me in her email of 21 December 2023 (and that is quite the assumption based on her colleagues' commitments to truth), there were 176 documents totalling over 3500 pages that were captured by the request.

There is no way that it would take even a marginally competent official in the AGD about 8 months to consider 20 documents. xxxxxx said that there were more than 3500 pages of documentation that were relevant to my request and Alice Linacre, whose decision notice is riddled with errors of law, dubious statements, bald assertions and discloses a disregard for the terms of the FOI Act, now tells me that there are, in effect, only 20 documents that are effectively relevant to my request (because, as I have demonstrated, documents 2, 3, 4 and 6 are not relevant and documents 16, 18 and 19 are not capable of being given access to under the FOI Act).

There is something fishy going on. I do not believe Alice Linacre for a moment.

Since Alice Linacre's decision is riddled with errors of law, dubious statements, bald assertions, discloses a disregard for the terms of the FOI Act and is, on the whole, a dumpster fire masquerading as a decision made pursuant to the FOI Act, there is no doubt in my mind that only a competent decision maker who has regard for the law and the provision of sensible reasons, which are more than bald assertions, should decide what documents are relevant and what documents, or parts of documents, should be granted access to. The FOI Commissioner and her staff are best placed to do just that.

The FOI Commissioner should, in my respectful submission, reconsider the 176 documents that xxxxxx claimed were in scope to make sure that Alice Linacre hasn't withheld documents within scope. The FOI Commissioner should also carefully review the documents to determine what is any exemptions apply and release those documents that it would be appropriate to release, according to law.

K. Updating my contact details

I respectfully request that future correspondence be sent to [foi+request-10637-e069e78a\(AT\)SYMBOL\)righttoknow.org.au](mailto:foi+request-10637-e069e78a(AT)SYMBOL)righttoknow.org.au).

Yours sincerely,

Waldek

-----Original Message-----

Our reference: MR23/01376
Agency reference: FOI23/463

Waldek Lupinski

By email: [1][FOI #10636 email]

Your review application about the Attorney-General's Department

Good afternoon Mr Lupinski,

A Freedom of Information (FOI) request was made by you to the Attorney-General's Department (the Agency).

On 14 November 2023, an application to the Information Commissioner (IC) was lodged to review the Freedom of Information request to the Agency because a decision was not made by the due date.

On 18 April 2024, the Agency notified the Office of the Australian Information Commissioner (OAIC) it has now provided decisions, dated 27 March 2024 and 18 April 2024 by email.

As a decision has now been issued, the reason for the IC review application appears to be resolved.

Action required by you before 7 May 2024:

1. If the decision has satisfied your request and you no longer require an IC review, please reply to this email stating “I no longer require an IC review”.

2. If you wish to proceed with your IC review application, you must tell us which parts of the decision you disagree with and why, including:
 - which documents you consider were not provided or should have been provided, or
 - which exemptions you consider should not have been applied.

Intention not to continue to undertake the IC review

The Commissioner’s written [2]direction to IC review applicants provides that:

- where an applicant wishes to proceed with a review of a revised decision they must explain why they disagree with the decision and the basis on which they wish to proceed with the IC review [1.33], and
- applicants must respond to enquiries from the OAIC within the period provided unless there are circumstances warranting a longer period to respond [1.22].

Section 54W(c) of the Freedom of Information Act 1982 provides that the IC may decide not to continue to undertake a review where an applicant fails to comply with a direction of the IC.

As such, if we do not hear from you by 7 May 2024, we intend to exercise the discretion to finalise your IC review application.

Assistance

If you are unable to respond 7 May 2024, please respond to this email and request an extension of time to provide your response.

If you require an interpreter, please call the Translating and Interpreting Service on 131 450, and ask for help speaking with the Office of the Australian Information Commissioner. Alternatively, you may wish to be supported by a person of your choosing anytime throughout this process.

If you require assistance regarding this email, please contact us at [3][email address].

Please quote the reference MR23/01376 in all correspondence.

Kind regards,

[4][IMG] Sussan J

Review Adviser

Office of the Australian Information Commissioner

GPO Box 5288 Sydney NSW 2001

P: 1300 363 992 E: [5][email address]

The OAIC acknowledges Traditional Custodians of Country across Australia and their continuing connection to land, waters and communities. We pay our respect to First Nations people, cultures and Elders past and present.

[6]Subscribe to Information Matters

Notice:

The information contained in this email message and any attached files may be confidential information, and may also be the subject of legal professional privilege. If you are not the intended recipient any use, disclosure or copying of this email is unauthorised. If you received this email in error, please notify the sender by contacting the department's switchboard on 1300 488 064 during business hours (8:30am - 5pm Canberra time) and delete all copies of this transmission together with any attachments.

References

Visible links

1. mailto:[FOI #10636 email]
2. <https://www.oaic.gov.au/freedom-of-information/reviews/direction-as-to-certain-procedures-to-be-followed-by-applicants-in-information-commissioner-reviews>
3. mailto:[email address]
4. <https://www.oaic.gov.au/>
5. mailto:[email address]
6. <https://www.oaic.gov.au/engage-with-us/networks/information-matters>

Please use this email address for all replies to this request:

xx@xxxxxxxxxxxx.xxx.xx

This request has been made by an individual using Right to Know. This message and any reply that you make will be published on the internet. More information on how Right to Know works can be found at:

<https://www.righttoknow.org.au/help/officers>

Please note that in some cases publication of requests and responses will be delayed.

If you find this service useful as an FOI officer, please ask your web manager to link to us from your organisation's FOI page.
