



**FEDERAL COURT OF AUSTRALIA
PRINCIPAL REGISTRY**

LEVEL 17
LAW COURTS BUILDING
QUEENS SQUARE
SYDNEY NSW 2000

19 December 2024

Glenn Hamiltonshire
By email

By email: foi+request-12348-735df876@righttoknow.org.au

Dear Mr Hamiltonshire,

Request under the Freedom of Information Act

I refer to your email to the Federal Court of Australia (**Court**) dated 19 November 2024 requesting access to documents under the *Freedom of Information Act 1982* (Cth) (**FOI Act**). Specifically, you requested access to the following:

I request access to the Style Guides/Brand Guides/Writing Guides currently used for the Federal Court of Australia.

Authorised decision-maker

I am authorised under section 23 of the FOI Act to make decisions on behalf of the Court in relation to requests made under the FOI Act.

Searches undertaken

Searches were undertaken by staff of the Court to identify any documents that fall within the scope of your request. The searches included searches of shared drives, emails, the Court's information management system, and its intranet including by reference to key search terms.

As a result of the searches undertaken, several writing/style/brand guides currently used by the Court were found relating to judgments, transcripts, practice notes, website content, and logos. Some of these materials did not exist in discrete written form, which is discussed further below.

I am not aware of any other steps that can be taken to identify documents within the scope of your request.

Decision

I have decided to grant you access to five (5) of the documents that were found from the searches conducted, which include written compilations that have been collated because the information found did not already exist in discrete written form. These documents and written compilations are guides relating to branding and logos, digital style, the Court's intranet, and its website.

I have decided to refuse you access to the balance of the documents requested, which are the guides relating to Court judgments, reports, transcripts, and practice notes. I refuse access to these documents on the basis that the FOI Act does not apply to a request for access to a document of the Court "*unless the document relates to matters of an administrative nature*" (s 5(1) of the FOI Act).

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

- the terms of your request;
- the relevant provisions of the FOI Act and case law considering those provisions;
- the *Freedom of Information (Charges) Regulations 1982*; and
- the FOI Guidelines issued by the Office of the Australian Information Commissioner.

Reasons for Decision

Section 5(1) of the FOI Act – requests to apply to courts in respect of administrative matters

The FOI Act has a very limited application to the Court.¹ Subsection 5(1) makes clear that the only request that can validly be made to the Court under the FOI Act is to access a document that relates to "*matters of an administrative nature*". Relevantly, subsection 5(1) provides:

but this Act does not apply to any request for access to a document of the court unless the document relates to matters of an administrative nature.

The High Court of Australia considered the operation of section 5 of the FOI Act and the meaning of the phrase "*matters of an administrative nature*" in *Kline v Official Secretary to the Governor General of Australia & Anor* (2013) 249 CLR 645; [2013] HCA 52. In the joint judgment dismissing the appeal, the Chief Justice and Justices Crennan, Kiefel and Bell held:

...the exception of a class of document which relates to "matters of an administrative nature" connotes documents which concern the management and administration of office resources, examples of which were given above. This is a common enough connotation of the epithet "administrative".²

¹ Paragraphs 2.8 to 2.10 of the FOI Guidelines.

² *Kline* at [41].

The “*examples*” referred to by the High Court were financial, human resources, and information technology documents.³ This category of documents was distinguished from documents that relate to the management and administration of office resources but involve assisting and supporting an agency in the discharge of its substantive powers and functions. The latter category of documents is not accessible under the FOI Act.

In its reasons, the High Court held to be erroneous the decision of *Bienstein v Family Court of Australia* (2008) 170 FCR 382. *Bienstein* suggested that documents might be characterised as relating to matters of an administrative nature when the documents relate to individual legal proceedings, or when the documents concern the powers and functions of a judicial officer that are administrative in nature.⁴ The High Court held that the reasoning in *Bienstein* accorded no weight to the circumstance that a judicial officer is not subject to the operation of the FOI Act, only a registry or office of a court or specified tribunal is subject to the operation of the FOI Act, and then only in respect of documents relating to administrative matters.⁵

In a separate judgment in *Kline*, Justice Gageler also dismissed the appeal. His Honour held:

*Matters which do not relate to the provision of logistical support do not become “administrative” merely because they are in some way preparatory to an exercise of a substantive power or to the performance of a substantive function.*⁶

The documents you have requested are the writing/style/brand guides currently used by the Court. Some of the documents that were found from the searches conducted are guides for Court judgments, reports, transcripts, and practice notes. These documents do not relate to “*matters of an administrative nature*” as that compound of words has been interpreted by the High Court. They are not documents concerning the management and administration of registry and office resources such as financial and human resources and information technology.⁷ Instead, they are documents related or in some way preparatory to legal proceedings and involve assisting and supporting the Court in the discharge of its substantive powers and functions. Such documents are not open to a request for access under the FOI Act.

Section 17 of the FOI Act – when information is not available in discrete written form

Based on the searches conducted by staff of the Court and discussions had with those staff members, I have determined that there is information relevant to your request that does not exist in a discrete written form. That information is housed on online webpages and published in HTML/web format only and would need to be retrieved and collated to fulfil your FOI request.

³ *Kline* at [13].

⁴ *Kline* at [51].

⁵ *Kline* at [51].

⁶ *Kline* at [76].

⁷ *Kline* at [13].

Paragraph 2.42 of the FOI Guidelines explains that the FOI Act “does not require an agency or minister to create a new document in response to an FOI request except in the limited circumstances set out in ss 17 and 20”. Section 17 of the FOI Act provides:

- (1) *Where:*
 - (a) *a request (including a request in relation to which a practical refusal reason exists) is made in accordance with the requirements of subsection 15(2) to an agency;*
 - (b) *it appears from the request that the desire of the applicant is for information that is not available in discrete form in written documents of the agency; and*
 - (ba) *it does not appear from the request that the applicant wishes to be provided with a computer tape or computer disk on which the information is recorded; and*
 - (c) *the agency could produce a written document containing the information in discrete form by:*
 - (i) *the use of a computer program or other equipment that is ordinarily available to the agency for retrieving or collating stored information; or*
 - (ii) *the making of a transcript from a sound recording held in the agency;*
- (2) *An agency is not required to comply with subsection (1) if compliance would substantially and unreasonably divert the resources of the agency from its other operations.*

Moreover, paragraph 3.210 of the FOI Guidelines provides:

Section 17 requires an agency to produce a written document of information that is stored electronically and not in a discrete written form, if it does not appear from the request that the applicant wishes to be provided with a computer tape or disk on which the information is recorded. Examples include a transcript of a sound recording, a written compilation of information held across various agency databases, or the production of a statistical report from an agency’s dataset...

Having regard to the information found from the searches conducted and the terms of your request, I have decided to provide you with written compilations of information where that information is not available in discrete written form. There is a total of three (3) written compilations that have been created, reflecting the separate webpages or online locations where that information was housed.

Access format

Given your FOI request was made by email, I assume that you would prefer access to the documents and written compilations to which I have decided to grant access in the form of electronic copies being emailed to you. I therefore release them to you by email. The documents and written compilations accompany this letter and are listed below:

- FCA Logo Guide;
- FCA Style Guide;
- Written compilation – branding and logos;

- Written compilation – intranet style guide; and
- Written compilation – website style guide.

I note that there are additional writing/style/brand guides currently used by the Court which are publicly available online. While these documents are not accessible under the FOI Act (see definitions under s 4(1) of the FOI Act), for your convenience, I direct you to where you may access some of that material through the following hyperlinks:

- [How to address judges and judicial registrars](#);
- [Australian Government Style Manual](#);
- [Commonwealth Coat of Arms](#); and
- [Australian guide to legal citation](#).

Charges

You have not been charged for the processing of your request.

Your Review Rights

If you are dissatisfied with my decision, you may apply for internal review or to the Information Commissioner for review of those decisions. I encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

Under section 54 of the FOI Act, you may apply in writing to the Court for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons as to why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Information Commissioner review

Under section 54L of the FOI Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within sixty (60) days of the date of this letter and be lodged in one of the following ways:

online: [OAIC Web Form](#)

email: foi@oaic.gov.au

post: FOI Coordinator, GPO Box 5288, Sydney NSW 2001

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

[of-information/your-freedom-of-information-rights/freedom-of-information-reviews/information-commissioner-review](https://www.oaic.gov.au/freedom-of-information-reviews/information-commissioner-review).

Complaints

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

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'R Muscat', written in a cursive style.

R Muscat
Registrar