



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. |

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|--------------------|---|
| 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.

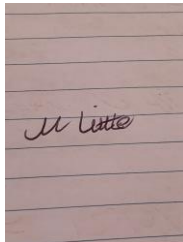
Contacts

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 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

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