



**Australian Government**  
**Attorney-General's Department**

Our ref: FOI20/060; CM20/4973

22 May 2020

Mr Rodney Culleton

By email: culleton.00099@gmail.com

Dear Mr Culleton

**Freedom of Information Request FOI20/060 – Decision Letter**

The purpose of this letter is to give you a decision about your request for access to documents which you submitted to the Attorney-General's Department (the department) under the *Freedom of Information Act 1982* (the FOI Act).

**Your Request**

On 4 May 2020, you requested access to:

*I request the instrument, or otherwise information, that demonstrates that the Federal Court of Australia Act 1976 complied with section 58 of the Commonwealth Constitution, in becoming law, to establish the Federal Court of Australia.*

*I request the instrument, or otherwise information, that demonstrates that the Federal Court of Australia Act 1976 complied with section 58 of the Commonwealth Constitution, in becoming law, to establish the authority to issue writs in the name of the Federal Court of Australia.*

*I request the instrument, or otherwise information, that demonstrates that the Federal Court of Australia Act 1976 complied with section 58 of the Commonwealth Constitution, in becoming law, to establish the role of the Chief Executive Officer for the Federal Court of Australia.*

*I merely seek the instruments, or otherwise information, requested.*

A decision in relation to your request is due on 3 June 2020.

**My Decision**

I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to freedom of information requests made to the department.

In making my decision, I have taken the following into account:

- the terms of your request;
- advice provided to me by officers with responsibility for matters to which your request relates;
- the provisions of the FOI Act; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Section 24A of the FOI Act relevantly provides that an agency or Minister may refuse a request for access to a document if all reasonable steps have been taken to find the document and the agency is satisfied that the document:

- is in the agency's possession but cannot be found; or
- does not exist.

When considering a decision to refuse access under section 24A of the FOI Act, the Guidelines relevantly provide at [3.89] that an agency or minister should take comprehensive steps to locate documents, having regard to:

- the subject matter of the documents;
- the current and past file management systems and the practice of destruction or removal of documents;
- the record management systems in place;
- the individuals within an agency or minister's office who may be able to assist with the location of documents; and
- the age of the documents.

To identify the documents for your request, departmental staff searched the department's main record keeping system, using particular search terms referencing the scope of the request.

Having regard to the above, I am satisfied that reasonable steps to locate the documents to which you have sought access were undertaken. I am also satisfied that the documents cannot be found or do not exist within the department's records holdings. I have therefore decided to refuse access pursuant to section 24A of the FOI Act.

#### **Additional Information**

While the department does not hold documents that fit the description you have outlined, the National Archives of Australia may be able to assist you. I note that the *Archives Act 1983* provides a right of access to records in the open access period. The open access period covers government records created prior to 1996 and Cabinet notebooks created prior to 1984. See

<https://www.naa.gov.au/help-your-research/using-collection/access-records-under-archives-act>

The records covering events mentioned in your request regarding the *Federal Court of Australia Act 1976* may be held at the National Archives. You can search the National Archives database or contact their Reference Service via their website:

<http://www.naa.gov.au/collection/askquestion/index.aspx>

Your review rights under the FOI Act are set out at **Attachment A** to this letter.

If you wish to discuss this decision, you can the FOI case officer for this matter, Euphrasia, who can be reached on (02) 6141 6666 or by email to [foi@ag.gov.au](mailto:foi@ag.gov.au).

Yours sincerely



#### **Antony Catt**

Director  
Freedom of Information and Privacy Section

#### **Attachments**

Attachment A: Review Rights

## Attachment A

### FOI Review Rights

If you are dissatisfied with the decision of the Attorney-General's Department (the department), you may apply for internal review or Information Commissioner review of the decision.

The department encourages applicants to consider seeking internal review as a first step as it may provide a more rapid resolution of your concerns.

#### ***Internal review***

Under section 54 of the *Freedom of Information Act 1982* (FOI Act), applications for internal review must be made in writing within 30 days of the date of the decision letter. Applications for internal review must be lodged by email or post.

email: [foi@ag.gov.au](mailto:foi@ag.gov.au)

post: Freedom of Information and Privacy Section  
Strategy and Governance Branch  
Attorney-General's Department  
3-5 National Circuit  
BARTON ACT 2600

An officer of the department other than the officer who made the original decision will complete the internal review within 30 days of receipt of your request.

Providing reasons you believe internal review of the decision is necessary will facilitate the completion of the internal review.

#### ***Information Commissioner review***

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

online: <https://forms.business.gov.au/aba/oaic/foi-review-/>

email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

post: GPO Box 5218, SYDNEY NSW 2001

in person: Level 3, 175 Pitt Street, SYDNEY NSW 2000

More information about Information Commissioner review is available on the Office of the Australian Information Commissioner website.

Go to <http://www.oaic.gov.au/freedom-of-information/foi-reviews>