



Intention to recommend that an Information Commissioner review not be undertaken under s 54W(a)(i) of the *Freedom of Information Act 1982*

Information Commissioner review applicant	Megan Poore
Agency	Office of the Official Secretary to the Governor-General
Recommendation date	19 November 2025
OAIC reference number	MR25/01208
Agency reference number	IR-FOI2025021

Summary

1. I refer to the application made by Megan Poore (the applicant) for Information Commissioner review (IC review) of an internal review decision made by the Office of the Official Secretary to the Governor-General (the Agency) under the *Freedom of Information Act 1982* (Cth) (the FOI Act).
2. The purpose of this letter is to advise you of my intention to recommend that the Information Commissioner exercises their discretion to decide not to undertake an IC review under s 54W(a)(i) of the FOI Act, on the basis that this IC review is lacking in substance.
3. During an IC review, applicants will be given a reasonable opportunity to present their case¹. As such, you are being provided an opportunity to comment or make submissions objecting to this recommendation **by 3 December 2025**.
4. The background of this matter is provided at **Attachment A**.

Discretion not to undertake an IC review

5. The Information Commissioner may decide not to undertake a review, or not to continue to undertake a review, if:

¹ See [Direction as to certain procedures to be followed by applicants in Information Commissioner reviews](#). [2.26]

- a. the applicant fails to comply with a direction by the Information Commissioner (s 54W(c)), or
- b. if the Information Commissioner is satisfied:
 - i. the review application is frivolous, vexatious, misconceived, lacking in substance or not made in good faith (54W(a)(i))
 - ii. the review applicant has failed to cooperate in progressing the IC review application or the IC review without reasonable excuse (54W(a)(ii))
 - iii. the Information Commissioner cannot contact the applicant after making reasonable attempts (s 54W(a)(iii)) or
- c. if the Information Commissioner is satisfied the IC reviewable decision should be considered by the Administrative Reviews Tribunal (s 54W(b)).²

Scope of IC review

- 6. The decision under review is the Agency's internal review decision of 30 April 2025 and the issue to be decided is whether the Agency has properly characterised the documents as held by, or on behalf of, the Governor-General, as relating to a substantive power or function of the Governor General. In which case, the FOI Act does not apply to the documents requested.

Reasons for recommendation

- 7. Having regard to the reasons for seeking an IC review it appears that the Information Commissioner, or a delegated member of staff, should exercise their discretion to decide not to undertake an IC review under s 54W(a)(i) of the FOI Act because the reasons for seeking an IC review lacks any grounds of substance for challenging the decision under review.
- 8. This is because it appears that the documents the applicant is requesting are documents regarding 'the decision to accept the role of patron for Equality Australia', which relate to the Agency's substantive powers and functions, are not documents relating to matters of an administrative nature and are therefore excluded from the FOI Act.
- 9. The FOI Guidelines, at Paragraph [2.8]-[2.12], state the following:

2.8 The FOI Act has a restricted application to courts, court registries and the Official Secretary to the Governor-General. Specifically, the FOI Act does not apply to a request for

² See [Freedom of Information Guidelines, Part 10: Review by the Information Commissioner](#) [10.100]

access to a document of a court or registry, or the Official Secretary to the Governor General ‘unless the document relates to matters of an administrative nature’ (ss 5 and 6A). The FOI Act does not apply to the holder of a judicial office (s 5(1)(b)), or to the Governor-General. A further exclusion exists for documents relating to the handling of complaints about judicial officers (ss 5(1A)–(1C)).

...

2.10 The phrase ‘matters of an administrative nature’ is not defined in the FOI Act. In *Kline v Official Secretary to the Governor General*, the High Court held that the phrase refers to documents that concern ‘the management and administration of office resources, such as financial and human resources and information technology’.³ By contrast, the phrase does not apply to documents that relate to the discharge of a court’s or the Governor-General’s ‘substantive powers and functions’. The High Court approved a similar distinction drawn by the Full Federal Court in the decision on appeal[6] between the substantive functions or powers of a court or the Governor-General, and the office ‘apparatus’ supporting the exercise or performance of those substantive powers and functions.

2.11 Applying that distinction, the High Court held in *Kline* that the FOI Act did not apply to an FOI request to the Official Secretary to the Governor General for access to documents relating to the administration of the Order of Australia, including decisions on the award of Australian honours. As to courts, the High Court observed that the FOI Act applies only to documents relating to the management and administration of registry and office resources, and not to documents relating to the discharge of the substantive powers and functions of adjudication or tasks referable to the exercise of judicial, rather than administrative, powers and functions.

10. Noting the above, it appears that the documents were characterised correctly by the Agency and are excluded from the operation of the FOI Act.

Next steps

11. It is open to you to withdraw your IC review. There is no penalty for doing so and you can continue to make new FOI requests to the Agency. If you wish to withdraw your IC review, please respond to this correspondence saying, ‘I no longer require an IC review’.
12. If you disagree with the above recommendation, please provide us with further information as to why you believe s 6A of the FOI Act and the decision of *Kline v Official Secretary to the Governor General* should not apply to the documents within scope of your request.
13. In the absence of a response **by 3 December 2025** it will be taken that you do not object to the recommendation. Extensions of time to respond to this recommendation will only be granted in exceptional circumstances. However, if the Information

³ See [Kline v Official Secretary to the Governor General \[2013\] HCA 52 \(6 December 2013\)](#)

Commissioner receives submissions prior to a decision being made, those submissions will be considered.

14. You will be provided review rights if the IC review is finalised by the Information Commissioner under s 54W(a)(i) of the FOI Act.

Yours sincerely,

A handwritten signature in black ink that reads "Claire Lynch". The signature is written in a cursive, flowing style.

Claire Lynch

Review Advisor

Freedom of Information Case Management Branch
Office of the Australian Information Commissioner

19 November 2025

ATTACHMENT A Background

Date	Events
24 February 2025	<p data-bbox="619 591 1062 622">FOI request made to the Agency for:</p> <p data-bbox="715 658 1299 730"><i>‘1. Documents related to the decision to become patron of Equality Australia</i></p> <p data-bbox="715 766 1327 981"><i>-All internal communications, briefing notes, meeting minutes, and correspondence within the Office of the Governor-General concerning the decision for Her Excellency, the Honourable Sam Mostyn AC, to accept the role of patron for Equality Australia.</i></p> <p data-bbox="715 1016 1327 1196"><i>-All communications and correspondence between the Office of the Governor-General and external entities, including Equality Australia and other government agencies, regarding this patronage decision.</i></p> <p data-bbox="715 1232 1248 1303"><i>2. Documents pertaining to reputational risk assessment</i></p> <p data-bbox="715 1339 1356 1518"><i>-Any assessments, analyses, or discussions within the Office of the Governor-General regarding potential reputational risks associated with the Governor-General’s acceptance of the patronage of Equality Australia.</i></p> <p data-bbox="715 1554 1311 1697"><i>-Any consultations or considerations undertaken regarding the policy requirement that “particular care and additional consultation” is required for patronage involving advocacy.</i></p> <p data-bbox="715 1733 1356 1877"><i>-Any records regarding how the Office considered the Federal Court’s recent finding that Equality Australia is not a public beneficent institution but an advocacy organisation.</i></p>

-Any advice or recommendations received or prepared within the Office of the Governor-General regarding the compatibility of this patronage with Equality Australia's policy advocacy'

18 March 2025 The Agency issued a decision in response to applicant's FOI request. 01/04/25

1 April 2025 The applicant sought an internal review of the Agency's decision.

30 April 2025 The Agency issued an internal review decision in response to applicant's request for internal review.

29 June 2025 IC review application received by the Office of the Australian Information Commissioner.
