



OFFICE OF THE OFFICIAL SECRETARY
TO THE GOVERNOR-GENERAL

30 April 2025

Via email: women@womensactionall.org

Re: Application under the *Freedom of Information Act 1982* – Internal Review of *Decision* - Ref: IR-FOI2025021

I refer to your email of 1 April 2025 in which you make the following request under the Commonwealth *Freedom of Information Act 1982* (FOI Act) for an internal review of decision FOI2025021:

"I am writing to request an internal review of the decision dated 18 March 2025 regarding my FOI request (Ref: FOI2025021). I respectfully submit that the decision is flawed both procedurally and legally, and I request that it be reviewed for the reasons set out below.

1. Failure to Conduct a Document Search

*The decision refers to "documents (should they exist)" and concludes that "no documents or categories of documents (if they exist) relate to matters of an administrative nature" and that, accordingly, "it is not open to you to obtain access to the documents under the FOI Act." This phrasing suggests that no search or retrieval process was conducted and therefore no documents were reviewed or assessed against the threshold in section 6A(1) of the *Freedom of Information Act 1982*.*

This approach does not reflect the process contemplated by the Act or established administrative practice. Agencies are expected to identify documents relevant to the terms of a request and then assess whether those documents fall within the scope of any applicable exclusion or exemption.

The exemption in section 6A is no exception to that process. This is clear from the language of section 6A, which states that the Act does not apply unless "the document" (not "the requested documents" or "the category of requested documents") relates to matters of an administrative nature.

Section 6A does not create a blanket exemption for whole categories of requests. A valid refusal under section 6A therefore requires locating any document within the scope of the request and then assessing whether each document relates to matters of administration or not.

A refusal without undertaking this step undermines both the intent of section 6A and the Act's core principles of transparency, accountability, and procedural fairness. If a search was conducted but not disclosed, the absence of that information has prevented me from properly understanding the basis for the refusal and limited my ability to seek an

informed review of the decision.

2. The Implementation of the Patronage Policy Is Administrative in Nature
The documents sought in this case concern the implementation of an internal policy by the Office of the Official Secretary — a role that is administrative in nature. The decision-maker's reliance on *Kline v Official Secretary to the Governor-General* will be addressed below, but it is important to first explain why the nature of this request places it within the scope of the FOI Act.

The OOSGG Patronage Policy sets out a series of structured procedures and considerations for managing applications for patronage. These include the receipt and documentation of requests, triage of applications through a staff-level Planning Committee, referral of certain matters for internal or external consultation — as well as following prescribed procedural steps in handling reputational issues where reputational issues may arise.

These are features of administrative implementation — focused not on the exercise of substantive discretion by the Governor-General, but on the internal operations of the Office in managing and applying a standing policy. The title — “OOSGG Policy – Patronages” — further indicates that the policy originates from the Office of the Official Secretary to the Governor-General, the administrative body that supports the Governor-General's functions.

As outlined above, section 6A requires a document-by-document assessment of whether a record relates to the procedural or administrative matters covered by the OOSGG Policy on patronages. Where it does, the document falls within the scope of the Act and is subject to the FOI framework — including the public interest objective that underpins the Act's operation.

3. Misapplication of Kline v Official Secretary to the Governor-General
The decision-maker relies on *Kline v Official Secretary to the Governor-General* [2013] HCA 52 to conclude that the documents sought are outside the scope of the FOI Act. However, *Kline* does not support a blanket refusal of all documents relating to a Governor-General function. In *Kline*, the High Court held that documents relating to the conferral of honours were excluded from the Act because they concerned the Governor-General's substantive powers. The Court contrasted such documents with those of an administrative nature, noting that the exception in section 6A “connotes documents which concern the management and administration of office resources or the provision of logistical support.”

The Court's use of the word “connotes” is significant — it illustrates that these are examples, not limitations. *Kline* does not exclude documents that relate to how an internal policy is applied in practice, nor does it support a refusal to release documents relating to the procedural implementation of the Patronage Policy by the office of the Official Secretary.

A narrow reading of *Kline* — one that treats its reference to office resource management and logistical support as an exhaustive definition — risks applying the judgment as if it rewrote section 6A(1). But the statutory language refers more broadly to documents that “relate to matters of an administrative nature,” and *Kline* does not suggest that

Parliament intended to confine this phrase to a closed set of examples. Such an approach undermines the purpose of the FOI Act, which is to promote access to government-held information subject only to necessary and proportionate limitations.

4. Reiteration of the Intent and Scope of the Request

To assist with the internal review, I reiterate the intent and scope of my original request. The request was not directed at obtaining documents relating to the Governor-General's personal deliberations or the exercise of her substantive powers. Rather, it was directed at documents held by the Office of the Official Secretary concerning how the Patronage Policy was applied or operationalised in relation to the Governor-General's patronage of Equality Australia.

Specifically, I sought administrative documents relating to:

- How the Patronage Policy's requirements for reputational risk assessment and consultation were implemented;*
- Internal governance processes or procedural steps taken by the Office in connection with the patronage;*
- Interpretive or procedural guidance concerning the application of the policy to organisations engaged in advocacy.*

These are, in my view, clearly administrative in nature, and distinct from any document recording or reflecting the Governor-General's personal decision to become a patron. I trust this reiteration will assist in properly identifying and assessing any responsive documents during the internal review process.

5. Public Interest and Objects of the FOI Act

This request arises from public interest in the administrative processes surrounding the Governor-General's patronage of an organisation the Federal Court found to be primarily an advocacy body. There is a legitimate interest in understanding how the Office followed the procedural safeguards and consultation requirements in its Patronage Policy.

Disclosure of the documents sought would promote the objectives of the FOI Act, including:

- Promoting public participation in government processes, with a view to better-informed decision-making (s 3);*
- Increasing scrutiny, discussion, comment and review of government activities (s 3);*
- Informing public debate on a matter of public importance (s 11B).*

Transparency in how the Governor-General's Office applies its own policies is essential to maintaining public trust in the impartiality and integrity of the institution it represents.

I thank you for your attention to this request for internal review and look forward to your response."

Outcome of Internal Review

For reasons I will explain I have decided to affirm the original decision communicated to you on 18 March 2025. However, to assist with your request, I provide some additional information below in relation to the various points your request raised, which may be helpful.

Material taken into account

In making my decision, I have had regard to the following:

- the terms of your request;
- advice from Agency officers with responsibility for matters relating to the documents to which you seek access;
- the relevant provisions of the FOI Act; and
- the Commonwealth's guidelines on FOI.

Explanation of decision

For ease of reference and completeness, I have addressed each of the points you raised in your request for Internal Review separately below.

Regarding your point 1: "Failure to conduct a document search"

The Office regularly receives FOI requests for documents relating to the Governor-General's substantive functions including in relation to the operation of the Australian honours system. In responding to these requests, confirming the existence of documents may in and of itself constitute an inappropriate release of information. Although a document search is conducted for all FOI requests received, which, as you have noted, is the requirement of the Act, the results of this search are not disclosed for the purpose of responding where any documents found relate to the Governor-General's substantive functions and are therefore not open to access under the FOI Act.

Regarding your point 2: "The implementation of the patronage policy is administrative in nature"

In your 1 April 2025 email you write "the documents sought in this case concern the implementation of an internal policy by the Office of the Official Secretary – a role that is administrative in nature". While I will expand further on the application of *Kline v Official Secretary to the Governor-General* further in the next point, I will note that Gaegler J said in *Kline* at [76] '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'.

The role of the Governor-General encompasses a range of functions including constitutional, ceremonial and community duties, of which patronages are an important element. The community engagement aspect of the role was specifically acknowledged by The High Court (see paragraph [11] of *Kline*). Although the implementation of an internal policy may seem to be an administrative task, where it is preparatory to the Governor-General's exercise of a substantive function it does not become 'administrative' for the purposes of the application of the FOI Act.

Regarding your point 3: "Misapplication of *Kline v Official Secretary to the Governor-General*"

The general right of access to documents of an agency in section 11, which

includes 'prescribed authorities', one of which is the Official Secretary, is qualified by section 6A(1), which provides:

(1) This Act does not apply to any request for access to a document of the Official Secretary to the Governor-General unless the document relates to matters of an administrative nature.

The FOI Act does not define the phrase 'matters of an administrative nature'.

The FOI Guidelines refer to section 5, 6 and 6A at paragraphs [2.8]-[2.10] and refer to the decision of the High Court in *Kline v Official Secretary to the Governor General* [2013] HCA 52 (Kline). In *Kline* the High Court makes clear the phrase has a narrow meaning and that FOI Act has a limited application to the Official Secretary:

[44] ... the exception [of a class of document which relates to 'matters of an administrative nature'] can only be read as referring to *documents relating to the management and administration of the resources of the Office* and is consistent with the general non application of the FOI Act to requests for access to documents of the Official Secretary.

(emphasis added)

In *Kline* the High Court also considered the analogous operation of sections 5 and 6 of the FOI Act which contain similar wording in relation to the courts and certain tribunals and overruled an earlier decision of the Federal Court (Bienstein) concerning the operation of those provisions. The High Court observed:

[51] In *Bienstein* ... it was decided that since some powers and functions of a judicial officer were administrative in nature, those administrative powers and functions which were not closely related to judicial independence would not need protection from the operation of the FOI Act. However, that reasoning ... accords 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. The approach in *Bienstein* ... would not accord proper weight to the circumstance that the Governor General is not subject to the operation of the FOI Act and would result in an impractical and unwieldy approach to the application of s 6A(1), contrary to the provision that public access to information is to be achieved promptly and at the lowest reasonable cost.

As was explained in the FOI decision provided to you on 18 March 2025, your request was not in fact seeking access to documents relating to matters of an administrative nature. The statutory test is not whether documents relate to the substantive functions and powers of the Governor-General, but whether the documents 'relate to matters of an administrative nature' as defined by the High Court in *Kline*.

Regarding your point 4: "Reiteration of the intent and scope of the request"

I recognise from your request that you seek to better understand the process around the manner in which requests for patronage are assessed, which is detailed in the Patronage Policy to which you refer (available at <https://www.gg.gov.au/about-governor-general/patronages>). As noted in point 2 above, tasks do not become administrative simply because they are preparatory to the exercise of a substantive function of the Governor-General. Their contribution to the exercise of the Governor-General's duties and powers means they are not of the 'administrative nature' that the High Court defined in Kline.

Regarding your point 5: "Public interest and objects of the FOI Act"

Under the FOI Act, the matter of public interest is only applied to the decision to release or exempt documents where conditional exemptions (under division 3 of the FOI Act) are claimed and is therefore not relevant to this request.

I strongly support the objectives of the FOI Act and recognise the importance of transparency in ensuring impartiality and integrity in the administration of Government institutions and in their actions. However, the Governor-General's role includes a range of constitutional and diplomatic functions that involve constitutional authority rather than administrative decision making. Documents relating to these functions are appropriately exempt from disclosure through the FOI Act to ensure that sensitive matters relating to the Governor-General's substantive functions remain confidential.

Decision

From the terms of your request, no documents or categories of documents (if they exist) relate to matters of an administrative nature, as that term has been interpreted by the High Court. The document(s) that you have requested, to the extent they existed, would not relate to matters of an administrative nature. Accordingly I refuse your request under section 6A of this Act.

Review rights

You are entitled to seek review of this decision. Your rights are set out at Attachment A to this letter.

Yours sincerely



Gerard Martin PSM

Official Secretary to the Governor-General

ATTACHMENT A — INFORMATION ON RIGHTS OF REVIEW

1. APPLICATION FOR INTERNAL REVIEW OF DECISION

You can request internal review within 30 days of you receiving this decision. An internal review will be conducted by a different officer from the original decision-maker.

No particular form is required but it would assist the decision-maker if you could set out in the application the grounds on which you consider that the decision should be reviewed. Applications for internal review can be made:

- via email to FOIcontactofficer@gg.gov.au
- by mail to The Official Secretary to the Governor-General, Government House, CANBERRA ACT 2600

If you choose to seek an internal review, you will afterward have a right to apply for Information Commissioner review (IC review) of the internal review decision.

OR

2. INFORMATION COMMISSIONER REVIEW OR COMPLAINT

You also have the right to seek IC review of this decision. For FOI applicants, an application for IC review must be made in writing within 60 days of the decision. For third parties who object to disclosure of their information, an application for IC review must be made in writing within 30 days of the decision.

If you are not satisfied with the way we have handled your FOI request, you can lodge a complaint with the OAIC. However, the OAIC suggests that complaints are made to the agency in the first instance.

The complaint should be in writing and set out the reasons for why you are dissatisfied with the way your request was processed. It should also identify this office as the agency about which you are complaining. The OAIC recommend that complaints be made via the FOI Complaint Form available on the OAIC website.

You can make an IC review application or make an FOI complaint in one of the following ways:

- online at <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/>
- via email to foidr@oaic.gov.au
- by mail to GPO Box 5218 Sydney NSW 2001, or
- by fax to 02 9284 9666.

More information about the Information Commissioner reviews and complaints is available at its website: www.oaic.gov.au/freedom-of-information/foi-review-process.