



AAWAA Women <women@womensadvocacy.net>

RE: FOI request: Administration of Patronage Policy [SEC=OFFICIAL]

AAWAA Women <women@womensadvocacy.net>
To: "(Shared) FOI & IPS Mailbox" <FOI.IPS@gg.gov.au>
Cc: "Shared FOI & IPS Mailbox" <FOI.IPS@gg.gov.au>

13 October 2025 at 07:00

Dear FOI Contact Officer,

Subject: Request for Internal Review – FOI Decision FOI2025062

I am writing to request an internal review of the decision dated 11 September 2025 regarding my FOI application (Ref: FOI2025062) concerning the administration of the Office patronage policy's *Ongoing Requirements* in connection with Equality Australia Ltd.

I request that a fresh decision be made under section 54C of the *Freedom of Information Act 1982 (Cth)*, taking into account the matters raised below.

I note that I have separately lodged an application for review with the Office of the Australian Information Commissioner concerning an earlier FOI request to the OOSGG relating to Equality Australia and the patronage policy. I mention this for completeness, while emphasising that this request for internal review concerns a separate matter and should be considered independently.

Document search

I respectfully ask that the reviewer conduct a thorough search for all documents that may fall within the scope of my request, noting that my request encompassed two distinct categories of document:

- a. documents (notifications) **received from Equality Australia** under the patronage policy's Ongoing Requirements; and
- b. documents **created within the Office** in administering or reviewing Equality Australia's compliance with the policy.

Notifications

With regard to the first category, I respectfully observe that the act of the OOSGG receiving and filing notifications is, by its nature, administrative. It does not concern the Governor-General's discretion, advice, or constitutional authority, but is rather a matter of routine record-keeping.

In accordance with section 24A of the Act, if - after taking all reasonable steps - the reviewer concludes that no document recording Equality Australia's notifications can be found, the decision must formally refuse access on that ground and set out the reasons for doing so in accordance with section 26(1)(b). Conversely, if such documents are located, then as administrative documents they fall within the operation of the Act and must be processed in the ordinary way, with any necessary exemptions considered under Part IV of the Act.

OOSGG documents

The second component of my request concerned documents generated by the Office itself, that is, documents discussing or considering Equality Australia's compliance in relation to the policy. I respectfully ask the reviewer to assess each of the documents identified in this category to determine whether the Act applies and, if so, whether any exclusion or exemption arises.

As you would be aware, the Act makes specific provision in section 6A for the Office of the Governor General:

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.

While the Act does not itself define "matters of an administrative nature", it would be inconsistent with both the text and purpose of the Act to treat every document produced by the Office in relation to the patronage policy as non-administrative. Sections 3 and 11 of the Act confirm Parliament's intention that access to information be the norm, with only limited exceptions. Section 3(4) expressly provides that all functions and powers given by the Act are to be exercised "as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost."

Accordingly, provisions such as section 6A must be read as narrow qualifications to that broad right of access. This approach is reinforced by section 15AA of the *Acts Interpretation Act 1901 (Cth)*, which requires that an interpretation promoting the purpose or object of an Act be preferred to one that would not. The purpose of the FOI Act is to ensure transparency and accountability in government administration; it would defeat that object to construe "matters of an administrative nature" so narrowly as to confine it to routine internal management or financial administration, thereby excluding all substantive administrative work undertaken by the Office.

Each document should therefore be analysed individually by reference to the purpose for which it was created and the function it serves, to determine whether it relates to a matter of an administrative nature within the meaning of section 6A(1).

Nature and Function of the "OOSGG policy - patronages"

The documents to which I requested access concern the administration of the *OOSGG policy – patronages* (October 2024). By its name and content, the policy is designed to assist the Office in the administration of the Governor-General's patronage activities. It sets out the procedures and criteria by which the Office manages requests for, and the ongoing administration of, vice-regal patronage. Importantly, the policy grants the Office authority to review, pause, or discontinue any patronage arrangement, underscoring that it is the Office - not the Governor-General personally - that administers these processes.

In implementing the policy, the Office undertakes a range of administrative decisions and activities, such as assessing compliance, determining whether continued patronage is appropriate, and corresponding with organisations and other government entities. These are ordinary administrative functions, comparable to those performed by other Commonwealth agencies. I would respectfully submit that the 2024 *Independent Review of the Office of the Official Secretary to the Governor-General* (Thom AM) supports this understanding, noting that the Office operates as an administrative agency under the *Public Governance, Performance and Accountability Act 2013 (Cth)* with responsibilities comparable to those of other Commonwealth entities.

I contend that, consistent with that statutory framework and with the intent of section 6A, documents generated under the Patronage Policy should be regarded as relating to matters of an administrative nature within the meaning of the FOI Act. Only in limited circumstances - for example, where a document directly records or conveys advice to the Governor-General in relation to the acceptance, continuation, or withdrawal of a particular patronage - might the exclusion in section 6A properly arise.

Assessment of documents under Section 6A

Accordingly, I respectfully ask that the reviewer apply section 6A diligently, proportionately, and reasonably in assessing any circumstances in which the exclusion might arise. Each document identified through the search should be considered on its own terms and in light of its actual function and purpose, to determine whether it relates to "matters of an administrative nature" within the meaning of section 6A(1) of the Act. The question is not simply whether a document refers to a vice-regal activity, but whether it records or supports the Governor-General's personal exercise of decision-making authority, as distinct from the Office's administrative processes in managing that activity. This approach accords with the purpose of section 6A and the standards of fairness and reasonableness expected of an administrative decision-maker.

The following examples are offered to illustrate the range of documents that could arise within the Office policy as it relates to Equality Australia. They are presented from those most clearly administrative through to those that might, at their outer edge, approach the Governor-General's substantive functions.

1. Media monitoring and information collation

Documents created or filed by the OOSGG to collect, summarise or internally circulate media reports about Equality Australia are routine administrative records. They assist the Office to monitor public interest or reputational issues but do not necessarily involve advice, discretion, or decision-making by the Governor-General.

2. Internal record-keeping and management systems

The administrative task of recording, storing, or tracking material received from Equality Australia within the Office's systems is distinct from any substantive consideration by the Governor-General. Internal updates, summaries, or data logs created for compliance or reporting are operational documents falling squarely within the administrative responsibilities of the OOSGG.

3. Routine correspondence with Equality Australia

Communications sent by the OOSGG acknowledging receipt of reports, confirming contact details, or clarifying procedural obligations under the Patronage Policy are administrative. They implement the policy's ongoing requirements and ensure compliance is documented.

4. Reminders or follow-up correspondence

Letters or emails issued by the OOSGG reminding Equality Australia to keep the office updated of developments in relation to the patronage policy, or confirming receipt of that information, are operational communications that carry out the policy's procedural requirements.

5. Correspondence with other government agencies

Correspondence between the OOSGG and agencies such as the Department of the Prime Minister and Cabinet, the Australian Charities and Not-for-profits Commission, Treasury, or other relevant Commonwealth entities about the administration of Equality Australia's patronage or the operation of the policy constitutes routine inter-agency communication of an administrative kind.

6. Preparation of briefing materials for parliamentary or accountability purposes

Drafts, notes, or talking points prepared by the OOSGG for Senate Estimates or to answer parliamentary questions about the operation of the Patronage Policy or Equality Australia's patronage are administrative. They relate to the Office's accountability under the *Public Governance, Performance and Accountability Act 2013 (Cth)* and other acts, not the Governor-General's personal decision-making.

7. Preparation of media or public-affairs material

Draft media responses or background notes produced by the OOSGG regarding Equality Australia's patronage are administrative communications undertaken in the course of managing public information. These materials would remain administrative unless they were prepared for the Governor-General's personal clearance or formal approval, which would indicate a closer connection to her substantive role.

8. Annotated material or information provided to the Governor-General for awareness

Notes or covering briefs that attach or summarise material about Equality Australia for the Governor-General's information may remain administrative in nature where they merely provide context or background and do not invite or record a decision. Even where the Office annotates or highlights aspects of Equality Australia's reporting for the Governor-General's awareness, the activity remains administrative unless it involves advice or recommendation on the exercise of patronage.

9. Advice or recommendations to the Governor-General about the acceptance, continuation or withdrawal of patronage

Where the OOSGG prepares a submission advising the Governor-General whether to accept, continue, or withdraw her patronage of Equality Australia, those documents would likely fall outside the Act under section 6A, as they directly relate to the Governor-General's substantive discretion.

Taken together, these examples illustrate the spectrum of the Office's administrative work under the policy and provide a practical framework for assessing which documents fall within the FOI Act and which might be excluded under section 6A.

Caution in applying *Kline* to justify a blanket jurisdictional limitation

I respectfully ask that the reviewer exercise caution in relying on *Kline v Official Secretary to the Governor-General* (2013) 249 CLR 645 to justify the wholesale exclusion of documents that merely refer to the patronage policy.

Kline concerned access to documents relating to the Order of Australia and other honours. The High Court's reasoning turned on the particular nature of those functions, which it held to be integrally connected with the Governor-General's formal powers of appointment and investiture.

The present matter is of a different character. It concerns the administration of the patronage policy - an internal framework issued by and for the Office of the Official Secretary to manage requests for and ongoing arrangements of vice-regal patronage. The Policy describes patronage

as an *honorary position* and expressly excludes any involvement by the Governor-General in the operations or positions of an organisation. It sets out procedural requirements for correspondence, record-keeping and compliance that are administered by the Office. These are administrative functions concerned with the management of the patronage program, not the Governor-General's personal exercise of any constitutional or formal power.

The principle in *Kline* should therefore be applied with care. Precedents are binding only in respect of their *ratio decidendi* and where the facts are materially analogous. The circumstances here are not. Extending *Kline* to all references to vice-regal activities would go beyond both its *ratio* and the intended reach of section 6A, effectively transforming a narrow exclusion into a blanket jurisdictional bar that Parliament did not enact.

Treatment of documents found to be within scope

Having addressed the question of jurisdiction under section 6A, I respectfully ask that the reviewer then consider the proper treatment of any documents found to fall within the operation of the *Freedom of Information Act 1982 (Cth)*.

Should any such documents be identified - namely, records of an administrative nature not excluded by section 6A - they should be processed in accordance with the Act's procedural requirements. This includes considering the possible application of relevant exemptions, making any necessary redactions under sections 47 or 22, and, where appropriate, weighing competing public-interest factors before deciding on release. I also respectfully request confirmation that, in making the fresh decision, no irrelevant considerations within the meaning of section 11B(3) of the Act - including potential embarrassment, misunderstanding, or criticism - were taken into account.

Observations on the primary decision

I respectfully submit that the primary decision contains several procedural and substantive deficiencies that warrant reconsideration.

First the decision does not indicate that any document search was undertaken before concluding that "no documents or categories of documents (if they exist) relate to matters of an administrative nature." Although the decision purports to rest on section 6A rather than section 24A, a proper application of section 6A still requires that the decision-maker first identify what documents exist. Only then can an informed assessment be made as to whether any of those documents relate to "matters of an administrative nature" within the meaning of the Act. The FOI Guidelines (Part 3, especially [3.143] and [3.150]) emphasise that agencies must undertake a thorough and systematic search before forming a view about a document's status under the Act. It is difficult to see how the conclusion reached here could have been properly formed without first taking that essential step.

If, on the other hand, a search was undertaken and the decision-maker has deliberately chosen not to confirm that fact, such an omission would appear inconsistent with section 26(1)(a) of the Act, which requires that a notice of decision state the findings on any material questions of fact, refer to the material on which those findings were based, and set out the reasons for the decision.

Secondly, the decision does not recognise that my request encompassed two distinct categories of documents:

- (1) those received from Equality Australia, and
- (2) those generated within the Office in administering or reviewing Equality Australia's compliance.

The decision treats these as a single category and applies a uniform conclusion to both, overlooking the clear difference between the Office's administrative handling of notifications received and any potential advice or submission to the Governor-General. Recognition of this distinction is essential to ensuring that at least the first category - routine notifications received under the policy - is not wrongly withheld from public access.

Thirdly, the reasoning treats documents in abstract "categories," as though the Act permitted exclusion by classification rather than through document-level analysis. However, section 6A(1) provides that "*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 deliberate use of the definite article reinforces that each document must be considered individually to determine whether it relates to matters of an administrative nature.

Finally, I contend that the decision overextends *Kline v Official Secretary to the Governor-General* (2013) 249 CLR 645. That case concerned a confined class of documents - those directly connected with the Governor-General's formal powers of appointment and investiture - which the Court held were outside the FOI Act because they supported the exercise of substantive constitutional functions. The administration of the patronage policy is different in character: it involves record-keeping, correspondence, inter-agency communication, and compliance monitoring - administrative functions undertaken by the Office, not the Governor-General personally. Section 6A draws precisely this distinction, recognising that the Office performs both administrative and non-administrative functions.

Final remarks

I appreciate the care and attention required to revisit these issues and trust that the matters raised above will assist in a fair and thorough review of my FOI request.

Yours faithfully,

Dr Megan Poore
Founder, AAWAA
women@womensadvocacy.net

[Quoted text hidden]