



OFFICE OF THE OFFICIAL SECRETARY
TO THE GOVERNOR-GENERAL

16 September 2022

foi+request-9291-06eba683@righttoknow.org.au

Dear C Drake

Re: Application under the *Freedom of Information Act 1982*
Ref: FOI2022104

I refer to your email of 20 August 2022 in which you make a request under the Commonwealth Freedom of Information Act 1982 (FOI Act) for:

"1. I request each of the documents since and including 24 August 2018 to the date that your process this request that appoint officers to administer departments of State of the Commonwealth.

I respectfully bring to your attention the longstanding precedent used by Australian Courts to identify "matters of an administrative nature" (which your office is obliged to accept FOI request for) by distinguishing them from "legislative and judicial actions", and since my request relates to matters of administering your duties under our constitution, it is therefore in scope of my request.

*See R Creyke and J McMillan, *Control of Government Action: Text, Cases & Commentary* (2005), [2.4.25]. and <https://www.alrc.gov.au/publication/for-your-information-australian-privacy-law-and-practice-alrc-report-108/35-federal-courts-and-tribunals/federal-courts/>*

2. On 17 August 2022 the following statement was published (<https://www.gg.gov.au/about-governor-general/media/statement-appointment-former-prime-minister-portfolios-other-department-prime-minister-and-cabinet>) and attributed to the Governor-General: "The Governor-General had no reason to believe that appointments would not be communicated."

Given that, on at least 4 (that we know of) occasions spanning more than a year, additional secret appointments were carried out, the fact that all these were being kept secret would have been increasingly obvious to any reasonable office-bearer performing their duties with diligence: I thus additionally request whatever

documentation that may exist justifying the above "no reason" statement of the Governor-General."

I am the authorised decision maker under section 23 of the FOI Act and this letter sets out my decision on your request for access.

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 sought access;
- the relevant provisions of the FOI Act; and
- the Commonwealth's guidelines on FOI.

Section 6A of the FOI Act

The FOI Act does not apply to the Governor-General. Under section 6A, the FOI Act also has a restricted application to the Official Secretary to the Governor-General (Official Secretary) 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.
- (2) For the purposes of this Act, a document in the possession of a person employed under section 13 of the *Governor-General Act 1974* that is in his or her possession by reason of his or her employment under that section shall be taken to be in the possession of the Official Secretary to the Governor-General.

The phrase 'matters of an administrative nature' is not defined in the FOI Act. The High Court of Australia held in *Kline v Official Secretary to the Governor General* [2013] HCA 52 that the phrase refers to documents that concern 'the management and administration of office resources, such as financial and human resources and information technology' (at [13]). By contrast, the High Court held the phrase does not apply to documents that relate to the discharge of the Governor-General's 'substantive powers and functions'.

Requested documents are not within the restricted application of the FOI Act

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 High Court has previously held that the exercise of the Governor-General's substantive powers and functions are not deemed to be matters of an administrative nature. The information in your request is considered to be a substantive function of the Governor-General and associated documents are excluded from disclosure. The

exception is documents concerning the management and administration of the office resources of the Official Secretary or the provision of logistical support.

Decision

The Office has been unable to identify any documents relevant to your request. 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.

Information provided outside the Office's obligations under the FOI Act

The Office of the Official secretary to the Governor General supports the inquiry and processes announced by the Prime Minister in relation to this issue.

To assist with your request, information regarding in part, the subject of your query can be found on the website of the [Australian Government - Department of the Prime Minister and Cabinet](#).

Review rights

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

Yours sincerely



Jeff Barnes
Deputy 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.

While there is no particular form required to make a complaint to the OAIC, 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.

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.