



OFFICE OF THE OFFICIAL SECRETARY
TO THE GOVERNOR-GENERAL

19 October 2022

[C Drake foi+request-9291-06eba683@righttoknow.org.au](mailto:C_Drake_foi+request-9291-06eba683@righttoknow.org.au)

Dear C Drake

Re: Application under the *Freedom of Information Act 1982* - Internal Review of Decision - Ref: FOI2022104

I refer to your email of 23 September 2022 in which you make the following request under the Commonwealth *Freedom of Information Act 1982* (FOI Act) for an Internal Review of decision:

"Dear Office of the Official Secretary to the Governor-General,

Please pass this on to the person who conducts Freedom of Information reviews.

I am writing to request an internal review of Office of the Official Secretary to the Governor-General's handling of my FOI request 'Documents appointing officers to administer departments of State of the Commonwealth since Scott Morrisons term'.

My request was improperly handled, not adequately considered, and improperly refused.

Note that in my request I specifically identified the high-court practice relevant to the status of the documents I request. This information was completely ignored by Mr Barnes, who elected to copy and paste the template-reply he used for the previous (not related to me) request of a similar nature, which falsely claims a different high-court outcome (Kline) applies to my request.

*Prior to receiving this refusal, I supplied additional information highlighting why Kline does NOT in fact apply to my request, and further, how Kline in fact *supports* my request. This information was also ignored by Mr Barnes. Also ignored by Mr Barnes was the intent and purpose of the Fol act in general, including (and not limited to) 11B Public interest exemptions — factors part 3(b), and while Mr Barnes doesn't of course say so, it's opaquely clear that government embarrassment is the true motive for his refusal decision - a factor that is NOT allowed under the Fol.*

While Kline is not applicable here (this is not a request for anything award or honorary related), that decision, in keeping with and supporting the one I already supplied, clearly explains what documents are to be considered "exempt", based on the purpose of the introduction of that language in the first place. I am NOT requesting Judicial documents. Accordingly, there is no legal justification for the refusal provided.

*11B-3(b) *clearly* applies in this instance. Australians were and are expected to cast votes in elections based on their knowledge and understanding of the character and nature of the personalities they're expected to vote for. Withholding critical information of the nature that my Fol request relates to amounts to nothing less than *serous* interference with, and manipulation of, the Australian electoral system.*

There is NO relevant precedent that supports the withholding of the documents I request.

There IS high-court practice relevant to my request that does support the release of these documents.

There IS provision in the Fol act that permits you to release these documents.

Do the right thing by the Crown, by me, and by the Australian people: release these documents."

Outcome of Internal Review

For reasons I will explain I have decided to affirm the original decision communicated to you on 16 September 2022. However, to assist with your request, I provide some additional information below 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 sought access;
- the relevant provisions of the FOI Act; and
- the Commonwealth's guidelines on FOI.

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

Section 6A of the FOI Act

As advised in Mr Barnes' letter to you of 16 September 2022, the FOI Act has a restricted application to the Office of the Official Secretary to the Governor-General and the 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 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'.

The High Court held that documents which come within the exception do not include all documents that relate to 'administrative' matters, as that term is commonly understood. 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'.

Your FOI request pertains to documents relating to the performance of the Governor-General's substantive functions, rather than relating to matters of an administrative nature within the restricted meaning given that term by the High Court. 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 role of the Governor-General

The Governor-General has a range of constitutional and ceremonial duties in his official capacity that relate to the discharge of the Governor-General's substantive powers and functions.

Key constitutional duties include:

- Presiding over the Federal Executive Council
- Facilitating the work of the Commonwealth Parliament and Government
- Dissolving Parliament and issuing writs for a Federal election
- Commissioning the Prime Minister; appointing Ministers and Assistant Ministers; and swearing-in other statutory positions
- Holding and possibly exercising the Reserve Powers.

As part of the Governor-General's substantive powers and functions the Governor-General signs Instruments of Appointment.

Importantly, the Instruments of Appointment that you are seeking are prepared by the Department of the Prime Minister and Cabinet and returned to the Department after the Governor-General has considered and signed them. The original Instruments are not retained by this Office. The documents you are seeking are likely held by the Department of the Prime Minister and Cabinet. To assist in your query, below is a list of the occasions the Governor-General has signed Instruments of Appointment of a Minister of State during the date range you have requested.

Date Instrument signed	Details
Morrison Ministry	
24 Aug 18	Swearing-in of Mr Morrison to hold office of Prime Minister; and Mr Frydenberg to hold office of Treasurer
27 Aug 18	Swearing-in of Mr Dutton to hold office of Minister for Home Affairs
28 Aug 18	Swearing-in of Morrison ministry
25 Jan 19	Swearing-in of Mr Gee to hold office of Assistant Minister to the Deputy Prime Minister
2 Mar 19	Swearing-in of Senator Reynolds to hold offices of Minister for Defence Industry and Minister for Emergency Management and North Queensland Recovery
29 May 19	Swearing-in of Morrison ministry following federal election
5 Dec 19	Changes to administrative arrangements following abolition of some departments with effect from 1 Feb 20
6 Feb 20	Changes to Morrison ministry
13 Mar 20	Appointment of Prime Minister Morrison to administer the Department of Health
30 Mar 20	Appointment of Prime Minister Morrison to administer the Department of Finance

Date Instrument signed	Details
30 Oct 20	Swearing-in of Senator Birmingham to hold office Minister for Finance
22 Dec 20	Changes to Morrison ministry
30 Mar 21	Changes to Morrison ministry
15 Apr 21	Appointment of Mr Robert to administer the Department of the Prime Minister and Cabinet
15 Apr 21	Appointment of Prime Minister Morrison to administer the Department of Industry, Science, Energy and Resources
6 May 21	Appointment of Prime Minister Morrison to administer the Department of Home Affairs and Department of the Treasury
22 Jun 21	Swearing-in of Mr Joyce to hold office of Deputy Prime Minister and Minister for Infrastructure, Transport and Regional Development
2 Jul 21	Changes to Morrison ministry
8 Oct 21	Changes to Morrison ministry
Albanese Ministry	
23 May 22	Swearing-in of Mr Albanese to hold office of Prime Minister; and the interim Albanese ministry
1 Jun 22	Swearing-in of Albanese ministry
16 Jun 22	Swearing-in of Senator McCarthy to hold offices of Assistant Minister for Indigenous Australians and Assistant Minister for Indigenous Health
1 Jul 22	Changes to Albanese ministry to reflect changes to the AAO

Please note that some of the information you have requested is already publicly available on the website of the Department of the Prime Minister and Cabinet. Links are provided below:

- PM&C FOI disclosure logs - [Departmental FOI Disclosure Logs | Department of the Prime Minister and Cabinet \(pmc.gov.au\)](#)
- PM&C News Centre [The instruments by which the then Prime Minister, the Hon Scott Morrison MP, was appointed to portfolios other than the Department of the Prime Minister and Cabinet during 2020 and 2021 | Department of the Prime Minister and Cabinet \(pmc.gov.au\)](#)

To support any future requests to the Office, having regard to the functions and responsibilities of the Office ([The Office of the Official Secretary to the Governor-General | Governor-General of the Commonwealth of Australia \(gg.gov.au\)](#)) may assist you to determine if the Office holds records relating to the considered request or if another agency may be best placed to assist you.

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.

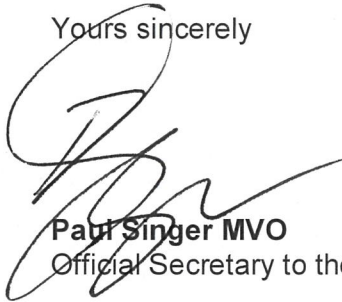
Decision

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, and provide the additional information above, outside the terms of the FOI Act, to assist with your request.

Review rights

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Singer', written over a printed name and title.

Paul Singer MVO
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.