



## **Express law** *fast track information for clients*

21 December 2012

### **Freedom of information requests to the Official Secretary to the Governor-General**

**In *Kline v Official Secretary to the Governor-General and Anor* [2012] FCAFC 184 the Full Court of the Federal Court confirmed that documents about the Australian system of honours are not documents that relate to matters of an administrative nature and are not subject to s 6A of the *Freedom of Information Act 1982 (Cth)* (FOI Act).**

#### ***Background facts***

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Ms Kline nominated a person for appointment to the Order of Australia in 2007 and 2009. Subsequently, Ms Kline made a request under the FOI Act to the Official Secretary to the Governor-General seeking access to documents relating to the nominations and to documents relating to the Australian system of honours managed by the Official Secretary.

The Official Secretary decided that the FOI Act did not apply to Ms Kline's request by reason of s 6A of the FOI Act, which states that the FOI Act does not apply to documents of the Official Secretary unless they relate to *matters of an administrative nature*.

Ms Kline sought review of this decision by the Office of the Australian Information Commissioner. The Information Commissioner affirmed the decision of the Official Secretary to refuse the request for documents. Ms Kline's subsequent application to the Administrative Appeals Tribunal was dismissed.

The issue before the Full Court of the Federal Court was whether the Tribunal was correct in determining that the request was for access to documents of the Official Secretary that relate to matters of an administrative nature.

#### ***Decision of the Full Federal Court***

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Keane CJ, Besanko and Robertson JJ upheld the decision of the Tribunal and found that none of the documents, or categories of documents, relevant to Ms Kline's request related to matters of an administrative nature.

Section 6A of the FOI Act looks to the person exercising the power or function, in this case the Governor-General. Accordingly, the FOI Act only applies to requests for access to a document of the Official Secretary where the document relates to matters of an administrative nature. It does not apply to requests for access to a document of the Official Secretary of any other character.

It was accepted that the terms of Ms Kline's request show that the substantive power or function in question was the administration of the Order of Australia. The requests were for access to documents of the Official Secretary which related to that substantive power or function.

The Full Court held that the relevant distinction being drawn in s 6A of the FOI Act is between the substantive powers and functions of the Governor-General, on the one hand, and the apparatus for the exercise of that power or function, matters merely supportive of that power or function, on the other.

The Full Court accepted that documents dealing, for example, with staffing arrangements within the Office of the Official Secretary, the costs of running the Office or statistics about the activities of the Office could all be the subject of a request to which the FOI Act would apply.

Kirsty Windeyer, Senior Executive Lawyer, instructed in this proceeding on behalf of the Official Secretary.

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