

KLINE v. OFFICIAL SECRETARY TO THE GOVERNOR GENERAL AND ANOR
(B47/2013)

Court appealed from: Full Court of the Federal Court of Australia
[2012] FCAFC 184

Date of judgment: 19 December 2012

Date of grant of special leave: 16 August 2013

The appellant made two unsuccessful nominations of a person for appointment to the Order of Australia. She sent a request to the first respondent pursuant to the *Freedom of Information Act* 1992 (Cth) (“the FOI Act”) for access to a number of documents held by the first respondent relating to the nominations. The documents she sought were “working manuals, policy guidelines and criteria related to the administration of awards within the Order of Australia [and] documents relating to review processes i.e. right of appeal in cases of maladministration”. Under s 6A of the FOI Act, only documents of the Official Secretary relating to matters of an administrative nature were accessible. On 25 February 2011, the Deputy Official Secretary to the Governor-General refused the appellant’s request on the basis that the documents sought did not relate to matters of an administrative nature.

On 9 August 2011, the Information Commissioner affirmed the decision under s 55K of the FOI Act and on 30 April 2012 the Administrative Appeals Tribunal affirmed the decision under review.

The appellant appealed to the Federal Court of Australia. The major question in the appeal was the construction of s 6A of the FOI Act. On 19 December 2012, the Full Court (Keane CJ, Besanko and Robertson JJ) concluded that a document that relates to a substantive power of function of the Governor-General is not a “document [that] relates to matters of an administrative nature” and dismissed the appeal with costs.

The grounds of appeal are:

The Federal Court erred:

- In holding that the FOI Act did not apply to the appellant’s requests for access to documents made on 26 and 30 January 2011 by reason of s 6A of that Act;
- In holding that any document that “relates to [a] substantive power or function” of the Governor-General is not a document that “relates to matters of an administrative nature” within the meaning of s 6A, and is thereby excluded from the coverage of the Act;
- In characterizing each document the subject of the requests as a document that “relates to [a] substantive power or function” of the Governor-General.

The first respondent has issued a notice pursuant to section 78B of the *Judiciary Act*.

