

Senate Finance and Public Administration Legislation Committee
Budget Estimates Hearing – October 2012
ANSWER TO QUESTIONS ON NOTICE

Prime Minister and Cabinet portfolio

Department/Agency: Office of the Official Secretary to the Governor-General

Program 1: Support for the Governor-General and Official Activities

Outcome 1: The performance of the Governor-General's role is facilitated through the organisation and management of official duties, management and maintenance of the official household and property and administration of the Australian Honours and Awards system.

Topic: Legal matter against Ms Kline

Senator: Ronaldson

Question reference number: PM55

Type of Question: Written

Date set by the committee for the return of answer: 30 November 2012

Number of Pages: 3

With respect to the costs of the legal matter against Ms Kline:

- a. What now are the total legal and other costs, thus far, associated with pursuing the case to refuse Ms Kline access to documents including “working manuals, policy guidelines and criteria related to the administration of the awards”?
- b. What are the projected total legal and other costs, from start to finish, if this case is finalised before the Full Court of Federal Court of Australia, in the cases of both the office succeeding and failing in the appeal?
- c. Does the office have a provisional allocation for future legal expenditure for this matter? How much is this allocation?
- d. What are the names of all the legal counsel and law firms that the office has employed in pursuing this case, noting the office has in the past mentioned the Australian Government Solicitor? What are the individual costs thus far associated with each counsel and each law firm employed by the office? Please give a breakdown of costs.
- e. What are the total hours, or an estimate of the total hours, spent by the office on this case? How long has this case gone on for now?
- f. If the office loses the appeal before the Full Court of the Federal Court of Australia, would it then seek to appeal the case before the High Court? What would be the projected additional legal and other costs associated with bringing this case before the High Court, in the cases of both the office succeeding and failing in an appeal?

Answer:

a. The Office has not pursued any legal case against Ms Kline. Ms Kline has taken legal action against this Office. The Office has an obligation to respond to legal cases brought against it. At all times the Office has acted in accordance with the Commonwealth's obligation to act as a model litigant.

Ms Kline's FOI request to which Senator Ronaldson referred, related to more than "*working manuals, policy guidelines and criteria related to the administration of the awards*". Ms Kline's request was as follows:

1. My nomination dated 31 March 2007 of [the nominee] for an Order of Australia. This includes the nomination form and all accompanying material i.e. testimonial, newspaper articles and referee details. A list of which of my nomination documents were presented to the Council [in] August 2008.
2. My 2009 nomination of [the nominee] for an Order of Australia. This includes nomination forms and accompanying material sent in 2009 and 2010 i.e. journal articles, referee reports, submissions and updates. All correspondence held by the Official Secretary in relation to this nomination. A list of which of my nomination documents were presented to the Council [in] August 2010.
3. Working manuals, policy guidelines and criteria related to the administration of awards within the Order of Australia.
4. Documents relating to review processes i.e. right of appeal in cases of maladministration.
5. All file notes from the Secretariat contained in my nominations of 2007 and 2009.

Total legal costs paid associated with responding to the legal action brought against this Office by Ms Kline in relation to her FOI request are \$125,621 (as at 15 October 2012).

The Office does not have available records regarding total other costs incurred, although Office travel costs associated with briefing Counsel and appearing before the AAT have totalled \$3,237.66 (as at 15 October 2012).

The dollar cost of staff hours is not known.

b. Projected legal and other costs from start to finish are not yet known. If the Office succeeds in the Federal Court it would seek to recover costs (as yet unknown) in line with Commonwealth Legal Directions. If the matter is appealed by the applicant to the High Court, there would be further costs incurred in defending such action. If successful in the High Court, the Office would again seek to recover costs (as yet unknown) in line with the Commonwealth Legal Directions. If unsuccessful the Office may be liable for the applicant's costs in the Federal and/or High Court (as yet unknown).

c. The Office does not have a formal budget allocation set aside for this matter. It will meet any necessary costs incurred by adjusting expenditure in other areas.

- d. The Office has engaged the Australian Government Solicitor (AGS) to act on its behalf in relation to these proceedings. The AGS has provided legal advice from its own staff resources and has engaged appropriate legal counsel to represent the Office in this matter before the AAT and Federal Court (Senior Counsel Peter Flanagan and Counsel Nitra Kidson). Total legal costs (as at 15 October 2012) paid to the AGS in relation to this matter are approximately \$125,621 (of which \$15,250 relates to the services of Peter Flanagan, and \$14,054 relates to the services of Nitra Kidson). Costs incurred are as per established Commonwealth rates for legal services.
- e. The Office has been responding to this FOI matter since it was first raised in January 2011. The Office has spent considerable time and resources defending the legal matters brought against it. Since Ms Kline first raised concerns with this Office regarding her unsuccessful nomination within the Australian honours system, the Office has spent approximately 5682 staff hours responding to the various issues raised. Whilst the Office would prefer not to have had to divert significant resources to this matter, it has responded thoroughly to every matter raised.
- f. The Office will consider its position on further legal action once it is aware of the outcome of the Federal Court case. Legal and other costs associated with further legal action are not known.