



Australian Government

# Fair Work OMBUDSMAN

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Our reference: FOI-000645

27 March 2016

Mr Jason Simpson

By email to: Jason Simpson [foi+request-3149-869a0f10@righttoknow.org.au](mailto:foi+request-3149-869a0f10@righttoknow.org.au)

Dear Mr Simpson

## **Notice of Decision – Freedom of Information Request**

I refer to your request received on 24 February 2017 under the *Freedom of Information Act 1982 (FOI Act)* for access to the following information:

*“information in regards to a recent change to the FWO web page (mid 2015) stating certain words were removed from the publication and an explanation/s for the removal of the words and the exact date in which the removal of the words occurred.*

Specifically:

*“The change was the removal of the words “help recover unpaid employee entitlements” (or similar wording) from the FWO “Our role” page under the subtitle of “Our main role is to”. The line I am referring to was one of the bullet points along with- promote harmonious, productive and cooperative workplace relations, ensure compliance with Australian workplace laws, monitor certain 457 subclass visa arrangements.”*

## **DECISION AND STATEMENT OF REASONS FOR DECISION**

I am authorised by the Fair Work Ombudsman (FWO), under s. 23 of the FOI Act, to make decisions on requests for access to documents. In making my decision, I took into account your request, the FOI Act, the Australian Information Commissioner’s Guidelines and discussions with FWO staff.

In accordance with s. 26 of the FOI Act, this is my Statement of Reasons.

## **Access Refusal – s.24A**

I have decided to refuse access to the documents you requested on the basis that they do not exist.

Section 24A of the FOI Act is entitled 'Requests may be refused if documents cannot be found, do not exist or have not been received.' It states:

*Document lost or non-existent.*

- (1) An agency or Minister may refuse a request for access to a document if
- (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found or
    - (ii) does not exist.

The FWO's Website team have undertaken searches and reviewed the version history of the 'Our role' page in the 'About us' section of the FWO website. They have advised that no previous version of the content of this page has included a reference to the words "help recover unpaid employee entitlements". It is for this reason that I am satisfied that no information can therefore exist in regards to any removal of such words.

I note that two of the dot points listed under 'Our free services' relate to the recovery of unpaid employee entitlements. They are:

- 'assessing complaints or suspected breaches of workplace laws, awards and registered agreements and some Fair Work Commission orders' and
- 'litigating in some circumstances to enforce workplace law and deter people from doing wrong in the community'.

There is no doubt that as a result of the FWO's litigation work, we have been successful in recovering unpaid employee entitlements. This work is connected to one of the FWO's primary roles (noted on the 'Our role' web page) in ensuring compliance with Australia's workplace laws.

I am satisfied that the FWO has undertaken all relevant searches and taken all reasonable steps to find documents relevant to the information you are seeking. No such documents exist. As a result, I am refusing you access, under s. 24A of the FOI Act, to the documents you sought on the basis that they do not exist.

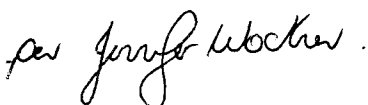
### **Review Rights**

I have attached a document setting out your rights of review of this decision (**Attachment A**).

### **Contact details**

If you need further information, please call Jennifer Wockner on (07) 4699 5876 or send an email to [foi@fwo.gov.au](mailto:foi@fwo.gov.au)

Yours sincerely



Annabel Kent  
Assistant Director – Customer Feedback and Information Access  
Fair Work Ombudsman

## INFORMATION ON RIGHTS OF REVIEW & COMPLAINTS

### Rights of review

If you are dissatisfied with this decision you can apply for internal review by this agency (Option 1 below) or external review by the Australian Information Commissioner (IC Review) (Option 2 below).

You do not have to apply for internal review before seeking IC review. However, the Information Commissioner has expressed the view that it is preferable for a person to seek internal review by the agency before applying for IC Review. If you choose Option 1 (internal review), you can also apply for IC review of the internal review decision within 60 days after receiving notice of our decision.

### Option 1 – Internal review

You can seek internal review of the decision. An application for internal review must be made in writing within 30 days after the date you were notified of the decision, or within such further period as the Fair Work Ombudsman allows. The internal review will be conducted by a senior officer who had no involvement in the initial decision.

There is no particular form required to make a request for internal review. However, it would help the reviewer if you said, in writing, why you think the decision should be reviewed.

An application for an internal review of the decision should be sent to:

Email: [foi@fwo.gov.au](mailto:foi@fwo.gov.au)

Or

FOI Manager  
GPO Box 9887  
MELBOURNE VIC 3001

### Option 2 – Review by the Australian Information Commissioner

Alternatively, you can apply in writing to the Australian Information Commissioner for IC review of the decision. An application for IC Review must be made within 60 days after the day you were given notice of this decision.

In making your application, you need to provide an address for notices to be sent (this can be an email address) and a copy of this decision. It would also help the Australian Information Commissioner if you set out the reasons for seeking IC review in your application.

To apply for IC review, please refer to the FOI Fact Sheet 13 issued by the Office of the Australian Information Commissioner ([http://www.oaic.gov.au/images/documents/freedom-of-information/foi-factsheets/FOI\\_factsheet12\\_your-rights\\_online\\_July2012.pdf](http://www.oaic.gov.au/images/documents/freedom-of-information/foi-factsheets/FOI_factsheet12_your-rights_online_July2012.pdf)). You can file your application online at <https://forms.business.gov.au/aba/oaic/foi-review/> or download a complaint form from the OAIC's website [www.oaic.gov.au](http://www.oaic.gov.au)

### Complaints

You can complain to the Australian Information Commissioner about action taken by the Fair Work Ombudsman in relation to your freedom of information request. Your complaint must be in writing and it is the Information Commissioner's preference that an online complaint form be completed. The form can be found at [https://forms.business.gov.au/aba/landing.htm?formCode=ICCA\\_1](https://forms.business.gov.au/aba/landing.htm?formCode=ICCA_1). Alternatively, you can send a letter to the Office of the Australian Information Commissioner, GPO Box 5218, Sydney NSW 2001 or send an email to [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au).