



Australian Government

Fair Work OMBUDSMAN

Our reference: FOI-000658

30 April 2017

Mr Jason Simpson

By email to: Jason Simpson foi+request-3326-4f8717cf@righttoknow.org.au

Dear Mr Simpson

Notice of Decision – Freedom of Information Request

I refer to your request received on 31 March 2017 under the *Freedom of Information Act 1982 (FOI Act)* for access to information regarding the Fair Work Ombudsman's (**FWO**) role in the government's interdepartmental or cross agency illegal phoenix task force. In your request, you specifically ask, "What is the role of the FWO in the illegal phoenix taskforce?"

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.

Background

The FWO is one of 20 government entities that make up the Phoenix Taskforce, committed to combatting the problem of illegal phoenix activity. The work of the taskforce and the different strategies employed by the Taskforce to date are outlined for the public on a number of dedicated pages available on the website of the Australian Taxation Office, including via this link - <https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/Phoenix-Taskforce/>

The FWO has also referred to its ongoing work on several occasions in detecting and deterring fraudulent phoenix behaviour by participating in the Inter-Agency Phoenix Forum and the Phoenix Taskforce. Examples of these references can be found in the FWO Annual Report for 2015-16, including via the following link –

<https://www.fairwork.gov.au/annual-report/02-performance-report/stakeholder-engagement>

Each of the government agencies which make up the Phoenix Taskforce, exercise their separate legislative functions to further the aims of the Taskforce, as well as combining to commission research reports and discuss collaborative strategies.

The FWO uses its existing powers under the *Fair Work Act 2009* to take legal action against employers that fail to comply with workplace laws and have been identified as phoenix operators. The FWO also provides advice to employees to assist them in recognising the warning signs that they may be working for phoenix companies, as outlined here -

<https://www.ato.gov.au/General/The-fight-against-tax-crime/Our-focus/Illegal-phoenix-activity/>

There have also been occasions where the FWO has shared information with other government bodies on the Phoenix Taskforce, such as the Australian Securities & Investments Commission (ASIC), to enable other enforcement action to be taken against phoenix operators.

Access Refusal – s.24A

I have arranged for a search of the FWO's internal records and can confirm that there are no separate documents containing information about the FWO's specific role in the Phoenix Taskforce. For this reason, I have decided to refuse access to the documents you have requested on the basis that they do not exist. I note that my decision is confined to documents addressing your specific request, which was "What is the role of the FWO in the illegal phoenix taskforce?".

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.*

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. I am therefore 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 send an email to foi@fwo.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Sally Dennington', written in a cursive style.

Sally Dennington
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

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). 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

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. 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.