



Australian Government

Fair Work

OMBUDSMAN

Our reference: FOI-1061

18 April 2019

Mr Henry Honner

Email: <mailto:foi+request-5284-b8662b6a@righttoknow.org.au>

Dear Mr Honner,

Freedom of Information Request – Notice of Decision

I refer to your Freedom of Information (**FOI**) request submitted to the Office of the Fair Work Ombudsman (**FWO**) seeking access to documents under the *Freedom of Information Act 1982* (**FOI Act**).

Scope of Request

In your email, you sought access to:

1. *The number of audits carried out in the hospitality industry annually over the last 10 years by FWO. Annual figures to show any growth or decline in visitation numbers.*
2. *A breakdown of those audits instigated by employee complaints and those conducted randomly as part of normal operations if possible.*
3. *The cost to FWO of carrying out a random audit.*
4. *The cost to FWO of carrying out an average resolution for an employee complaint (in number of labour hours if financial costs are not known).*
5. *Percentage of complaints/underpayments that involved migrant workers over time.*
6. *Percentage of complaints that derived from migrant employers or employers from non-English speaking backgrounds over time.*

Decision and Statement of Reasons

I am an officer authorised under subsection 23(1) of the FOI Act to make decisions in relation to FOI requests.

In making my decision, I took into account the request for documents, the FOI Act, the Australian Information Commissioner's Guidelines (**FOI Guidelines**)¹ and communications with relevant FWO business units.

Access Refusal

I have decided to refuse access to the documents you requested on the basis that the work involved in processing your FOI request for relevant documents would 'substantially and unreasonably' divert the resources of the agency from its other operations, in accordance with subsection 24(1)(b) of the FOI Act.

In the Consultation Notice to you dated 28 March 2019, the FWO provided you with an opportunity to refine the scope of your request as part of the request consultation process referred to in section 24AB of the FOI Act. No response was provided within the 14-day timeframe.

The Consultation Notice also contained advice to you that a 'practical refusal' existed under subsection 24AA(1)(a) of the FOI Act, including detail about the significant time and resources needed to process your request.

Specifically I informed you that:

- the average time spent on processing FOI requests within this agency was 36 hours per request;
- if the FWO was to continue processing your request in its current form, we believe that it would take well over 100 hours just to locate and identify all relevant documents;
- a considerable amount of time (over several hundred hours) would then be needed to review all those documents, undertake the required internal consultation and then prepare an appropriate decision in accordance with the FOI Act;
- based on our initial searches for documents and discussions with FWO's Proactive Compliance Business Unit and relevant searches have taken approximately six hours to date including initial consultations with other FWO's business units; and
- the FWO would also need to conduct an extensive internal consultation process with other business units within the agency, further extending the search and retrieval timeframe.

Based on the time and work involved in processing your request, I am refusing you access to the documents sought, pursuant to subsection 24(1)(b) of the FOI Act.

In deciding whether the work involved in processing your request would meet this threshold, I considered specific guidance provided by the Office of the Australian Information Commissioner (**OAIC**) (including Part 3 of the OAIC review decisions), and the FWO's staffing and resources involved in processing information access requests.

¹ The FOI Guidelines are available at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

Review Rights

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

Contact details

If you would like further information, please contact me via foi@fwo.gov.au.

Sincerely,

Annabel Kent
Director (a/g) – Customer Feedback & 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
Ph: (03) 9603 0947
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 12 issued by the Office of the Australian Information Commissioner (<https://www.oaic.gov.au/resources/freedom-of-information/foi-resources/foi-fact-sheets/foi-factsheet-12-your-review-rights.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.