



17 April 2018

BY EMAIL: [REDACTED]

In reply please quote:

FOI Request: FA 17/11/00039

File Number: ADF2017/115765

Dear [REDACTED]

Freedom of Information (FOI) request - Access Decision

On 31 October 2017, the Department of Home Affairs (the Department) received a request for access to document under the *Freedom of Information Act 1982* (the FOI Act).

On 20 December 2017 the Home Affairs Portfolio, including the Department of Home Affairs, was formally established. The Department of Home Affairs includes the entirety of the Department of Immigration and Border Protection, the Australian Border Force and the Office of Transport Security from within the Department of Infrastructure and Regional Development. It also includes specific functions from the Attorney-General's Department, the Department of Social Services and the Department of the Prime Minister and Cabinet.

As such a decision has now been made on your request by the Department of Home Affairs (the Department).

The purpose of this letter is to provide you with a decision on your request for access under the FOI Act.

1 Scope of request

You have requested access to the following document:

This request is in relation to the 2013 MOU between the Fair Work Ombudsman and the (then) Department of Immigration and Citizenship. A 2013 MOU between the Fair Work Ombudsman and Department of Immigration and Citizenship outlines an agreed framework for inter-agency collaboration including the sharing of information between FWO and DIAC.

Clause 23 of the MOU states Fair Work Ombudsman inspectors will refer matters to DIAC using a referral template. Unions NSW requests a copy of this template, both in its current form, and any other versions used since the implementation of this MOU.

Clause 26.2 of the MOU states FWO is required to refer findings of monitoring activities to DIAC if a contravention of migration law is identified. Unions NSW requests breakdown of all referrals made by FWO to DIAC (and DIBP) since the implementation of the MOU. This request does not include identifiable data. Unions NSW requests information on the total number of referrals made as well as for each referral made, information on: date, state, industry, visa type and overview of contravention.

Clause 26.1 of the MOU identifies the FWO as being responsible for any contravention of the Fair Work Act. The MOU does not outline a requirement for DIAC (or DIBP) to refer contraventions to the Fair Work Ombudsman. Unions NSW requests a list of all referrals made by DIAC to the FWO in relation to contraventions of the Fair Work Act. This request does not include identifiable data. Unions NSW requests information on the total number of referrals made as well as for each referral made, information on: date, state, industry, visa type and overview of contravention.

Clause 55 of the MOU requires a formal annual review of the MOU. Unions NSW requests:

- The details of the review process which has taken place in 2014, 2015, 2016 and 2017. Specifically, did a meeting take place to discuss the MOU, what were the dates of these meetings, who was present at the meeting. If no meeting took place, what process was used to review the MOU and who was involved in this process.
- The outcomes of the review process for 2014, 2015, 2016 and 2017. Including specific changes made to the MOU.

On 1 December 2017 the Fair Work Ombudsman (FWO) accepted transfer of the following part of your request in accordance with s.16 of the FOI Act:

Clause 23 of the MOU states Fair Work Ombudsman inspectors will refer matters to DIAC using a referral template. Unions NSW requests a copy of this template, both in its current form, and any other versions used since the implementation of this MOU.

Clause 26.2 of the MOU states FWO is required to refer findings of monitoring activities to DIAC if a contravention of migration law is identified. Unions NSW requests breakdown of all referrals made by FWO to DIAC (and DIBP) since the implementation of the MOU. This request does not include identifiable data. Unions NSW requests information on the total number of referrals made as well as for each referral made, information on: date, state, industry, visa type and overview of contravention.

2 Authority to make decision

I am an officer authorised under section 23 of the FOI Act to make decisions in respect of requests to access document or to amend or annotate records.

3 Relevant material

In reaching my decision I referred to the following:

- the terms of your request

- the document relevant to the request
- the FOI Act
- Guidelines published by the Office of the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines)
- advice from Departmental officers with responsibility for matters relating to the document to which you sought access.

4 Document in scope of request

In accordance with section 17 of the FOI Act, the Department has used its computer system to produce one document that contains information that falls within the scope of your request that refers to *Clause 26.1 of the MOU*. The data produced in the document existed in the possession of the Department on 31 October 2017 when your FOI request was received.

5 Decision

The decision in relation to the document in the possession of the Department which fall within the scope of your request is as follows:

- Release one document in full

6 Legislation

A copy of the FOI Act is available at <https://www.legislation.gov.au/Details/C2017C00251>. If you are unable to access the legislation through this website, please contact our office for a copy.

7 Your Review Rights

Internal Review

If you disagree with this decision, you have the right to apply for an internal review by the Department of this decision. Any request for internal review must be provided to the Department within 30 days of you being notified of the decision. Where possible please attach reasons why you believe a review of the decision is necessary. The internal review will be carried out by an officer other than the original decision maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

By email to: foi.reviews@homeaffairs.gov.au

OR

By mail to:
Freedom of Information Section
Department of Home Affairs
PO Box 25
BELCONNEN ACT 2617

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of this decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a request for a review to the OAIC,

please see Fact Sheet 12 "Freedom of information – Your review rights", available online at <http://www.oaic.gov.au/freedom-of-information/foi-reviews>.

8 Making a Complaint

You may complain to the Australian Information Commissioner about action taken by the Department in relation to your request.

Your enquiries to the Australian Information Commissioner can be directed to:

Phone 1300 363 992 (local call charge)

Email enquiries@oaic.gov.au

There is no particular form required to make a complaint to the Australian Information Commissioner. The request should be in writing and should set out the grounds on which it is considered that the action taken in relation to the request should be investigated and identify the Department of Home Affairs as the relevant agency.

9 Contacting the FOI Section

Should you wish to discuss this decision, please do not hesitate to contact the FOI Section at foi@homeaffairs.gov.au.



Acting Superintendent | National Investigations
Australian Border Force