

s.22 - Irrelevant to request

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Wednesday, 18 September 2019 6:39
To: FWO - FOI Requests
Subject: FOI inquiry ABC ref no 160/19

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Saved to SharePoint

ABC Ref: 160/19

Dear Sir or Madam,

I am writing to seek access to documents and/or information under the Freedom of Information Act.

I wish to access documents containing information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes.

Specifically, I am seeking information about:

- a. Documents produced between May 1, 2015 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about the assistance the FWO has provided to 417 visa holders who undertook regional work. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.
- b. Documents produced between May 1, 2015 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about the correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.

I advise I am not interested in duplicate copies of documents or documents that have already been publicly released or media releases, media articles or media statements.

I would also like advice if the information I have sought is due to be released under FOI to individuals or organisations prior to finalisation of my FOI application.

I also note the onus rests with the agency to prove why any information should not be released under the Act and I request the agency provide evidence in support of any assumptions or assertions used to justify non-disclosure.

I also advise the agency I am seeking a total reduction in fees and charges associated with this request as release of the information will: contribute to community understanding on an important issue and inform debate and improve government accountability and transparency. Further, the ABC is a non-profit, publicly funded broadcaster and warrants a remission of fees and charges on that basis. I also request the agency provide a five-day waiting period before provision of the information I have sought onto any disclosure log as this will assist the ABC in the preparation of any material for broadcast or publication including assessing the information and seeking additional comment including from government. I refer to the OAIC guidelines on this issue and request that if the agency ignores these guidelines that detailed reasons why be provided.

Yours sincerely,

Katri Uibu

uibu.katri@abc.net.au

+61 474 901 768

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privileged or copyright material. It is intended only for the use of the addressee(s). If you are not the intended recipient of this email, you are not permitted to disseminate, distribute or copy this email or any attachments. If you have received this message in error, please notify the sender immediately and delete this email from your system. The ABC does not represent or warrant that this transmission is secure or virus free. Before opening any attachment you should check for viruses. The ABC's liability is limited to resupplying any email and attachments.

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s. 22 - Irrelevant to request

From: FWO - FOI Requests
Sent: Wednesday, 18 September 2019 11:45 AM
To: Katri Uibu
Subject: Acknowledgement of FOI Request - ABC - IA-1072 [DLM=For-Official-Use-Only]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Saved to SharePoint

For Official Use Only

Dear Katri Uibu,

I confirm receipt of your email correspondence dated 18 September 2019, containing your Freedom of Information (FOI) request for documents held by the Fair Work Ombudsman (FWO).

The reference number for your request is: **IA-1072**

A member of the FWO's Customer Feedback and Information Access team will contact you in due course about your request.

Please direct any further correspondence about this request via email to foi@fwo.gov.au, quoting reference IA-1072.

Sincerely,

Monique Tudman | Customer Feedback and Information Access Officer

Fair Work Ombudsman

s. 22 - Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Wednesday, 18 September 2019 12:44 PM
To: s.22 – Irrelevant to request
Cc:
Subject: Re: FW: FOI inquiry ABC ref no 160/19 [DLM=For-Official-Use-Only]

Thanks s.22. I'll talk to s.22 about this one tomorrow and you on Fri.

The scope is clear enough. We just need to start consulting with right people in OWT to find out what might be relevant as first steps.

From: FWO - FOI Requests <FOI@fwo.gov.au>
Sent: Wednesday, 18 September 2019 12:32 pm
To: s.22 – Irrelevant to request
CC: s. 22 - Irrelevant to request
s. 22 - Irrelevant to request
Subject: FW: FOI inquiry ABC ref no 160/19 [DLM=For-Official-Use-Only]

For Official Use Only

Hi s.22 – Irrelevant

I have acknowledged this new request from the ABC (ref: IA-1072) and have also recorded it on Atlas and in reports.

At first glance, the scope could use some refining as it's quite broad and covers a lengthy timeframe.

Please let me know if you would like to discuss and/or if I can action this on Friday.

Thanks

s.22 – Irrelevant to request

From: Katri Uibu <Uibu Katri@abc.net.au>
Sent: Wednesday, 18 September 2019 6:39 AM
To: FWO - FOI Requests <FOI@fwo.gov.au>
Subject: FOI inquiry ABC ref no 160/19

ABC Ref: 160/19

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Yours sincerely,

Katri Uibu

uibu.katri@abc.net.au

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s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 24 September 2019 8:34 AM
 To: s.22 – Irrelevant to request
 Subject: Internal Stakeholder Draft Email - Request for Assistance IA-1072 - ABC
 [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant

We have a number of cross agency stakeholders who may hold information pertaining to the ABC scope request including:

- Strategic Communications & Education s.22 – Irrelevant to request
- Policy Analysis, Intelligence & Reporting s.22 – Irrelevant to request
- Strategic Research, analysis and Reporting s.22 – Irrelevant to request
- Strategic Engage & Stakeholder Relations s.22 – Irrelevant to request – ILS)
- Operations - Advice, Support and Assistance s.22 – Irrelevant to request
- Operations - Compliance and Enforcement s.22 – Irrelevant to request
- Proactive Compliance s.22 – Irrelevant

I have composed an initial draft email for these teams to gauge a preliminary assessment of the types and quantities of documents that may exist etc.

Dear Colleagues

The purpose of this email to consult with you about a Freedom of Information (FOI) request from Journalist Katri Uibu of the Australian Broadcasting Corporation (ABC), received by the FWO on 18 September 2019.

Scope Request

- a. Documents produced between May 1, 2015 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about the assistance the FWO has provided to 417 visa holders who undertook regional work. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.
- b. Documents produced between May 1, 2015 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about the correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.

The request scope excludes documents that have already been publicly released or media releases, media articles or media statements.

Requested Action

We understand that the FWO may not hold all the information that is being requested, that relevant documents may not exist and we may not report on or have available data on the two scope request points.

So that we can prepare a suitable response to the request, we are seeking information from all relevant business units to confirm the agency's position.

As a starting point, we seek your team's advice on:

- **What relevant documents you know exist;**
- **the quantities of documents;**
- **where the information is located;**
- **the ease or difficulty of abstracting the information from FWO's information systems; and**
- **estimated time to search and retrieve all documents falling within the scope request**

Next Action

Once we receive a response from you we shall be able to determine if the request scope is sufficiently clear to begin processing, or consult with the ABC to reduce/refine the information sought to a more clearer and manageable request.

We would really appreciate it if you could arrange for a response to be provided on behalf of your team to the FOI mailbox (foi@fwo.gov.au) ASAP and at least by **COB Tuesday 1 October 2019**.

Regards

s.22 – Irrelevant
to request

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Wednesday, 18 September 2019 6:39 AM
To: FWO - FOI Requests <FOI@fwo.gov.au>
Subject: FOI inquiry ABC ref no 160/19

ABC Ref: 160/19

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s.22 – Irrelevant to request

From: FWO - FOI Requests
Sent: Tuesday, 24 September 2019 12:03
To: s.22 – Irrelevant to request
Cc:
Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Saved to SharePoint

OFFICIAL

Dear Colleagues

We are looking for your assistance please in dealing with a large FOI request from an ABC reporter based in Hobart –

The reporter is seeking documents produced between 1 May 2015 and 30 August 2019 that contain **information** about:

1. the assistance the FWO has provided to subclass 417 visa holders who have undertaken regional work, including information about how much money the FWO was able to recover for the visa-holders; and
2. correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.

The reference to **information** in the above scope includes “briefings and/or analysis and/or evaluation and/or assessments and/or reports” and the request scope excludes documents that have already been publicly released or media releases, media articles or media statements.

At this stage, we are trying to urgently understand how many relevant documents the FWO might hold in relation to both points of the above scope, and the likely work involved in identifying and reviewing these documents. We are not aware of any ability to search for matters involving 417 visa holders?

Requested action

Please can you arrange for a response to be provided by your team asap and by COB Tues 1 Oct, regarding:

- **What relevant documents you know exist;**
- **the quantities of documents;**
- **where the information is located;**
- **the ease or difficulty of abstracting the information from FWO’s information systems; and**
- **estimated time to search and retrieve all documents falling within the scope request**

Once we have a clearer idea on the above points, we can work out how to respond to the applicant’s request in accordance with our responsibilities under the FOI Act (including providing the applicant with an opportunity to refine her request).

Please provide any written responses to foi@fwo.gov.au or telephone s.22 – Irrelevant to request with your advice.

Many thanks in advance.

Kind regards

s.22 – Irrelevant to request

s.22 – Irrelevant to request

s.22 – Irrelevant to request

From: [REDACTED]
Sent: Tuesday, 24 September 2019 11:40 AM
To: FWO - FOI Requests
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: s.22 – Irrelevant to request Saved to SharePoint

OFFICIAL

Hi team

This would likely sit predominantly with RST and OWT, however there may have been some for other teams like mine as well.

This is a very significant piece of work and would involve reading every document for every matter in Nexus and Titan for our team, in order to find what they're looking for.

Both systems allow us to search by business name, individual name, or matter number not by attributes like 417 visa holders.

My responses to the questions are below:

- **What relevant documents you know exist;**

None I'm aware of off the top of my head, but I'd say likely some of our matters over the last 4 years deal with this to some degree

- **the quantities of documents;**

I'd say not a lot of documents would exist for our team but we'd need to look at hundreds of investigations that between them would have hundreds of thousands of documents or more, to work out if there is anything that exists

- **where the information is located;**

Titan or Nexus

- **the ease or difficulty of abstracting the information from FWO's information systems; and**

Significant difficulty – can't search by attribute so would have to look at every matter to see if any deal with 417 visa holders and then from there read all documents for relevant matters

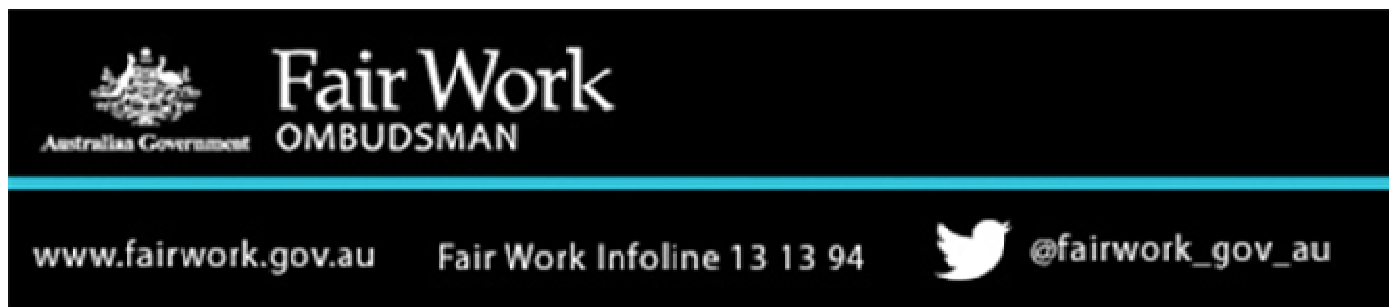
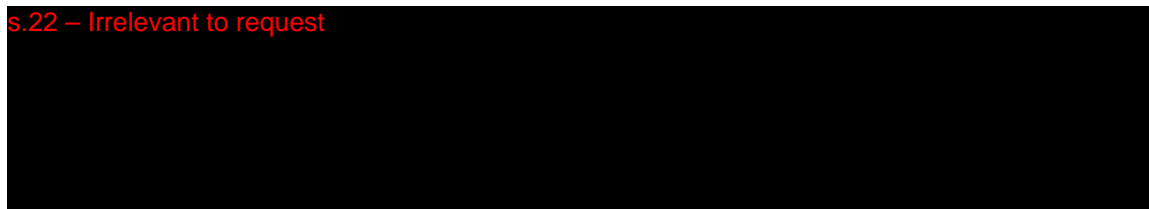
- **estimated time to search and retrieve all documents falling within the scope request**

Months and months

s.22 – Irrelevant to request

[REDACTED] Assistant Director (a/g) - General Protections
 Compliance and Enforcement - Operations Group
Fair Work Ombudsman

s.22 – Irrelevant to request



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We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#).

From: FWO - FOI Requests

Sent: Tuesday, 24 September 2019 12:03 PM

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

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s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Wednesday, 25 September 2019 1:09 PM
To: s.22 – Irrelevant to request
Cc:
Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

s.22 has asked me to contact you in her absence today and unfortunately I couldn't get you on the telephone.

Specifically we would like to confirm if there are search parameters within our Information Systems (Nexus and Titan) to abstract the information the ABC reporter has requested.

Based on the information in the scope of the request we envisage the search parameters would be for 417 Visa holders and then separately broken down to include:

- Work location – regional Australia
- Money recovered
- Year of Visa held (i.e. first year or second year)

Please feel free to contact me via telephone when you have the opportunity.

Kind regards

s.22 – Irrelevant to request

Customer Feedback and Information Access Officer

Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Wednesday, 25 September 2019 11:59 am
To: s.22 – Irrelevant to request
CC: FWO - FOI Requests <FOI@fwo.gov.au>, s.22 – Irrelevant to request
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Hi s.22 – Irrelevant to request

I was hoping to have a chat with you about the scope of this request and the contribution required from SRAR. I noticed you are offline today, given the deadline it would be great if we could chat at your earliest convenience.

Thank you

s.22 –
Irrelevant to
request

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

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Requested action

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- **What relevant documents you know exist;**
- **the quantities of documents;**
- **where the information is located;**
- **the ease or difficulty of abstracting the information from FWO’s information systems; and**
- **estimated time to search and retrieve all documents falling within the scope request**

Once we have a clearer idea on the above points, we can work out how to respond to the applicant’s request in accordance with our responsibilities under the FOI Act (including providing the applicant with an opportunity to refine her request).

Please provide any written responses to foi@fwo.gov.au or telephone **s.22 – Irrelevant to request** with your advice.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: September 2019 1:23 PM
To: s.22 – Irrelevant to request
Subject: abc request [SEC=OFFICIAL]

OFFICIAL

Scope Request

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s.22 – Irrelevant to request

Customer Feedback and Information Access Officer

Fair Work Ombudsman

s.22 – Irrelevant to request

s.22 – Irrelevant to request

From: FWO - FOI Requests
Sent: Friday, 27 September 2019 8:52 AM
To: s.22 – Irrelevant
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL] ATLAS:0077087

Follow Up Flag: Follow up
Flag Status: Completed

OFFICIAL

Good morning s.22 – Irrelevant to request

Thank you very much for coming back to us so quickly.

We will await for further responses from other stakeholders and will be in touch again shortly with a clear direction on how we will approach the processing of the request.

Kind regards

s.22 – Irrelevant to request

Customer Feedback and Information Access Officer

Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Friday, 27 September 2019 9:02 AM
To: FWO - FOI Requests
Cc: s.22 – Irrelevant to request
Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Good morning

I understand at this stage you are just asking for advice about documents which might fit within the scope of the request, rather than the actual documents.

I believe ILS are likely to have SE briefs, other briefs and papers prepared for the MWT, and potentially emails with s.22 (Home Affairs) about pay slips, further details below for your consideration.

Thank you

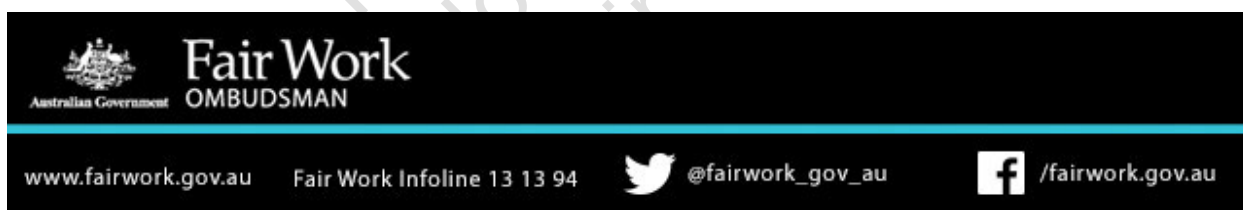
s.22 – Irrelevant to request

- What relevant documents you know exist; The ILS team has not conducted a thorough search, but from memory we believe we would likely hold documents (emails and briefing materials) which may fit within the scope of the request.
- the quantities of documents; The ILS team estimates holding up to 40 relevant documents (this is a generous estimate).
- where the information is located; The information is located in Outlook and DocBank.
- the ease or difficulty of abstracting the information from FWO's information systems; Easy once the documents are located.
- estimated time to search and retrieve all documents falling within the scope request. Estimated retrieval time is 4 hours (2 hours each per Assistant Director to search and retrieve).
 - I recently left the agency for s.22 and do not have access to any emails / documents from the previous 12 years

s.22 – Irrelevant

Director – International Labour Strategy
Strategic Engagement & Stakeholder Relations
Fair Work Ombudsman

s.22 – Irrelevant to request



~Please consider the environment before printing this message~

From: FWO - FOI Requests <FOI@fwo.gov.au>

Date: 24 September 2019 at 11:33:05 am ACST

s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

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Follow Up Flag: Follow up
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- the ease or difficulty of abstracting the information from FWO's information systems; **Easy once the documents are located.**
- estimated time to search and retrieve all documents falling within the scope request. **Estimated retrieval time is 4 hours (2 hours each per Assistant Director to search and retrieve).**
 - I recently left the agency for s.22 and do not have access to any emails / documents from the previous 12 years

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Friday, 27 September 2019 3:46 PM
 To: FWO - FOI Requests
 Cc: s.22 – Irrelevant to request
 Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
 Flag Status: Completed

Categories: s.22 – Irrelevant to request Saved to SharePoint

OFFICIAL

Hi s.22 – Irrelevant to request

Following on from the below request. OWT has had approximately 6 investigations related to this issue. Each investigation would have 30-50 documents located in I drive and Nexus. It would take approximately 1 hour per matter to retrieve these docs.

During the period we would have exchanged about 50 emails with Home Affairs regarding referral of matters and meetings held on the issue between the agencies, these would take about 2 hours to locate and would be in my email box.

We also were in the process of undertaking our Inquiry in to the regional work requirement with the public report being released in October 2016. There would be up to 200 background documents for this Inquiry, located in the I drive and would take about 1 hour to retrieve.

These times do not include time to redact information.

Thanks,

s.22 – Irrelevant to request

Director (a/g) – Overseas Workers

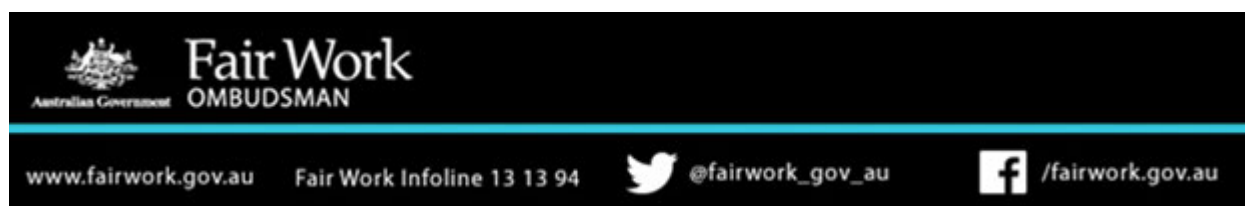
Compliance & Enforcement

Operations Group

Fair Work Ombudsman

s.22 – Irrelevant to request

We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#).



~Please consider the environment before printing this message~

From: s.22 – Irrelevant to request
Sent: Wednesday, 27 September 2019 12:09 PM
To: s.22 – Irrelevant to request
Cc: s.22 – Irrelevant
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Colleagues

We are looking for your assistance please in dealing with a large FOI request from an ABC reporter based in Hobart – The reporter is seeking documents produced between 1 May 2015 and 30 August 2019 that contain **information** about:

1. the assistance the FWO has provided to subclass 417 visa holders who have undertaken regional work, including information about how much money the FWO was able to recover for the visa-holders; and
2. correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.

The reference to **information** in the above scope includes “briefings and/or analysis and/or evaluation and/or assessments and/or reports” and the request scope excludes documents that have already been publicly released or media releases, media articles or media statements.

At this stage, we are trying to urgently understand how many relevant documents the FWO might hold in relation to both points of the above scope, and the likely work involved in identifying and reviewing these documents. We are not aware of any ability to search for matters involving 417 visa holders?

Requested action

Please can you arrange for a response to be provided by your team asap and by COB Tues 1 Oct, regarding:

- **What relevant documents you know exist;**
- **the quantities of documents;**
- **where the information is located;**
- **the ease or difficulty of abstracting the information from FWO’s information systems; and**

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Monday, 30 September 2019 12:44 PM
 To: FWO - FOI Requests
 Cc: s.22 – Irrelevant to request
 Subject: ABC Request - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
 Flag Status: Completed

Categories: Saved to SharePoint

OFFICIAL

Hi FOI Team,

RE: FOI request re 417 visa holders (IA-1072) – Intelligence Team

*The reporter is seeking documents produced between 1 May 2015 and 30 August 2019 that contain **information** about:*

1. *the assistance the FWO has provided to subclass 417 visa holders who have undertaken regional work, including information about how much money the FWO was able to recover for the visa-holders; and*
2. *correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.*

*The reference to **information** in the above scope includes “briefings and/or analysis and/or evaluation and/or assessments and/or reports” and the request scope excludes documents that have already been publicly released or media releases, media articles or media statements.*

- **What relevant documents you know exist;**

As part of ordinary business the Intelligence Team produces narrative driven reports for an operations purpose that contain descriptions/analysis of FWO dispute interactions and assistance provided to 417 Visa workers in regional areas.

- **the quantities of documents;**

Approximately a quarter of all reports produced by the Intelligence Team relate to work performed in a regional area, each of which is likely to contain descriptions/analysis of FWO dispute interactions and assistance provided to 417 Visa workers. From 1 May 2015 to 30 August 2019 it is estimated that 100 reports (average of 5 pages each) prepared for Intelligence purposes may be within scope.

- **where the information is located;**

The information is located in Docbank, the Intelligence Database and Team I drive.

- **the ease or difficulty of abstracting the information from FWO’s information systems; and**

Intelligence reports are not searchable within the FWO information systems by geography or Visa type. The Intelligence Team would therefore need to abstract and review reports across industries, businesses and worker types– this is likely to exceed 200 reports (average of 5 pages each) and will require operational knowledge of the purpose of the report.

- **estimated time to search and retrieve all documents falling within the scope request**

It is estimated that to extract and review the reports likely to fall within scope would be 8-10 working days for a Senior Analyst.

Happy to assist the FOI team as you need.

Regards,

s.22 –
Irrelevant to
request

s.22 – Irrelevant
to request

Assistant Director | Intelligence

Policy, Analysis, Intelligence & Reporting

Fair Work Ombudsman

s.22 – Irrelevant to request



www.fairwork.gov.au

Fair Work Infoline 13 13 94



@fairwork_gov_au



/fairwo

~Please consider the environment before printing this message~

From: FWO - FOI Requests

Sent: Tuesday, 24 September 2019 11:33 AM

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

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The reporter is seeking documents produced between 1 May 2015 and 30 August 2019 that contain **information** about:

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2. correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Monday, 30 September 2019 3:15 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

On 24 September, we commenced consultation with internal stakeholders to identify the possible breadth of documents this request captured (email below for reference).

To date we have received the following replies:

BU	Contact	# Estimated Docs	Estimated timeframes
ILS	s.22 – Irrelevant to request	40 documents	4 hours
Intel (and SRAR)		5 documents @ 100 pages each	70 hours (8-10 days)
OWT		500 documents	9 hours
GPT		Unable to identify – need to review all matters	Months and months

Therefore, we are currently at an estimated 80 hours for search and retrieval purposes only (+ the 'months and months') but we are still waiting on replies from the following noting they are 'due' tomorrow:

- s.22 – Irrelevant to request - RST
- s.22 – Irrelevant to request - Campaigns
- s.22 – Irrelevant to request - Policy

Given the responses we have received to date I believe that this request may already be headed towards a complex and/or voluminous request in its current form.

Please let me know whether you would like me to follow up with the business units who have not replied before we can consider our next steps or if we have sufficient responses to indicate this may need some discussion with the applicant to enable us to process the request.

Thanks

s.22 – Irrelevant to request
 Customer Feedback and Information Access Officer

Fair Work Ombudsman

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

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At this stage, we are trying to urgently understand how many relevant documents the FWO might hold in relation to both points of the above scope, and the likely work involved in identifying and reviewing these documents. We are not aware of any ability to search for matters involving 417 visa holders?

Requested action

Please can you arrange for a response to be provided by your team asap and by COB Tues 1 Oct, regarding:

- **What relevant documents you know exist;**
- **the quantities of documents;**
- **where the information is located;**
- **the ease or difficulty of abstracting the information from FWO’s information systems; and**
- **estimated time to search and retrieve all documents falling within the scope request**

Once we have a clearer idea on the above points, we can work out how to respond to the applicant’s request in accordance with our responsibilities under the FOI Act (including providing the applicant with an opportunity to refine her request).

Please provide any written responses to foi@fwo.gov.au or telephone s.22 – Irrelevant to request with your advice.

Many thanks in advance.

Kind regards

s.22 – Irrelevant to request

s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Tuesday, 1 October 2019 6:43 AM
To: s.22 – Irrelevant to request
Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Please note my previous error in the table – now corrected.

From: s.22
Sent: Tuesday, 1 October 2019 7:10 AM
To: s.22 – Irrelevant to request
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Thanks for picking that up 😊

It's 100 reports (average of 5 pages each) and let's use the more conservative estimate (100 v 200) for now but I will clarify this with s.22 prior to making any formal decisions.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Monday, 30 September 2019 4:29 PM
To: s.22 – Irrelevant to request
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

In the below assessment, for s.22, did you mean there are 100 documents at 5 pages each?

And have we clarified whether it is 100 or 200 documents. His email mentions both but I suspect 100 is the more accurate number?

I do however agree this has probably exceeded the threshold for what is considered grounds for a practical refusal.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Monday, 30 September 2019 3:45 PM
To: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

On 24 September, we commenced consultation with internal stakeholders to identify the possible breadth of documents this request captured (email below for reference).

To date we have received the following replies:

BU	Contact	# Estimated Docs	Estimated timeframes
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Please let me know whether you would like me to follow up with the business units who have not replied before we can consider our next steps or if we have sufficient responses to indicate this may need some discussion with the applicant to enable us to process the request.

Thanks

s.22 – Irrelevant to request

Customer Feedback and Information Access Officer

Fair Work Ombudsman

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

s.22 – Irrelevant

From: [REDACTED]
 Sent: Tuesday, 1 October 2019 3:52 PM
 To: FWO - FOI Requests
 Cc: [REDACTED]
 Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Categories: [REDACTED] Saved to SharePoint

OFFICIAL

Hi CFIA team

Please find below Policy's response to the 417 visa holder FOI query.

What relevant documents you know exist

- We've identified approximately a dozen briefing and correspondence records produced by the Policy team that are likely in scope of the request.
- There has been a standing FWO Senate Estimates brief on general visa holder information for each appearance since May 2015. These briefs contain small but varying levels of 417 visa holder information and operational activities along with similar information on other visa subclasses. In addition there are several briefs specific to 417 visa holders, although content regarding regional work is limited.
- This excludes publically available documents produced by the Policy team that may reference 417 visa holder information such as questions on notice, submissions and statements to Senate Inquiries. Also excludes Policy input to other external documents that may include 417 visa holder info like annual reports etc.

the quantities of documents;

- The briefing and correspondence records all have a small number of background attachments (usually 2-3, although the highest is about 15)
- The Estimates briefs vary in length but are all single documents.

where the information is located;

- PSEC, DocBank, PDMS

the ease or difficulty of abstracting the information from FWO's information systems;

- all information appears available to extract from systems

estimated time to search and retrieve all documents falling within the scope request

- likely several hours at minimum

Please let us know if this doesn't provide the level of info needed at this point – happy to discuss and assist as needed.

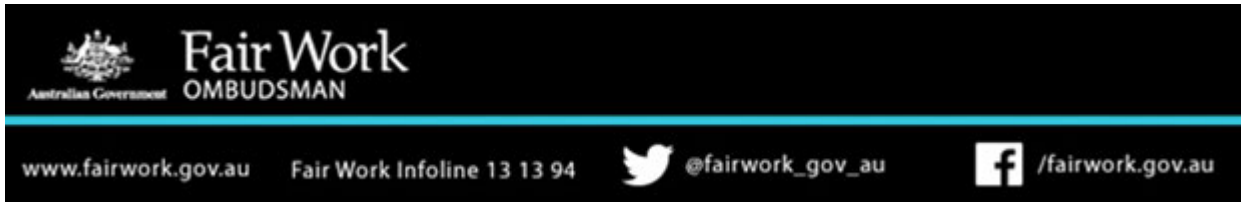
Thanks

s.22 – Irrelevant to request

Assistant Director (A/g) - Policy | Policy, Analysis, Intelligence and Reporting

Fair Work Ombudsman

s.22 – Irrelevant to request



~Please consider the environment before printing this message~

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

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1. the assistance the FWO has provided to subclass 417 visa holders who have undertaken regional work, including information about how much money the FWO was able to recover for the visa-holders; and
2. correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.

The reference to **information** in the above scope includes “briefings and/or analysis and/or evaluation and/or assessments and/or reports” and the request scope excludes documents that have already been publicly released or media releases, media articles or media statements.

At this stage, we are trying to urgently understand how many relevant documents the FWO might hold in relation to both points of the above scope, and the likely work involved in identifying and reviewing these documents. We are not aware of any ability to search for matters involving 417 visa holders?

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Wednesday, 2 October 2019 6:22 AM
 To: s.22 – Irrelevant to request
 Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

FYI

From: s.22 – Irrelevant to request
 Sent: Tuesday, 1 October 2019 5:10 PM

s.22 – Irrelevant to request

Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Good afternoon

Please find the requested information below.

Requested information - 1 May 2015 and 30 August 2019**1. FWO disputes completed**

- **What relevant documents you know exist**

- A dataset comprising of a list of FWO disputes completed in relation to 417 visa holders could be retrieved from FWO CRM systems. Employer location can be provided as part of the dataset in order to identify those that relate to employers in regional areas. Unfortunately we do not have data on the year of visa (first or second).
- We could also provide a list of 417 disputes that had money recovered with a payment date within the specified period (these may not be completed disputes so it's essentially a different dataset). Employer location can be provided as part of the dataset. Unfortunately we do not have data on the year of visa (first or second).

- **the quantities of documents**

- Approximately 3000 417 visa holder disputes were completed over the period. This dataset would need to be assessed by employer location to detriment which of these are related to employers in a regional locations.

- **where the information is located**

- This data is held in our historical datasets (stored in I drive) originally extracted from cNet, Nexus and Titan.

- **the ease or difficulty of abstracting the information from FWO's information systems**

- manual process with moderate difficulty

- **estimated time to search and retrieve all documents falling within the scope request**

- Approximately 3 hours to produce two datasets comprising of:
 - 417 visa holder completed disputes
 - 417 visa holder disputes with money recovered with a payment date within the specified period.
- The estimated time does not include time required to identify disputes related to employers in regional areas or any other assessment in terms of describing/analysing outcome of disputes which could take substantially longer depending on the volume.

2. Briefings and/or analysis and/or evaluation and/or assessments and/or reports

SRAR produces a number of reports /analysis pieces that include data regarding 417 visa holders (I'm not sure if these are in scope or not):

- Annual Report and Senate Estimates data/Operational reports:
 - In preparation for each SE appearance and at the end of each FY SRAR prepares data in a OneNote to be used in Policy briefs and the Annual report. This includes summary data on the number of disputes completed and received by FY from 2013-14 for 417 visa holders. It includes money recovered, top industries and allegations (this is not broken down by region). We also produce a number of operational reports that essentially contain the same data such as the Quarterly agency performance snapshot. The data is prepared using the same data as will be used for the datasets described above. I assume that as it the same data and is not available by region that this would be out of scope.
- Analysis Pieces:
 - From time to time SRAR produces analysis reports, some of these may include 417 visa holder data or commentary. For example the team produces a Vulnerable cohorts report which has a small section of 417 visa holders with external data such as the number in Australia, citizenship country and representation in FWO disputes. Another example is the work undertaken for the Horticulture working group; we produced a report exclusively related to the horticulture industry that includes some commentary regarding external research on issues experienced by 417 visa holders in terms of exploitative practices in the workplace it also includes some data in relation of the volume of FWO interactions with 417 visa holders. 417 are not the focus of the paper. There are probably a few other pieces that touch on 417 visa holders as well.
- Commissioned research:
 - SRAR has also has a role in trying to provide access across the agency to any FWO commissioned research, see the research centre intranet page <http://fwocollaboration.hosts.application.enet/sites/teams2012/research/Pages/default.aspx>. The library has a piece of research that was commissioned by FWO into 417 visa holders that may be in scope. <http://fwocollaboration.hosts.application.enet/sites/teams2012/research/Documents/417%20Visa%20Review.pdf>.

Please let me know if you require further details and if any of the reports or analysis work falls in scope.

Thanks

s.22 – Irrelevant
to request

From: s.22 – Irrelevant to request
 Sent: Wednesday, 25 September 2019 1:39 PM
 To: s.22 – Irrelevant to request
 Cc: [REDACTED]
 Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

s.22 – Irrelevant to request has asked me to contact you in her absence today and unfortunately I couldn't get you on the telephone.

Specifically we would like to confirm if there are search parameters within our Information Systems (Nexus and Titan) to abstract the information the ABC reporter has requested.

Based on the information in the scope of the request we envisage the search parameters would be for 417 Visa holders and then separately broken down to include:

- Work location – regional Australia
- Money recovered
- Year of Visa held (i.e. first year or second year)

Please feel free to contact me via telephone when you have the opportunity.

Kind regards

s.22 – Irrelevant to request

Customer Feedback and Information Access Officer

Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Wednesday, 25 September 2019 11:59 am

To: s.22 – Irrelevant to request

CC: FWO - FOI Requests <FOI@fwo.gov.au>, s.22 – Irrelevant to request

Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Hi s.22 – Irrelevant to request

I was hoping to have a chat with you about the scope of this request and the contribution required from SRAR. I noticed you are offline today, given the deadline it would be great if we could chat at your earliest convenience.

Thank you

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Colleagues

We are looking for your assistance please in dealing with a large FOI request from an ABC reporter based in Hobart –

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At this stage, we are trying to urgently understand how many relevant documents the FWO might hold in relation to both points of the above scope, and the likely work involved in identifying and reviewing these documents. We are not aware of any ability to search for matters involving 417 visa holders?

Requested action

Please can you arrange for a response to be provided by your team asap and by COB Tues 1 Oct, regarding:

- **What relevant documents you know exist;**
- **the quantities of documents;**
- **where the information is located;**
- **the ease or difficulty of abstracting the information from FWO’s information systems; and**
- **estimated time to search and retrieve all documents falling within the scope request**

Once we have a clearer idea on the above points, we can work out how to respond to the applicant’s request in accordance with our responsibilities under the FOI Act (including providing the applicant with an opportunity to refine her request).

Please provide any written responses to foi@fwo.gov.au or telephone **s.22 – Irrelevant to request** with your advice.

Many thanks in advance.

Kind regards

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Wednesday, 2 October 2019 7:06 AM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072)
 [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

We are still waiting on responses from RST and Campaigns to round out the information needed for the 24AB consult letter/practical refusal. Received a couple more yesterday from Policy and SRAR.

Could we please follow up today for responses by this afternoon? I'm not in Friday so ideally we can have the estimated timeframes to go into the letter completed by tomorrow.

DRAFT below if you want to use it.

Thanks

s.22 – Irrelevant to

TO: s.22 – Irrelevant to request

DRAFT

Dear s.22 – Irrelevant to request

I am writing regarding the email sent by s.22 on 24 September (below) where we requested certain information from business units, to enable us to consider a recent FOI request made by a journalist on behalf of the ABC.

CFIA have now received responses from the majority of business units and based on the broad range of documents captured in this request, we are planning on commencing consultation with the applicant in an attempt to narrow the scope. However, before we can do this, we require your input.

Can you please provide a response by **COB today** to enable us to prepare a thorough estimate of the range and type of documents this request captures, in its current form?

Although we are already in practical refusal territory (based on the responses already received from other business units), your input will provide us with important information regarding the nature and extent of documents within scope that the FWO holds.

If you have any questions, please contact me or s.22 – Irrelevant to request

Thanks,

s.22 – Irrelevant

Director (a/g) – Customer Feedback and Information Access

Fair Work Ombudsman

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

To: s.22 – Irrelevant to request

s.22 irrelevant information

From: s.22 – Irrelevant
Sent: Wednesday, 2 October 2019 4:07 PM
To: s.22 – Irrelevant FWO - FOI Requests
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Completed

OFFICIAL

Thanks s.22 – Irrelevant to request

From: s.22
Sent: Wednesday, 2 October 2019 2:15 PM
To: FWO - FOI Requests
Cc: s.22 – Irrelevant
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi Team

We have had a look at the below request and this would be an absolutely onerous task for us as we will have a lot of documents that would potentially fit. We have addressed the request scope as follows indicating where we might have documents:

- **What relevant documents you know exist;**

Campaign matters relating to employers of Visa workers (assessments)

- **the quantities of documents;**

Unknown at this stage but potentially significant.

- **where the information is located;**

Titan and Nexus Cis

- **the ease or difficulty of abstracting the information from FWO's information systems; and**

Difficult and a matter of manually looking at each matter, in each campaign individually and extracting relevant documents.

- **estimated time to search and retrieve all documents falling within the scope request**

50+ hours?

This would be particularly onerous as we have multiple regional based Campaigns that have been undertaken since May 2015 that have captured Visa workers but we are unable to extract data specific to Visa employees, Visa types

or monies recovered without manually reviewing each individual matter registered under each Campaign. The employee hours to do so are projected of at least 1 full time employee focusing on this task alone for in excess of a week.

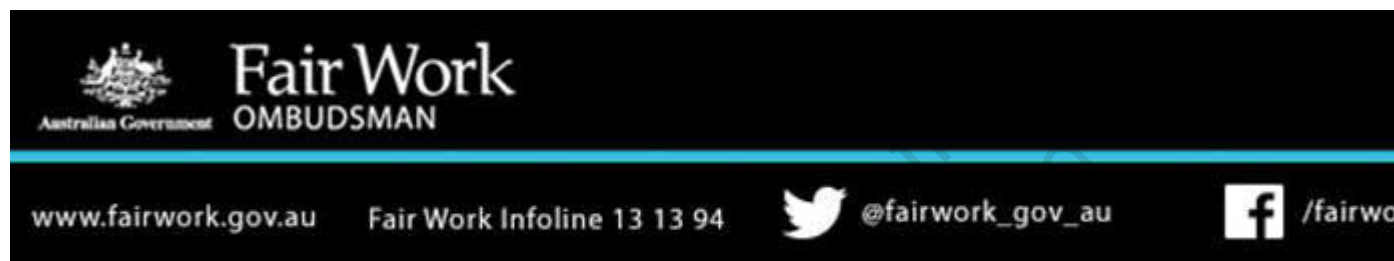
Please let us know what you would like from us and when?

Regards

s.22 – Irrelevant to request

Director – Campaigns
Operations Group
Fair Work Ombudsman

s.22 – Irrelevant to request



From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

To: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

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We are looking for your assistance please in dealing with a large FOI request from an ABC reporter based in Hobart –

The reporter is seeking documents produced between 1 May 2015 and 30 August 2019 that contain **information** about:

1. the assistance the FWO has provided to subclass 417 visa holders who have undertaken regional work, including information about how much money the FWO was able to recover for the visa-holders; and
2. correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Thursday, 3 October 2019 10:14 AM
To: s.22 – Irrelevant to request
Cc:
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Yes that would be good thanks.

From: s.22 – Irrelevant to request
Sent: Thursday, 3 October 2019 9:38 AM
To: s.22 – Irrelevant to request
Cc:
Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Morning,

I can see that s.22 and s. are still out of office. In s.22 and s.22 absence, do you have any concerns if I contact s.22 – Irrelevant to request – (a/g) AD for RST to get an indication?

I think we need to make a call and issue the s24AB consult notice by Friday (so I would like to have this complete draft to you by this afternoon).

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Wednesday, 2 October 2019 2:05 PM
To: s.22 – Irrelevant to request
Cc:
Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Thanks. I'll work on this tomorrow – letter is all but done (just awaiting totals)

From: s.22 – Irrelevant to request
Sent: Wednesday, 2 October 2019 2:00 PM
To: s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hey – just spoke to s.22 – he’s asked his team to get back to him asap. s. and s.22 are out of the office. I’ll send them an email.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Wednesday, 2 October 2019 7:36 AM

To: HA s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

We are still waiting on responses from RST and Campaigns to round out the information needed for the 24AB consult letter/practical refusal. Received a couple more yesterday from Policy and SRAR.

Could we please follow up today for responses by this afternoon? I’m not in Friday so ideally we can have the estimated timeframes to go into the letter completed by tomorrow.

DRAFT below if you want to use it.

Thanks

s.22 – Irrelevant to request

TO: s.22 – Irrelevant to request

DRAFT

Dear s. and s.22

I am writing regarding the email sent by s.22 – on 24 September (below) where we requested certain information from business units, to enable us to consider a recent FOI request made by a journalist on behalf of the ABC.

CFIA have now received responses from the majority of business units and based on the broad range of documents captured in this request, we are planning on commencing consultation with the applicant in an attempt to narrow the scope. However, before we can do this, we require your input.

Can you please provide a response by **COB today** to enable us to prepare a thorough estimate of the range and type of documents this request captures, in its current form?

Although we are already in practical refusal territory (based on the responses already received from other business units), your input will provide us with important information regarding the nature and extent of documents within scope that the FWO holds.

If you have any questions, please contact me or s.22 – Irrelevant to request

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Thursday, 3 October 2019 3:26 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: RE: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

Categories: Saved to SharePoint

OFFICIAL

Hi s.22 – Irrelevant to request

Please see my response to your questions below.

Cheers

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Thursday, 3 October 2019 11:04 AM
 To: s.22 – Irrelevant to request
 Subject: FW: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant

As discussed just now, I am forwarding you an email (below) regarding a recent FOI request we received, made by a journalist on behalf of the ABC. The email was originally sent to a range of BUs including RST but to date we haven't received a reply and I notice s.22 and s. are out of office. We are planning on commencing consultation with the applicant in an attempt to narrow the scope of the request however, before we can do this we are seeking your input.

To enable us to prepare a thorough estimate of the range and type of documents this request captures in its current form, can you please provide a response on behalf of RST (by COB today if possible)? Apologies for the tight turnaround.

Although we are already in practical refusal territory (based on the responses received from other BUs), your input will provide us with important information regarding the nature and extent of relevant documents that the FWO holds, especially if the applicant wishes to consider ways to narrow the scope. We just need high level information at this stage, in response to the questions below.

Thanks in advance and if you have any questions, please contact me.

s.22 – Irrelevant | Customer Feedback and Information Access Officer
 Fair Work Ombudsman

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 24 September 2019 12:03 PM

s.22 – Irrelevant to request

Subject: Seeking responses by Tues 1 Oct - FOI request re 417 visa holders (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Colleagues

We are looking for your assistance please in dealing with a large FOI request from an ABC reporter based in Hobart –

The reporter is seeking documents produced between 1 May 2015 and 30 August 2019 that contain **information** about:

1. the assistance the FWO has provided to subclass 417 visa holders who have undertaken regional work, including information about how much money the FWO was able to recover for the visa-holders; and
2. correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.

The reference to **information** in the above scope includes “briefings and/or analysis and/or evaluation and/or assessments and/or reports” and the request scope excludes documents that have already been publicly released or media releases, media articles or media statements.

At this stage, we are trying to urgently understand how many relevant documents the FWO might hold in relation to both points of the above scope, and the likely work involved in identifying and reviewing these documents. We are not aware of any ability to search for matters involving 417 visa holders?

Requested action

Please can you arrange for a response to be provided by your team asap and by COB Tues 1 Oct, regarding:

- **What relevant documents you know exist; There will be contravention letters, CN’s and LoC’s that may contain this information.**
- **the quantities of documents; There would be significant documents given the request spreads over a significant period however it would be impossible to estimate how many at this stage.**
- **where the information is located; This information would be contained within Nexus and Titan.**
- **the ease or difficulty of abstracting the information from FWO’s information systems; and This information would be very difficult to pull from Nexus as this is an archived system and Titan would be problematic as well.**
- **estimated time to search and retrieve all documents falling within the scope request Search time alone would be in excess of 4 weeks for one full time person. This does not include retrieval of the documents. In my estimation it could take up to 3 months due to the dual system searches required.**

s.22 – Irrelevant to request

From: s.22 – Irrelevant
 Sent: Thursday, 3 October 2019, 16:29
 To: s.22 – Irrelevant to request
 Subject: ABC - 417 Visa Holders s24AB consult notice [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant
to requestDraft letter [located here](#)

I used figures compiled from BU responses as follows:

Business Unit	# Estimated Documents	Estimated timeframes for retrieval only
International Labour Strategy	40	4 hours
Intelligence	150 documents	70 hours
Overseas workers	500 documents	9 hours
Policy	12	5
Regional Services	-	150 hours min
Campaigns	-	50 hours
Strategic Reporting	3000	3 hours
	3702 Documents assessed at average of 3 pages each = 11,106	241

Charges calc extract as follows:

(insert data in shaded boxes only)

GENERAL DATA ESTIMATE
(terms in red are explained on the notes sheet)

Pages (approx) of material in scope	11106	in A4 pages
Number of discrete relevant documents	3702	
Percentage (approx) of pages to disclose in whole	50%	
Percentage (approx) of pages requiring redaction	50%	
Percentage (approx) of content that is applicant's own personal information	0%	
Number of third parties to consult	50	

PROCESS - search and retrieval	TIME per task	charge time:	COST @ \$15 per hr
Time required to execute searches - enter hours (including part hours eg 0.5)	241	241.00	\$3,615.00
Preparing schedules detailing all relevant documents (basic data entry eg doc no, date, description) - enter minutes per 10 documents	5	30.85	\$462.75
<i>Search & Retrieval Subtotal</i>		271.85	\$4,077.75
PROCESS - decision-making	TIME per task	charge time:	COST @ \$20 per hr
Examine relevant pages for decision making - enter minutes per page	1	185.10	\$3,702.00
Redacting pages that are partially disclosed - enter minutes per page	3	277.65	\$5,553.00
Consult third parties - enter average per third party in hours	2	100.00	\$2,000.00
Preparation and notification of decision			
Writing statement of reasons - enter hours	5	5.00	\$100.00
Complete schedule by recording decision @ 4 documents per minute		15.425	\$308.50
<i>Decision-making Subtotal (before deduction of 5 hours)</i>		583.18	\$11,663.50


s.22 – Irrelevant to
request



Customer Feedback and Information Access Officer
Fair Work Ombudsman

s.22 – Irrelevant to request



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We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#).

~Please consider the environment before printing this message~

Freedom of Information Act

Free by

s.22 – Irrelevant

From: FWO - FOI Requests
Sent: Friday, 4 October 2019 12:10 PM
To: Uibu.Katri@abc.net.au
Subject: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]
Attachments: Consultation notice - IA-1072 - ABC.pdf

Follow Up Flag: Follow up
Flag Status: Completed

Categories: Saved to SharePoint

OFFICIAL

Dear Katri Uibu,

Please find attached correspondence relating to your request under the *Freedom of Information Act 1982* on 18 September 2019.

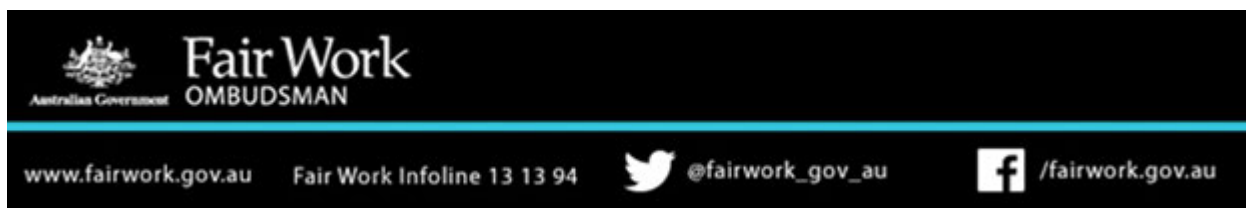
It would be ideal to have a quick discussion regarding your request. Can you please advise a time when you are free today or early next week?

While I note you have expressed that you are not interested in publicly available materials, in case you have not seen them I would like to draw your attention to the FWO's 'Harvest Trail Inquiry Report' (November 2018) and 'Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program' (October 2016) which available through the [Inquiry Reports](#) section of our website.

Regards,

Cameron Hankins | Assistant Director (a/g), Customer Feedback and Information Access
Fair Work Ombudsman

s.22 – Irrelevant to request



We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#)

~Please consider the environment before printing this message~

Our reference: IA-1072

4 October 2019

Katri Uibu
Journalist
Australian Broadcasting Corporation

By email: uibu.katri@abc.net.au

Dear Ms Uibu

FREEDOM OF INFORMATION REQUEST

Consultation Notice under section 24AB of the *Freedom of Information Act 1982*

I refer to your request made to the Fair Work Ombudsman (**FWO**) for documents under the *Freedom of Information Act 1982* (**FOI Act**).

Scope of request

I wish to access documents containing information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes.

Specifically, I am seeking information about:

- a. *Documents produced between May 1, 2015 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about the assistance the FWO has provided to 417 visa holders who undertook regional work. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.*
- b. *Documents produced between May 1, 2015 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about the correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.*

Purpose of this Notice

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

The Customer Feedback and Information Access Team (**CFIA**) is responsible for processing FOI requests in the FWO. I confirm that my team has made a number of enquiries with several

business units within the office of the FWO to understand what relevant documents the FWO holds in relation to your request.

As a result of these enquiries and as detailed further below, I have now formed the view that a practical refusal reason exists within the meaning of section 24AA of the FOI Act, because the work involved in processing the request would 'substantially and unreasonably divert the resources of the agency from its other operations'.¹

The purpose of this notice is to provide you an opportunity to refine the request scope so that a practical refusal ground no longer exists.

Why I consider a practical refusal reason exists

In deciding whether the work involved in processing the request would substantially and unreasonably divert FWO's resources from its other operations, I considered guidance provided by the Office of the Australian Information Commissioner (**OAIC**) (including Part 3 of the OAIC Guidelines and OAIC review decisions).

The OAIC Guidelines note that practical refusal grounds operate to ensure the capacity of agencies to discharge their normal functions is not undermined by processing unreasonably burdensome FOI requests. In deciding if a practical refusal reason exists, an agency must have regards to the resources required to perform a number of activities, including:

- identifying, locating or collating documents within the filing system of the agency;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents
- notifying an interim or final decision to the applicant;
- the staffing resources available to an agency for FOI processing;
- the impact that processing a request may have on other work in an agency, including other information access requests;
- whether there is a significant public interest in the documents requested; and
- other steps taken by an agency to publish information of the kind requested by an applicant.²

There is no set number of hours of processing time that determines whether a practical refusal reason exists, but rather each case should be assessed on its own merits. Recent decisions by the Australian Information Commissioner has affirmed decisions by departments and agencies that practical refusal grounds may exist where requests would exceed 70 hours of work.³

I estimate that it would take at least 855 hours to process your FOI request in its current form. This includes identifying all documents within scope of the FOI request, reviewing and consulting with relevant external third parties, and preparing a decision and the documents for release in accordance with the FOI Act.

¹ Section 24AA(1)(a) of the FOI Act.

² OAIC Guidelines, [3.116]-[3.119].

³ For example, in *'NX' and Australian Trade and Investment Commission (Freedom of Information)* [2018] AICmr 18 (2 February 2018), a practical refusal decision was issued for an FOI request involving an estimated further 63 hours of processing of 610 documents, and involving consultation with five external third parties, see: <https://www.oaic.gov.au/freedom-of-information/foi-decisions/ic-review-decisions/2018-aicmr-18>.

The FWO is a relatively small agency and the team responsible for processing Information Access requests⁴ comprises four employees (overseen by one Director). Processing a request of this size would unreasonably impact on the available resources and ability to respond to other Information Access requests, privacy matters and other functions performed by the team.

The FWO processes approximately 150 Information Access requests per annum. Assuming the information access and FOI staff members work 70 per cent of their time on Information Access requests⁵, they would spend around 6,300 hours processing these matters each year, equating to approximately 42 hours per request. Your request is estimated to significantly exceed the average processing time for an Information Access request.

The processing of this request would also substantially and unreasonably divert the resources of other teams across the FWO, requiring time be spent away from core duties and functions.

Identifying documents within scope of the request

The FWO's information management systems do not have the required functionality to easily identify documents falling within the scope of your request and multiple Business Units across the FWO may hold documents in various formats. This is because multiple units within the FWO conduct compliance and dispute resolution activities involving 417 visa holders, and further multiple units are engaged in reviewing and analysing FWO's assistance to 417 visa holders.

The preliminary enquiries that my team has made and relevant searches have taken approximately six hours to date and included consultation with eight business units within the FWO. Across these units, we have identified approximately 3,702 documents held by FWO relating to the scope of your request. To accurately identify documents within the scope of your request, we would be required to review each of these 3702 documents.

Processing calculation

I have estimated it would take at least 272 hours to locate, collate and schedule relevant documents. This includes 241 hours to collate documents and a further 30 hours to prepare schedules detailing all relevant documents, noting document numbers, dates, any applicable exemptions and document descriptions. This estimate assumes it would take five minutes to record 10 entries in a document schedule.

I have also estimated it would take at least 463 hours for the removal of personal information and the potential application of exemptions under the FOI Act. In calculating this estimation, I have allowed one minute per page to examine each of the documents and three minutes per page to review and consider potential exemptions.⁶

I have also estimated 20 hours to prepare the Notice of Decision, including writing a statement of reasons. This includes five hours to write the Notice and a further 15 hours to mark my decision on the schedule of documents (at four pages per minute).

I have estimated an additional 50 hours for the FWO to consult with third parties in accordance with the FWO's obligations to do so under the FOI Act, prior to any release of relevant documents which contain business or personal information.

⁴ Information Access requests includes FOI Requests and documents released pursuant to section 718(2) of the *Fair Work Act 2009*, as outlined further in the FWO's Information Access Policy (see: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/accessing-our-information>).

⁵ Based on 48 weeks' work per annum (factoring in annual leave).

⁶ In *'QO and Department of Human Services (Freedom of Information) [2019] AICmr 46 (24 June 2019)*. The Australian Information Commissioner considered 'that an average of one minute per page is a reasonable estimate of the time it would take examine each of the documents, with an additional three minutes per page to consider and apply redactions to the pages' (at [58]).

Methodology assumptions

In attempting to quantify the number of documents within scope of the request, I note that many documents contain multiple pages and/or attachments.

In light of this, I have conservatively projected that each document on average would contain three pages and there would be at least 11,106 pages within scope of the request.

In addition to the estimates provided above, there are Business Units within the FWO that have been unable to provide either an estimated quantity of documents, which may fall within the scope of your request, or an estimated timeframe for how long the searches may take, due to them exceeding weeks or even months. Therefore, the estimated numbers and processing timeframes provided are minimums only and are likely to be significantly higher than quoted.

Request consultation process

Before I make a final decision in response to the request, you have the opportunity to revise the request in accordance with the 'request consultation process' referred to in section 24AB of the FOI Act.

The OAIC's FOI Guidelines note that a 'broadly worded request is more likely to constitute an unreasonable diversion of resources than a request that is narrowly focused'. Revising your request can mean narrowing the scope of the request to make it more manageable or explaining in more detail the documents you wish to access.

By providing more specific information about exactly what documents you are interested in, we may be able to pinpoint the documents more quickly and avoid using excessive resources to identify and review irrelevant documents.

Next steps

Under the FOI Act, you have 14 days to respond in writing to this notice from the day after you receive it by:

- withdrawing the request;
- making a revised request; or
- telling us why you do not wish to revise the request.

During this period, please consider seeking the FWO's assistance to revise your request scope. If you revise your request in a way that adequately addresses the practical refusal grounds outlined above, we will recommence processing it straight away.

If you have any questions or wish to discuss the matter, please contact me via foi@fwo.gov.au and we can arrange a time for me to contact you if you wish.

Yours sincerely



Cameron Hankins

Director (a/g) – Customer Feedback and Information Access

Fair Work Ombudsman

Subject* Phone call with applicant


Call From* [Katri Uibu](#)

Call To* [Cameron Hankins](#)

Phone Number Direction Incoming

Description

Applicant called following receipt of consultation notice. Requested information on how to reduce request scope. Applicant queried whether reducing the time-frame would assist. I said yes but it will not solve the issue regarding the fact that numerous business units within the FWO are involved in work with 417 visa holders. Applicant asked whether narrowing it further to types of documents would assist. I said naturally yes but would depend on what is sought. Enquired whether it could relate to matters involving FWO finding non-compliance. I said yes but they would need to think about in what form that is presented, in terms of documents, and that a lot of that information about those matters are in one way or another publicly available through our media releases and inquiry reports. Enquired whether narrowing it to monies recovered would assist, I said potentially, yes. I advised that we can consider a revised scope in accordance with processes outlined in my letter and once a revised scope is proposed, take it from there. Applicant advised they would consider my letter and come back with a revised request scope week of 7.10.19.

Regarding  [IA-1072 - Direct FOI Request - ABC \(Katri Uibu\)](#)

Duration 15 minutes

s.22 – Irrelevant

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Tuesday, 8 October 2019 12:03 PM
To: FWO - FOI Requests
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Categories: s.22 – Irrelevant to request Saved to SharePoint

Hi Cameron,
 I've revised the scope and changed it a bit. Please have a look at the FOI below. Please let me know if I can help any further.
 Thanks,
 Katri

I wish to access documents containing information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes.

Specifically, I am seeking information about:

- a. Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of underpayment 417 visa holders had made to the FWO. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.
- b. Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of workplace harassment 417 visa holders had made to the FWO. Information about how many of the complaints the FWO attended to is also in the scope.

I advise I am not interested in duplicate copies of documents or documents that have already been publicly released or media releases, media articles or media statements.

I would also like advice if the information I have sought is due to be released under FOI to individuals or organisations prior to finalisation of my FOI application.

I also note the onus rests with the agency to prove why any information should not be released under the Act and I request the agency provide evidence in support of any assumptions or assertions used to justify non-disclosure.

I also advise the agency I am seeking a total reduction in fees and charges associated with this request as release of the information will: contribute to community understanding on an important issue and inform debate and improve government accountability and transparency. Further, the ABC is a non-profit, publicly funded broadcaster and warrants a remission of fees and charges on that basis. I also request the agency provide a five-day waiting period before provision of the information I have sought onto any disclosure log as this will assist the ABC in the preparation of any material for broadcast or publication including assessing the information and seeking additional comment including from government. I refer to the OAI guidelines on this issue and request that if the agency ignores these guidelines that detailed reasons why be provided.

From: FWO - FOI Requests
Sent: Friday, 4 October 2019 12:40 PM
To: Katri Uibu
Subject: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Katri Uibu,
 Please find attached correspondence relating to your request under the *Freedom of Information Act 1982* on 18 September 2019.
 It would be ideal to have a quick discussion regarding your request. Can you please advise a time when you are free today or early next week?

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Tuesday, 8 October 2019 2:17 PM
 To: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

See below email from Ms Uibu with revised scope.

Point (a)

Although the wording is different for revised point (a) – ‘*complaints of underpayment 417 visa holders had made to the FWO*’ essentially captures the original (a) but appears to exclude proactive work. Although, then the final sentence of (a) would rope in the campaigns recoveries anyway.

Point (b)

This appears to be outside the FWO’s remit. It’s unlikely that we record and/or report on this as this function sits with the FWC.

Comparison of scope wording below:

Original	Revised
<p>a. Documents produced between May 1, 2015 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about the assistance the FWO has provided to 417 visa holders who undertook regional work. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.</p>	<p>a. Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of underpayment 417 visa holders had made to the FWO. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.</p>
<p>b. Documents produced between May 1, 2015 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about the correspondence with the Department of Home Affairs regarding payslips submitted with second-year 417 visa applications.</p>	<p>b. Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of workplace harassment 417 visa holders had made to the FWO. Information about how many of the complaints the FWO attended to is also in the scope.</p>

Without asking BU’s to do another estimate, I would be inclined to estimate that as she’s halved the time period, that the revised scope is likely to still be at least half of our initial estimate, (possibly less the proactive campaigns figures)?

I look forward to your thoughts.

Thanks

s.22 – Irrelevant
to request

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Tuesday, 8 October 2019 11:33 AM
To: FWO - FOI Requests <FOI@fwo.gov.au>
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Hi Cameron,

I've revised the scope and changed it a bit. Please have a look at the FOI below. Please let me know if I can help any further.

Thanks,
Katri

I wish to access documents containing information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second year Working Holiday visa purposes.

Specifically, I am seeking information about:

- c. Documents produced between May 1 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of underpayment 417 visa holders had made to the FWO. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.
- d. Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of workplace harassment 417 visa holders had made to the FWO. Information about how many of the complaints the FWO attended to is also in the scope.

I advise I am not interested in duplicate copies of documents or documents that have already been publicly released or media releases, media articles or media statements.

I would also like advice if the information I have sought is due to be released under FOI to individuals or organisations prior to finalisation of my FOI application.

I also note the onus rests with the agency to prove why any information should not be released under the Act and I request the agency provide evidence in support of any assumptions or assertions used to justify non-disclosure.

I also advise the agency I am seeking a total reduction in fees and charges associated with this request as release of the information will: contribute to community understanding on an important issue and inform debate and improve government accountability and transparency. Further, the ABC is a non-profit, publicly funded broadcaster and warrants a remission of fees and charges on that basis. I also request the agency provide a five-day waiting period before provision of the information I have sought onto any disclosure log as this will assist the ABC in the preparation of any material for broadcast or publication including assessing the information and seeking additional comment including from government. I refer to the Oaic guidelines on this issue and request that if the agency ignores these guidelines that detailed reasons why be provided.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: PM
 To: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
 Flag Status: Completed

Hi. I haven't had time to prepare a proposed response to this yet. If you get a chance tomorrow, I can look at it on Thursday or I perhaps ask s. to have a go first....

I think we have a few days to get back to her about it, there is no urgency and we need to take care of course.

Good luck tomorrow! Thanks for holding the fort again in my absence on Thurs and Fri too. I'll be in touch.

s.22 – Irrelevant to request

From: Katri Uibu <Uibu.Katri@abc.net.au>
 Sent: Tuesday, 8 October 2019 12:33 PM
 To: FWO - FOI Requests <FOI@fwo.gov.au>
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Hi Cameron,

I've revised the scope and changed it a bit. Please have a look at the FOI below. Please let me know if I can help any further.

Thanks,
 Katri

I wish to access documents containing information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes.

Specifically, I am seeking information about:

- a. Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of underpayment 417 visa holders had made to the FWO. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.
- b. Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of workplace harassment 417 visa holders had made to the FWO. Information about how many of the complaints the FWO attended to is also in the scope.

I advise I am not interested in duplicate copies of documents or documents that have already been publicly released or media releases, media articles or media statements.

I would also like advice if the information I have sought is due to be released under FOI to individuals or organisations prior to finalisation of my FOI application.

s.22 – Irrelevant

From: FWO - FOI Requests
Sent: Thursday, 10 October 2019 11:00 AM
To: Katri Uibu; FWO - FOI Requests
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Completed

OFFICIAL

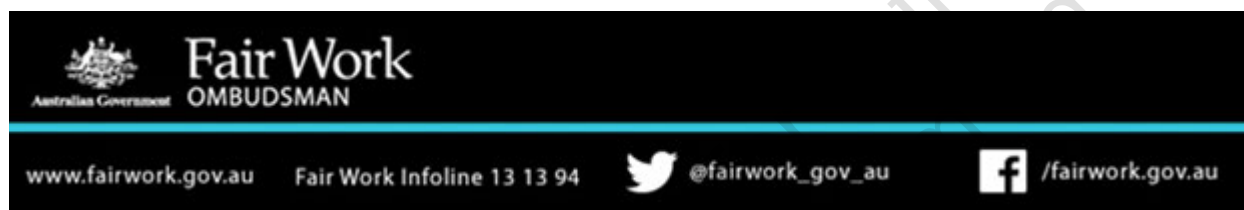
Hi Katri,

We did, sorry for not responding earlier. We are reviewing the revised scope and will be in touch shortly.

Regards,

Cameron Hankins | Assistant Director (a/g), Customer Feedback and Information Access
Fair Work Ombudsman

s.22 – Irrelevant to request



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~Please consider the environment before printing this message~

From: Katri Uibu
Sent: Thursday, 10 October 2019 9:25 AM
To: FWO - FOI Requests
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Hi Cameron,

Just checking that you got my revised FOI.

Thanks,
Katri

From: Katri Uibu
Sent: Tuesday, 8 October 2019 12:33 PM
To: 'FWO - FOI Requests' <FOI@fwo.gov.au>
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Hi Cameron,

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Monday, 14 October 2019 3:36 PM
 To: s.22 – Irrelevant to request
 Subject: FW: draft email to Katri Uibu [SEC=OFFICIAL]

OFFICIAL

Hi. I've just made a few adjustments. Let me know what you think? Thanks,

s.22 –
 Irrelevant to
 request

Dear Ms Uibu,

Thank you for your email on 8 October 2019 providing the following suggested revised scope for your FOI request –

"I wish to access documents containing information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes.

Specifically, I am seeking information about:

- a. *Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of underpayment 417 visa holders had made to the FWO. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.*
- b. *Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of workplace harassment 417 visa holders had made to the FWO. Information about how many of the complaints the FWO attended to is also in the scope."*

So that we can understand that documents you are seeking, please consider the following issues/questions in relation to paragraph a above:

1. Are you seeking documents relating to underpayment complaints made by 417 visa holders during the period 1 May 2017 to 30 August 2019? Or are you looking for relevant documents created between 1 May 2017 and 30 August 2019 that are likely to relate to complaints made before 1 May 2017?
2. Are you seeking all documents that record the outcomes of relevant underpayment complaints, including information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers? Or are you seeking documents relating to individual complaints?
3. Are you willing to exclude from the scope of your request all personal and business information that would identify the parties involved in each relevant complaint?

Once we have your responses to the above questions, we will be in touch to confirm our combined understanding of your request scope before we make enquiries with relevant business units about the likely number of relevant documents.

In relation to paragraph b of your request scope –

Please note that the FWO is not responsible for responding to complaints regarding workplace harassment. This is explained further on our website under the section titled [Bullying & harassment](#). Harassment matters are handled by the Fair Work Commission or can be referred to state or territory workplace health and safety bodies. Where the FWO receives an enquiry or complaint in relation to bullying or harassment at work, they will usually be referred to these bodies for further assistance. Accordingly it is highly unlikely that we will hold any documents within scope of this part of your request.

I can be contacted via foi@fwo.gov.au.

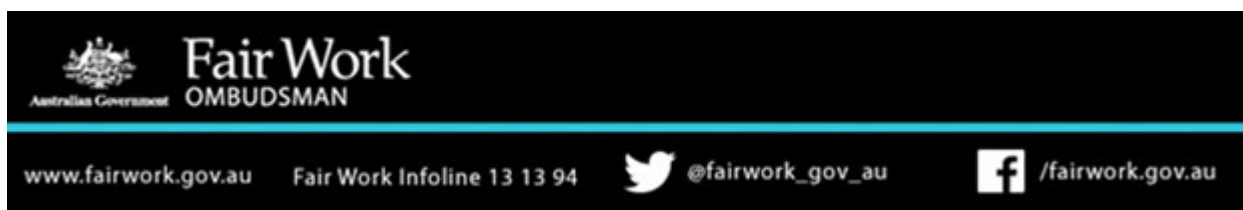
Thank you. Sincerely,

s.22 – Irrelevant to request

Assistant Director (a/g), Customer Feedback and Information Access

Fair Work Ombudsman

s.22 – Irrelevant to request



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~Please consider the environment before printing this message~

s.22 – Irrelevant

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Tuesday, 15 October 2019 2:25 PM
To: FWO - FOI Requests
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: s.22 – Irrelevant to request Saved to SharePoint

Hi Cameron,

Thanks for your email. Please see my response below.

1. I am after documents relating to underpayment complaints made by 417 visa holders during the period 1 May 2017 to 30 August 2019.
2. Both. Please note that I am after all the complaints made within that time period, as well as in how many cases a solution favourable to the complainant was reached, and what that solution was.
3. Yes, I'm willing to exclude all personal and business information.

Please let me know if I can help with anything else.

Thanks,

Katri

From: FWO - FOI Requests
Sent: Tuesday, 15 October 2019 11:16 AM
To: Katri Uibu
Cc: FWO - FOI Requests
Subject: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Ms Uibu,

Thank you for your email on 8 October 2019 providing the following suggested revised scope for your FOI request –

"I wish to access documents containing information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes.

Specifically, I am seeking information about:

- a. *Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of underpayment 417 visa holders had made to the FWO. Information about how much money the FWO was able to recover for 417 visa holders, who had not been paid legal wages, is also in the scope.*
- b. *Documents produced between May 1, 2017 and August 30, 2019 containing information including briefings and/or analysis and/or evaluation and/or assessments and/or reports about complaints of workplace harassment 417 visa holders had made to the FWO. Information about how many of the complaints the FWO attended to is also in the scope."*

So that we can understand that documents you are seeking, please consider the following issues/questions in relation to paragraph a above:

1. Are you seeking documents relating to underpayment complaints made by 417 visa holders during the period 1 May 2017 to 30 August 2019? Or are you looking for relevant documents created between 1 May 2017 and 30 August 2019 that are likely to relate to complaints made before 1 May 2017?
2. Are you seeking all documents that record the outcomes of relevant underpayment complaints, including information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers? Or are you seeking documents relating to individual complaints?
3. Are you willing to exclude from the scope of your request all personal and business information that would identify the parties involved in each relevant complaint?

Once we have your responses to the above questions, we will be in touch to confirm our combined understanding of your request scope before we make enquiries with relevant business units about the likely number of relevant documents.

In relation to paragraph b of your request scope –

Please note that the FWO is not responsible for responding to complaints regarding workplace harassment. This is explained further on our website under the section titled [Bullying & harassment](#). Harassment matters are handled by the Fair Work Commission or can be referred to state or territory workplace health and safety bodies. Where the FWO receives an enquiry or complaint in relation to bullying or harassment at work, they will usually be referred to these bodies for further assistance. Accordingly it is highly unlikely that we will hold any documents within scope of this part of your request.

I can be contacted via foi@fwo.gov.au.

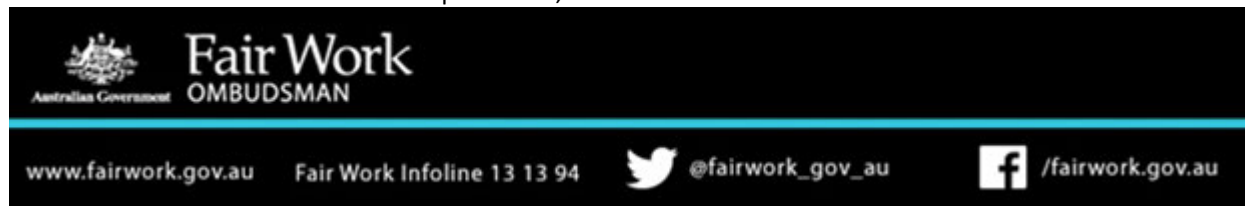
Thank you.

Sincerely,

Cameron Hankins | Assistant Director (a/g), Customer Feedback and Information Access

Fair Work Ombudsman

GPO Box 9887 Melbourne VIC 3001 | Level 14, 414 La Trobe Street. Melbourne VIC 3000



We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#)

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s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Monday, 21 October 2019 12:35 PM
To: s.22 – Irrelevant to request
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Cool, I'm happy with your interpretation! I will email the applicant accordingly now.

From: s.22 – Irrelevant to request
Sent: Monday, 21 October 2019 1:03 PM
To: s.22 – Irrelevant to request
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi.

I think the scope is clear enough and addresses her response. But I will let you know how I read it which will be a good indicator if we're on the same page!

I think the scope takes out everything in the middle and is focussed on the documents at the start and end of the complaint.

I take point 1 to mean the initial complaints received and any aggregate data reporting on this information. It don't think it would encompass anonymous reports because 'complaints' are usually a direct request for FWO assistance. Because the complaints must relate to underpayments, I think it would also exclude matters outside of FWO's scope that get referred externally. It would also exclude complaints about non monetary entitlements and any visa-related issues.

For point two, I think it would encompass Titan and CNet records that record outcomes. Importantly we haven't to date as far as I know reported on individual mediation settlement outcomes, which might present as a sensitivity. Though this data is reported on at the aggregate level. I also think any aggregate data relating to outcomes would be captured.

I think favourable is clear enough and it is reasonable to define it with our understanding of agency complaint processes. I don't think it means 'desirable', so could cover any outcome where through some form of FWO assistance the worker has obtained some form of benefit.

The main identifier of a favourable outcome would be monies recovered. I am not sure if we will be able to identify non-monetary outcomes, however I don't think we need to. For the complainants who didn't receive a 'favourable outcome' we might need to clarify that it doesn't necessarily mean the employer had a 'favourable outcome' or that they got away with employment breaches. 'non-favourable' outcomes might still contain adverse findings against a business (eg record-keeping issues which limited the ability to establish an underpayment) or could mean that the business was compliant.

Regards,

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Monday, 21 October 2019 12:10 PM
To: s.22 – Irrelevant to request
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi. I am thinking about putting the below scope back to the applicant that I think fits what she has said to us.

What do you think? I will confirm that if she is happy with the below scope, we will come back to her regarding the potential number of relevant documents (i.e. it does not mean access won't be refused, but it is a valid scope....)

Do you think the word "favourable" is clear enough? It's open to us how we define it...

s.22 – Irrelevant to request

I am seeking the following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*
 - a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

From: Katri Uibu <Uibu.Katri@abc.net.au>

Sent: Tuesday, 15 October 2019 2 55 PM

To: FWO - FOI Requests <FOI@fwo.gov.au>

Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Hi Cameron,

Thanks for your email. Please see my response below.

1. I am after documents relating to underpayment complaints made by 417 visa holders during the period 1 May 2017 to 30 August 2019.
2. Both. Please note that I am after all the complaints made within that time period, as well as in how many cases a solution favourable to the complainant was reached, and what that solution was.
3. Yes, I'm willing to exclude all personal and business information.

Please let me know if I can help with anything else.

Thanks,
Katri

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Monday, 11 November 2019 7:37
To: s.22 – Irrelevant to request
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

Follow Up Flag: Follow up
Flag Status: Completed

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Here is my reasoning for the calcs to be added to the above decision letter in case we need to finalise the decision today - pending SRAR data of course....

Please find details below to support the calculations within the practical refusal letter.

- SRAR data indicates our information systems show we have received xxx matters during the period 1 May 2017 to 30 August 2019 which involve 417 visa workers. These matters could range from basic enquiries to more drawn out investigations, including litigations.
- Based on recent processing undertaken by s.22 – Irrelevant to request where she processed 10 matters, there were on average 100 pages per matter. This figure has been used as a basis for the calculations which follow.
- Each of the xxx matters quoted by SRAR would need to be reviewed to determine:
 - a) Whether the worker has 'undertaken three months of regional work for second-year Working Holiday visa purposes' and
 - b) Then extract and compile Documents that show the outcomes...including:
 - i. information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and
 - ii. information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.
- xxx matters x 100 pages = approximately xxx pages in total.
- I estimate that approximately 50% of each file would need to be reviewed to be able to determine whether the matter would be in scope of the request. This equates to xxx pages in total.
- I believe this 50% figure is a reasonable and conservative estimate as some matters would have this information stated in the initial RFA and then the decision letter, whereas some would need a more extensive review of peripheral materials including evidence, ROCs/ROIs etc.
- We also need to consider the compilation of the data and presenting it into a suitable format – such as in the s.22 – Irrelevant to request. However, the time taken to do this work should be covered in the other processing times within the charges tool.

Using the AGS charges tool, I have arrived at the following processing time frame – the final hours have been inputted into the decision letter:

Xxxx – to be completed once we have figures

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Thursday, 7 November 2019 11:55 AM
To: s.22 – Irrelevant to request
Cc: s.22 – Irrelevant to request
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Updated versions in the links below.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 5 November 2019 1:24 PM
 To: s.22 – Irrelevant to request
 Cc: [REDACTED]
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Confidential & Deliberative

Hi s.22

Please see the following drafts for your review, per Annabel's request below:

- [IA-1072 Notice of Decision](#)
- [Email to Directors of Policy, SRAR and Media](#), that outlines our proposed approach.

Regarding the due date...there are two approaches here (thanks s.22 for your discussion and clarification on this!):

- The first being that we consider the revised scope as a new request and begin the statutory processing timeframes from the date this was confirmed 23 October 2019, therefore due date would be 30 days from then.
- The second being that we consider it the same original request which was due on 18 October, but which was paused for s24AB consultation after 16 days. Then once the revised scope was confirmed it recommenced the day after, being 24 October and the remaining 14 days brings us to 6 November.

Let me know if there's anything further I can do on this.

Thanks

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 1 November 2019 1:31 PM
 To: s.22 – Irrelevant to request
 Cc: [REDACTED]
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Confidential & Deliberative

Hi Jen. (FYI s.22) Below is s.22's follow-up assessment of this matter, confirming your thoughts and adding some extra useful analysis and scope for action (I've highlighted some key parts)... Have a read and chat to s.22 if you have any follow-up questions and concerns... I'm really grateful to both of you for your work on this.

Please now go ahead and prepare an email from me to Directors of Policy, SRAR and Media, copying in s.22 and s.22, that outlines our proposed approach to send the applicant a letter that includes:

1. an access refusal decision, with brief explanation of reasons why (expand), and
2. an offer to provide the applicant with the data about 417 visa holders highlighted in yellow below. I want to be clearer about how we define 'compliance outcomes'. Probably worth having a chat to someone like s.22 in SRAR to confirm that SRAR can provide what we think they can.

Please send draft email to s.22 for his review by Wednesday morning..... we'll aim to get the email off by the end of next week. I'm presuming our statutory deadline for this matter is 22 Nov (it wasn't in Corp Board report) given applicant confirmed scope on 23 Nov? Please double check.

Thanks – good teamwork on this one! s.22 or I will call the applicant prior to sending the letter and after we've confirmed the approach with stakeholders.

s.22 – Irrelevant to request

Director (a/g) – Customer Feedback and Information Access
Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Friday, 1 November 2019 1:26 PM
To: s.22 – Irrelevant to request
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi,

So in terms of the actual scope, I think s. is right. But I have also thought about what we might be able to provide.

There are two types of 417 visa holders. A 417 visa gives you the right to work in Australia for up to 12 months. If you 'have completed three months specific work in a regional area', your visa is extended a further 12 months.

What the applicant is seeking is information which relates to those three months' work (or longer) to obtain your second year under the visa. We do not distinctly record when someone is working in that three month period (and it may not always be relevant to the matter at hand). Also, there is no distinct visa category while you are performing that three months' work. It's both an issue with how matters are recorded in our system but that there's nothing setting the two types of visa categories apart at DoHA's end either. There is also nothing that distinctly records that one is performance 'specific work in a regional area', you provide ordinary documents when applying for your second year visa.

s.22 from SRAR has advised that they can provide a list of all the matters involving 417 visa holders, with the related matter number and monies recovered. It is possible to do a manual search, however, we'd very likely be looking at in excess of a thousand matters for the period between 1 May 2017 and 30 August 2019.

I think we can quite clearly explain the limitation of our system if we are to refuse access. We can also explain, if we wanted, that our prior inquiry involved manual input and information was captured with the intent of producing a report at the end, which is not standard practice for all matters.

In terms of if there is any data that could be provided, **which would not necessarily be in scope of the request** but which might be of interest to the applicant: we could provide the total monies recovered over the period, or sets of periods, for all 417 visa holders. We could also provide information about any compliance outcomes. SRAR could easily produce this kind of information.

Whether we release this information is a matter for us to consider proposing, I imagine being guided by the views of our internal stakeholders – mainly policy, SRAR and media.

Let me know if you'd like to discuss.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Monday, 28 October 2019 4:46 PM
To: s.22 – Irrelevant to request
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

FYI

From: s.22 – Irrelevant
Sent: Friday, 25 October 2019 9:04 AM
To: s.22 – Irrelevant to request
Cc:
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant to request

It is my view that we issue a Access Refusal on the basis that documents cannot be found or do not exist as our systems do not capture data sets that relate to the year level of the Visa Holder and time period worked in a regional area. There is possibly information that relates to the scope request however manual searches of each matter/campaign etc would need to be done to this which was the basis for our previous access refusal notice.

You will note in the table below my summary of responses from our internal stakeholders relating to the original scope request.

Moving forward I would suggest writing to our stakeholders and executives with advice that the scope request was revised by the ABC and of our intention to refuse access.

s.22 – Irrelevant to request

Business Unit - Contact	Documents	Comment
General Protections – s.22 – Irrelevant to request	A lot of documents would exist for our team but we'd need to look at hundreds of investigations that between them would have hundreds of thousands of documents or more, to work out if there is anything that exists - can't search by attribute so would have to look at every matter to see if any deal with 417 visa holders and then from there read all documents for relevant matters.	Possibly documents within scope. Would involve reading every document for every matter in Nexus and Titan for our team, in order to find what they're looking for.
International Labour Strategy – s.22 – Irrelevant to request	ILS are likely to have SE briefs, other briefs and papers prepared for the MWT, and potentially emails with s.22 (Home Affairs) about pay slips, further details below for your consideration.	Documents out of revised scope request
Oversees Workers Team s.22 – Irrelevant to request	6 investigations related to this issue. Email communication with Home Affairs regarding referral of matters/meetings. Currently undertaking Inquiry in to the regional work requirement relating to report released in October 2016.	Possibly documents within scope relating to investigations however would take manual search to determine if information was captured on 2 nd year Visa Workers and what area they were working in.
Intelligence Team – s.22 – Irrelevant to request	Intelligence Team produces narrative driven reports for an operations purpose that contain descriptions/analysis of FWO dispute interactions and assistance provided to 417 Visa workers in regional areas. Intelligence reports are not searchable within the FWO information systems by geography or Visa type. The Intelligence Team would therefore need to abstract and review reports across industries, businesses and worker types– this is likely to exceed 200 reports (average of 5 pages each) and will require operational knowledge of the purpose of the report.	Documents out of revised scope request noting intelligence reports are not searchable within the FWO information systems by geography or Visa Type.
SRAR s.22 – Irrelevant to request	A dataset comprising of a list of FWO disputes completed in relation to 417 visa holders could be retrieved and money recovered with payment date from FWO CRM systems. Employer location can be provided as part of the dataset in order to identify those that relate to employers in regional areas. No data sets available to extract year of Visa Holder. SRAR produces a number of reports /analysis pieces that include data regarding 417 visa holders including Annual reports/Senate Estimate data / Operational reports and analysis reports which hold commentary (e.g. Vulnerable cohort / Horticultural reports)	No data sets available to extract year of Visa Holder. Would take a manual search to find out if data is held in each of the matters/campaigns if an individual was a 2 nd year 417 Visa Holder working in a regional area Briefs etc out of revised scope.
Operations – Compliance and Enforcement s.22 – Irrelevant to request	There will be contravention letters, CN's and LoC's that may contain this information and there would be significant documents given the request spreads over a significant period. This information would be contained within Nexus and Titan and would be very difficult to pull from Nexus as this is an archived system and Titan would be problematic.	Possibly documents within scope relating to investigations however would take manual search to determine if information was captured on 2 nd year Visa Workers and what area they were working in.
Proactive Compliance s.22 – Irrelevant to request	Campaign matters relating to employers of Visa workers (assessments). Difficult to extract information and would require a manual search of each matter/campaign.	Possibly documents within scope. Would take a manual search to find out if data is held in each of the matters/campaigns if an individual

		was a 2 nd year 417 Visa Holder working in a regional area – and then a report would need to be prepared
Policy s.22 – Irrelevant to request	Briefings and correspondence relating to FWO Senate Estimates. Content on regional work is limited. Publically available information on 417 visa holders including questions on notice, submissions and statements to Senate enquiries, Annual reports	Documents out of revised scope No detailed information on 2 nd year 417 Visa Holders working on Regional areas.

From: s.22 – Irrelevant to request
 Sent: Thursday, 24 October 2019 10:15 PM
 To: s.22 – Irrelevant to request
 Cc: [Redacted]
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Hi s. Are you happy to pick this one up again now that scope has been confirmed? Just have a think about next steps and we can discuss on Monday. Thanks,

s.22 – Irrelevant to request

From: Katri Uibu <Uibu.Katri@abc.net.au>
 Sent: Wednesday, 23 October 2019 1:05 PM
 To: FWO - FOI Requests <FOI@fwo.gov.au>
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Dear Ms Kent,

Yes, the scope is correct.

Thanks,
 Katri

From: FWO - FOI Requests <FOI@fwo.gov.au>
 Sent: Monday, 21 October 2019 1:09 PM
 To: Katri Uibu <Uibu.Katri@abc.net.au>
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Ms Uibu

Thank you for your email on 15 October 2019.

Based on your responses to the questions posed regarding the scope of your FOI request, we understand that you are seeking -

the following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;
2. Documents that show the outcomes of the above complaints, including:
 - a. information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and
 - b. information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.

Please confirm in writing whether the above scope is correct. Once we have received your confirmation, we will commence further consultation with relevant FWO business units to understand how many relevant documents the FWO is likely to hold, and will be in touch.

Sincerely

Annabel Kent | Director (a/g) – Customer Feedback and Information Access
Fair Work Ombudsman

s.22 – Irrelevant to request

Fair Work Infoline 13 13 94

www.fairwork.gov.au

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Fair Work

OMBUDSMAN

Our reference: IA-1072

X December 2019

Ms Katri Uibu
Journalist
Australian Broadcasting Corporation

By email: uibu.katri@abc.net.au

FREEDOM OF INFORMATION REQUEST Notice of Decision

Dear Ms Uibu

I refer to your request on behalf of the Australian Broadcasting Corporation (**ABC**) to the Fair Work Ombudsman (**FWO**) for documents under the *Freedom of Information Act 1982* (**FOI Act**).

Scope of Request

Following consultation under section 24AB of the FOI Act regarding the original scope of your request, you submitted the following amended request scope:

The following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*
 - a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

Decision and Statement of Reasons

This letter sets out my decision in relation to your request, which I am authorised to make under section 23 of the FOI Act.

In making my decision, I took into account the wording of your request scope, the FOI Act, the Australian Information Commissioner's Guidelines (the **FOI Guidelines**)¹ and consultation with relevant FWO business units and FWO employees.

¹ <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

Practical Refusal — s 24AA

I have decided that a practical refusal reason exists pursuant to section 24AA of the FOI Act, because the work involved in processing your request would substantially and unreasonably divert the resources of the agency from its other operations.

Whilst the amendments to your scope request did reduce the overall likely number of relevant documents, it is still clear that the work required to process your request would substantially and unreasonably divert the FWO's resources from its other operations, within the meaning of section 24AA.

The FOI Guidelines state that in deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities:

- identifying, locating or collating documents within the filing system of the agency or minister;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents; and
- notifying an interim or final decision to the applicant.²

In the consultation letter sent to you regarding your original request scope, Mr Cameron Hankins explained that the FWO's information management systems do not have the required functionality to easily identify documents falling within the scope of your request. The same must be said for your amended request scope

The complexities involved in identifying relevant documents are also linked to the specificity of the 417 visa-holder information you are seeking.

Information available on the website of the Department of Home Affairs (**DoHA**) notes that a 417 visa gives the holder a right to work in Australia for up to 12 months. If the visa holder has completed at least three months specific work in a regional area during this time, the visa holder is eligible, subject to meeting other requirements, to apply for a second 12-month working holiday visa.³

You are seeking information that relates to the three months' work (or longer) in a regional area that a 417 visa holder needs to undertake in order to be eligible to apply for a second 12 month working holiday visa.

When a visa holder seeks FWO assistance and provides information about their visa subclass, we record this information in a reportable way.⁴ However, when someone is completing 'specific work in a regional area', we do not record this subset of information in a way that is readily identifiable. This is for two reasons.

First, there is no distinct visa subclass that indicates a visa holder is performing 'specific work in a regional area'. This limits FWO's ability to easily distinguish which 417 visa holders who sought FWO assistance were performing work for the purpose of obtaining a second 12 month working holiday visa.

² FOI Guidelines, 3.116.

³ <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/work-holiday-417/second-working-holiday-417>.

⁴ Not all complainants provide this information when seeking FWO assistance.

Second, as a general rule we would also only record this information where it is known and relevant to the workplace dispute. For these matters, while this information is recorded, it is information that is primarily used for the purpose of handling the workplace dispute. The information would exist in documents such as emails, file notes and decision records. Therefore, although there is a certain amount of information of this nature held by the FWO, manual searches of each matter/investigation would need to be undertaken to identify and extract it. As previously advised in the section 24AB consultation notice dated 4 October 2019, this is further complicated by the fact that multiple business units across the FWO may hold documents in various formats in undertaking their functions.

This can be compared with inquiries, undertaken as part of FWO's statutory functions under section 682 of the *Fair Work Act 2009*, that captured information relating to 417 visa-holders. The FWO's 'Harvest Trail Inquiry Report' (**the 2018 Inquiry**) and 'Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program' (**the 2016 Inquiry**) involved manual input of information throughout the inquiries, captured with the intent of producing these reports.⁵

Importantly, these inquiries are significant, distinct bodies of work, which FWO dedicated resources to for this purpose, and which do not reflect the way individual requests for assistance are managed.

Specifically, the FWO commenced the 2016 Inquiry by obtaining information from the Department of Home Affairs to assist in the identification of employers who were 'signing off' on specified work during the 2013-2014 financial year. Following analysis of this data, the 2016 Inquiry engaged with employers who were high users of the program in regional areas and had a documented history of sourcing labour from 417 visa holders undertaking the three month specified work requirement. The 2016 Inquiry also commissioned a mass survey of 43,219 subclass 417 visa holders who had been granted a second year visa in the 2013-2014 financial year.⁶

During the FWO's 2018 Inquiry, there were 1,295 discrete education and compliance interactions with Harvest Trail participants (including but not limited to workers and business) and 836 completed investigations. Of the growers that provided data to the FWO about the kinds of workers they engaged, the Working Holiday visa subclass 417 was the most common visa type.⁷

In other words, most data and information relating to 417 visa-holders undertaking 'three months specific work in a regional area' was proactively sought and initially obtained through external sources for the purposes of the Inquiry work.

Processing timeframes

We consulted with eight FWO business units when considering the most efficient way to identify documents relevant to the scope of your request.

The work involved to complete the level of interrogation of FWO information management systems in order to process your request formed the basis for the notice of consultation sent to you in October, with reference to section 24AB of the FOI Act.

In that notice that included specific calculation and an explanation of the methodology used, we estimated that it would take approximately 855 hours to process your request in its original form.

⁵ Accessible through our website: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>.

⁶ FWO's Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program (November 2016), pages 13-14. Available at: <http://www.fairwork.gov.au/ArticleDocuments/763/417-visa-inquiry-report.pdf.aspx>.

⁷ FWO's Harvest Trail Inquiry Report (November 2018), page 31. Available at <https://www.fairwork.gov.au/ArticleDocuments/1461/fair-work-ombudsman-harvest-trail-inquiry-report.docx.aspx>.

When considering the revised scope of your request, I have estimated that it would take at least 132 hours to complete the preliminary search and retrieval stage of your FOI request. This would involve reviewing the documentation associated with each complaint from a 417 visa-holder to determine whether it relates to work performed in a specific regional area for the purpose of obtaining a second 12 month working holiday visa.

This estimated processing time does not include identifying, extracting and compiling the specific information contained within the documents you are seeking. Nor does it include preparing a decision and presenting the relevant information into a meaningful format for release.

There is no set number of hours of processing time that determines whether a practical refusal reason exists, but rather each case should be assessed on its own merits. Recent decisions by the Australian Information Commissioner has affirmed decisions by departments and agencies that practical refusal grounds may exist where requests would exceed 70 hours of work.⁸

The FWO is a relatively small agency and the team responsible for processing information access requests⁹ comprises four employees (overseen by one Director). Processing a request of this size would unreasonably impact the available resources and ability to respond to other information access requests, privacy matters and other functions performed by the team.

The FWO processes approximately 150 information access requests per annum. Assuming the information access and FOI staff members spend approximately 70 per cent of their work time on information access requests,¹⁰ they would spend around 6,300 hours processing these matters each year, equating to approximately 42 hours per request.

Given our estimation that it would take approximately 132 hours just to identify and retrieve the documents relevant to your request, it is clear that the overall processing time for your request is likely to more than triple the average processing time per request.

Your revised request has narrowed the scope by reducing the period for documents sought, and removing additional policy and briefing related materials. However, for the reasons outlined above, the FWO cannot reasonably identify and extract the information you are seeking without it presenting a substantial and unreasonable diversion of FWO resources from its other operations.

Data regarding disputes involving migrant workers

In the interests of assisting you in relation to your request, I confirm that we have collated some information that you may be interested in, relating to dispute matters handled by the FWO involving migrant workers over the past two financial years. This information is provided to you on a discretionary basis in accordance with section 718(2) of the *Fair Work Act 2009*.

Review Rights

I have attached a document setting out your rights of review of this decision in accordance with the FOI Act (**Attachment A**).

⁸ For example, in *'NX' and Australian Trade and Investment Commission (Freedom of Information)* [2018] AICmr 18 (2 February 2018), a practical refusal decision was issued for an FOI request involving an estimated further 63 hours of processing of 610 documents, and involving consultation with five external third parties, see: <https://www.oaic.gov.au/freedom-of-information/foi-decisions/ic-review-decisions/2018-aicmr-18>.

⁹ Information access requests include FOI Requests and request for disclosures pursuant to section 718(2) of the *Fair Work Act 2009*, as outlined further in the FWO's Information Access Policy (see: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/accessing-our-information>).

¹⁰ Based on 48 weeks' work per annum (factoring in annual leave).

Contact details

If you would like to discuss the matter further or need any further information, please email me via foi@fwo.gov.au.

Yours sincerely

Annabel Kent
Assistant Director – Information Governance
Fair Work Ombudsman

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Attachment A

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

By Post: 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 an IC review, please refer to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>. You can download a review form and/or file your application online at <https://forms.business.gov.au/aba/oaic/foi-review/>

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

DRAFT

Subject: IA-1072 – ABC FOI Request regarding 417 Visa Holders

To: s.22 – Irrelevant to request

CC: s.22 – Irrelevant to request

Dear Colleagues,

Requesting your input by Friday 15 November – discretionary release of data to ABC journalist

CFIA is currently managing an FOI request from Ms Katri Uibu, an ABC journalist, for information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa (see attached email for background).

After consultations across the agency, we intend to issue a practical refusal decision on 20 November 2019, on the basis that the work involved to complete this level of interrogation of FWO information management systems would ‘substantially and unreasonably divert the resources of the agency from its other operations’ (s24A FOI Act).

While we believe this position is defensible, we are seeking your view on discretionally releasing the following FWO data:

Aggregate FWO data relating to complaints received from 417 visa-holders for the 2017-18 and 2018-19 financial years that includes:

- a. the total monies recovered by the FWO; and
- b. the number of matters resulting in the use of:
 - Infringement notices
 - Compliance notices
 - Enforceable undertakings, and
 - Civil litigation.

The benefits of this approach are that although we are refusing access to the particular documents sought, we are offering alternative information that can easily be obtained from our systems. We are hopeful that this approach may limit negative media, an appeal and/or subsequent FOI requests.

We adopted a similar approach to processing a request in 2018 from s.22 (freelance Journalist) in relation to migrant workers (see attached PDF). This information (except monies recovered) was also contained within the “Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program” (at Appendix 1).

We propose that any discretionary release of data to Ms Uibu would be in a similar format to what was released to s.22

Could you please consider this proposed approach and confirm your approval or advise of any concerns you have by COB Friday 15 November?

If you are agreeable to this approach, we will work with SRAR to prepare the data and can consult further prior to its release.

Kind regards,

s.22 - Irrelevant to request

Director (a/g) – Customer Feedback and Information Access

Fair Work Ombudsman

s.22 - Irrelevant to request

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s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Monday, 11 November 2019 9:44 AM
To: s.22 – Irrelevant to request
Cc: s.22 – Irrelevant to request; FWO - Strategic Research Analysis and Reporting
Subject: RE: request for data - no. of 417 visa-holder complaints - May 2017 - August 2019 [SEC=OFFICIAL]

Hi s.22 – Irrelevant to request

Yes disputes is complaints and only includes customers requesting our assistance (it does not include any proactive campaign, inquiry or SICA matters).

Cheers

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Monday, 11 November 2019 10:10 AM

s.22 – Irrelevant to request

FWO - Strategic

Research Analysis and Reporting <StrategicResearchAnalysisandReporting@fwo.gov.au>

Subject: RE: request for data - no. of 417 visa-holder complaints - May 2017 - August 2019 [SEC=OFFICIAL]

OFFICIAL

Thanks s.22 This assists greatly with our calculations. It puts the matter well in excess of what would be reasonable to search through to identify which matters relate to the cohort of 417 visa-holders that performed regional work.

Can you please advise whether 'disputes' is the same as complaints? As in, does this encompass campaigns work or just matters involving customers requesting our assistance and which usually go to C&E or ASA for dispute resolution assistance?

Cheers,

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Monday, 11 November 2019 9:42 AM

To: s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

FWO - Strategic

Research Analysis and Reporting <StrategicResearchAnalysisandReporting@fwo.gov.au>

Subject: RE: request for data - no. of 417 visa-holder complaints - May 2017 - August 2019 [SEC=OFFICIAL]

Hi s.22 – Irrelevant to request

1,470 disputes were completed related to 417 visa holders for the period of 1 May 2017 and 30 August 2019.

If you require further assistance please let us know.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Friday, 8 November 2019 3:31 PM

To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: RE: request for data - no. of 417 visa-holder complaints - May 2017 - August 2019 [SEC=OFFICIAL]

OFFICIAL

Thanks s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 8 November 2019 3:31 PM
 To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: RE: request for data - no. of 417 visa-holder complaints - May 2017 - August 2019 [SEC=OFFICIAL]

Hi s.22 – Irrelevant to request

We should be able to provide you with the number of 417 visa holder disputes for the relevant period by early next week, we will keep you updated if any issues arise.

Thanks

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 8 November 2019 11:32 AM
 To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: request for data - no. of 417 visa-holder complaints - May 2017 - August 2019 [SEC=OFFICIAL]

OFFICIAL

Hi s.22 and s.22

We recently spoke about an FOI request relating to complaints received from 417 visa-holders, specifically those performing work for the purpose of obtaining a second year visa.

The applicant has requested FWO provide information relating to the number of disputes involving this kind of work, and the outcome.

We are in the process of estimating how long it would take to identify all the matters that involved work performed for the purpose of obtaining a second year visa. As this is not a distinct visa category, we believe manual searches of each matter file within Titan, Nexus and CNet would be required to determine those that might relate to this issue. Given the time taken to review each matter, we intend to refuse the request on the grounds it would take too long.

To assist us to justify our position, I was hoping we could obtain the number of disputes known to involve a 417 visa-holder between 1 May 2017 and 30 August 2019 (this is the time frame the applicant has requested). This figure will only be used for internal purposes. We have an estimate of how long it will take to confirm whether one matter involving a 417 visa-holder related to work performed for the purpose of obtaining a second year visa. We intend to use the total figure SRAR provides to come to a total estimate of the time taken.

We will only disclose the final estimated figure to the applicant. We are separately considering proactively releasing data relating to 417 visa holders, but those discussions will be occurring in a different forum with relevant stakeholders (including SRAR).

I'd be happy to discuss if I can clarify any of the above.

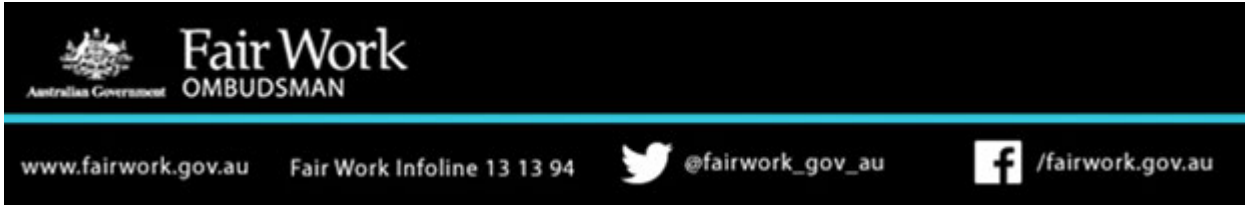
Cheers,

s.22 – Irrelevant to request

Assistant Director (a/g), Customer Feedback and Information Access

Fair Work Ombudsman

s.22 – Irrelevant to request



We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#)

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Information by Fair Work Ombudsman

by F

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 12 November 2019 11:47
 To: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Will do.

To assist with finalising the Decision, I have updated my reasoning and charges tool calculations below, following the figures provided by SRAR.

FOI CHARGES ESTIMATE TOOL - SIMPLE (insert data in shaded boxes only)			
GENERAL DATA ESTIMATE (terms in red are explained on the notes sheet)			
Pages (approx) of material in scope	73500	in A4 pages	
Number of discrete relevant documents (I divided 73500 by 3 which is the ave pages per document)	2450		
Percentage (approx) of pages to disclose in whole	25%		
Percentage (approx) of pages requiring redaction	25%		
Percentage (approx) of content that is applicant's own personal information (I have used 25% for each section above to equal a total of 50% which will account for the review and extraction of data)	0%		
Number of third parties to consult			
PROCESS - search and retrieval	TIME per task	charge time:	COST @ \$15 per hr
Time required to execute searches - enter hours (including part hours eg 0.5)	5	5.00	\$75.00
Preparing schedules detailing all relevant documents (basic data entry eg doc no, date, description) - enter minutes per 10 documents	5	20.42	\$306.25
<i>Search & Retrieval Subtotal</i>		25.42	\$381.25

PROCESS - decision-making	TIME per task	charge time:	COST @ \$20 per hr
Examine relevant pages for decision making - enter minutes per page	1	1225.00	\$24,500.00
Redacting pages that are partially disclosed - enter minutes per page	3	918.75	\$18,375.00
Consult third parties - enter average per third party in hours	0	0.00	\$0.00
Preparation and notification of decision			
Writing statement of reasons - enter hours	5	5.00	\$100.00
Complete schedule by recording decision @ 4 documents per minute		10.20833333	\$204.17
<i>Decision-making Subtotal (before deduction of 5 hours)</i>		2158.96	\$43,179.17
<i>Decision-making Subtotal (after deduction of first 5 hours free for all)</i>		2153.96	\$43,079.17

Please find details below to support the calculations within the practical refusal letter.

- SRAR data indicates our information systems show we have received 1470 matters during the period 1 May 2017 to 30 August 2019 which involve 417 visa workers. These matters could range from basic enquiries to more drawn out investigations, including litigations.
- Based on recent processing undertaken within CFIA, there are on average 100 pages per matter. This figure has been used as a basis for the calculations which follow.
- Each of the 1470 matters quoted by SRAR would need to be reviewed to determine:
 - a) Whether the worker has 'undertaken three months of regional work for second-year Working Holiday visa purposes' and
 - b) Then extract and compile *Documents that show the outcomes...including:*
 - i. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - ii. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*
- 1470 matters x 100 pages = approximately 147,000 pages in total.
- I estimate that approximately 50% of each file would need to be reviewed to be able to determine whether the matter would be in scope of the request. This equates to 73,500 pages to be reviewed.
- I believe this 50% figure is a reasonable and conservative estimate as some matters would have this information stated in the initial RFA and then the decision letter, whereas some would need a more extensive review of peripheral materials including evidence, ROCs/ROIs etc.
- We also need to consider the compilation of the data and presenting it into a suitable format – such as in the **s.22 - Irrelevant to request** However, the time taken to do this work should be covered in the other processing times within the charges tool.

Using the AGS charges tool, I have arrived at the following processing time frame – the final hours need to be added into the decision letter:

2153 hours

Although the scope was reduced, as we now have a **more accurate** figure of the matters which may fall within the scope of the request, using a recent estimate of the average number of pages and discreet documents contained within each matter, this accounts for the increase in the processing timeframe.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Tuesday, 12 November 2019 11:40 AM
To: s.22 – Irrelevant to request
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Review of stakeholder email done. Can you please review and if agreeable accept changes and delete comments and send to s.22? I think we just need to note that we should commit to a date for issuing the decision early next week.

I'll jump into the decision after lunch.

Cheers,

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Thursday, 7 November 2019 12:55 PM
To: s.22 – Irrelevant to request
Cc:
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Updated versions in the links below.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 5 November 2019 1:24 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Confidential & Deliberative

Hi s.22 – Irrelevant to request

Please see the following drafts for your review, per s.22 request below:

- IA-1072 Notice of Decision
- Email to Directors of Policy, SRAR and Media, that outlines our proposed approach.

Regarding the due date...there are two approaches here (thanks S. for you discussion and clarification on this!):

- The first being that we consider the revised scope as a new request and begin the statutory processing timeframes from the date this was confirmed 23 October 2019, therefore due date would be 30 days from then.
- The second being that we consider it the same original request which was due on 18 October, but which was paused for s24AB consultation after 16 days. Then once the revised scope was confirmed it recommenced the day after, being 24 October and the remaining 14 days brings us to 6 November.

Let me know if there's anything further I can do on this.

Thanks

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 1 November 2019 1:31 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: SensitiveConfidential & Deliberative

Hi Jen. (FYI s.22) Below is s.22 follow-up assessment of this matter, confirming your thoughts and adding some extra useful analysis and scope for action (I've highlighted some key parts)... Have a read and chat to s.22 if you have any follow-up questions and concerns... I'm really grateful to both of you for your work on this.

Please now go ahead and prepare an email from me to Directors of Policy, SRAR and Media, copying in s.22 and s., that outlines our proposed approach to send the applicant a letter that includes:

1. an access refusal decision, with brief explanation of reasons why (expand), and
2. an offer to provide the applicant with the data about 417 visa holders highlighted in yellow below. I want to be clearer about how we define 'compliance outcomes'. Probably worth having a chat to someone like s.22 in SRAR to confirm that SRAR can provide what we think they can.

Please send draft email to s. for his review by Wednesday morning..... we'll aim to get the email off by the end of next week. I'm presuming our statutory deadline for this matter is 22 Nov (it wasn't in Corp Board report) given applicant confirmed scope on 23 Nov? Please double check.

Thanks – good teamwork on this one! s.22 or I will call the applicant prior to sending the letter and after we've confirmed the approach with stakeholders.

s.22 – Irrelevant to request

Director (a/g) – Customer Feedback and Information Access
Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Friday, 1 November 2019 1:26 PM

To: s.22 – Irrelevant to request

Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi,

So in terms of the actual scope, I think s. is right. But I have also thought about what we might be able to provide.

There are two types of 417 visa holders. A 417 visa gives you the right to work in Australia for up to 12 months. If you 'have completed three months specific work in a regional area', your visa is extended a further 12 months.

What the applicant is seeking is information which relates to those three months' work (or longer) to obtain your second year under the visa. We do not distinctly record when someone is working in that three month period (and it may not always be relevant to the matter at hand). Also, there is no distinct visa category while you are performing that three months' work. It's both an issue with how matters are recorded in our system but that there's nothing setting the two types of visa categories apart at DoHA's end either. There is also nothing that distinctly records that one is performance 'specific work in a regional area', you provide ordinary documents when applying for your second year visa.

s.22

from SRAR has advised that they can provide a list of all the matters involving 417 visa holders, with the related matter number and monies recovered. It is possible to do a manual search, however, we'd very likely be looking at in excess of a thousand matters for the period between 1 May 2017 and 30 August 2019.

I think we can quite clearly explain the limitation of our system if we are to refuse access. We can also explain, if we wanted, that our prior inquiry involved manual input and information was captured with the intent of producing a report at the end, which is not standard practice for all matters.

In terms of if there is any data that could be provided, **which would not necessarily be in scope of the request** but which might be of interest to the applicant: we could provide the total monies recovered over the period, or sets of periods, for all 417 visa holders. We could also provide information about any compliance outcomes. SRAR could easily produce this kind of information.

Whether we release this information is a matter for us to consider proposing, I imagine being guided by the views of our internal stakeholders – mainly policy, SRAR and media.

Let me know if you'd like to discuss.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Monday, 28 October 2019 4:46 PM

To: s.22 – Irrelevant to request

Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

FYI

From: s.22 – Irrelevant to
Sent: Friday, 25 October 2019 9:04 AM
To: s.22 – Irrelevant to request
Cc:
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22 – Irrelevant

It is my view that we issue a Access Refusal on the basis that documents cannot be found or do not exist as our systems do not capture data sets that relate to the year level of the Visa Holder and time period worked in a regional area.

There is possibly information that relates to the scope request however manual searches of each matter/campaign etc would need to done to this which was the basis for our previous access refusal notice.

You will note in the table below my summary of responses from our internal stakeholders relating to the original scope request.

Moving forward I would suggest writing to our stakeholders and executives with advice that the scope request was revised by the ABC and of our intention to refuse access.

s.22 – Irrelevant to request

Business Unit - Contact	Documents	Comment
General Protections – s.22 – Irrelevant to request	A lot of documents would exist for our team but we'd need to look at hundreds of investigations that between them would have hundreds of thousands of documents or more, to work out if there is anything that exists - can't search by attribute so would have to look at every matter to see if any deal with 417 visa holders and then from there read all documents for relevant matters.	Possibly documents within scope. document for every matter in Ne: to find what they're looking for.
International Labour Strategy – s.22 – Irrelevant to request	ILS are likely to have SE briefs, other briefs and papers prepared for the MWT, and potentially emails with s.22 – Irrelevant to request (Home Affairs) about pay slips, further details below for your consideration.	Documents out of revised scope r

Oversees Workers s.22 – Irrelevant to request	6 investigations related to this issue. Email communication with Home Affairs regarding referral of matters/meetings. Currently undertaking Inquiry in to the regional work requirement relating to report released in October 2016.	Possibly documents within scope would take manual search to determine on 2 nd year Visa Workers and what
Intelligence Team – s.22 – Irrelevant to request	Intelligence Team produces narrative driven reports for an operations purpose that contain descriptions/analysis of FWO dispute interactions and assistance provided to 417 Visa workers in regional areas. Intelligence reports are not searchable within the FWO information systems by geography or Visa type. The Intelligence Team would therefore need to abstract and review reports across industries, businesses and worker types– this is likely to exceed 200 reports (average of 5 pages each) and will require operational knowledge of the purpose of the report.	Documents out of revised scope are not searchable within the FWO or Visa Type.
SRAR – s.22 – Irrelevant to request	A dataset comprising of a list of FWO disputes completed in relation to 417 visa holders could be retrieved and money recovered with payment date from FWO CRM systems. Employer location can be provided as part of the dataset in order to identify those that relate to employers in regional areas. No data sets available to extract year of Visa Holder. SRAR produces a number of reports /analysis pieces that include data regarding 417 visa holders including Annual reports/Senate Estimate data / Operational reports and analysis reports which hold commentary (e.g. Vulnerable cohort / Horticultural reports)	No data sets available to extract y Would take a manual search to find matters/campaigns if an individual working in a regional area Briefs etc out of revised scope.
Operations – Compliance and Enforcement s.22 – Irrelevant to request	There will be contravention letters, CN's and LoC's that may contain this information and there would be significant documents given the request spreads over a significant period. This information would be contained within Nexus and Titan and would be very difficult to pull from Nexus as this is an archived system and Titan would be problematic.	Possibly documents within scope would take manual search to determine on 2 nd year Visa Workers and what
Proactive Compliance s.22 – Irrelevant to request	Campaign matters relating to employers of Visa workers (assessments). Difficult to extract information and would require a manual search of each matter/campaign.	Possibly documents within scope. out if data is held in each of the n was a 2 nd year 417 Visa Holder we report would need to prepared
Policy s.22 – Irrelevant to request	Briefings and correspondence relating to FWO Senate Estimates. Content on regional work is limited. Publicly available information on 417 visa holders including questions on notice, submissions and statements to Senate enquiries, Annual reports	Documents out of revised scope No detailed information on 2 nd year Regional areas.

From: s.22 – Irrelevant to request

Sent: Thursday, 24 October 2019 10:15 PM

To: s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Hi s.22 – Irrelevant to request. Are you happy to pick this one up again now that scope has been confirmed? Just have a think about next steps and we can discuss on Monday. Thanks,

From: Katri Uibu <Uibu.Katri@abc.net.au>
 Sent: Wednesday, 23 October 2019 1:05 PM
 To: FWO - FOI Requests <FOI@fwo.gov.au>
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Dear Ms Kent,

Yes, the scope is correct.

Thanks,
 Katri

From: FWO - FOI Requests <FOI@fwo.gov.au>
 Sent: Monday, 21 October 2019 1:09 PM
 To: Katri Uibu <Uibu.Katri@abc.net.au>
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Ms Uibu

Thank you for your email on 15 October 2019.

Based on your responses to the questions posed regarding the scope of your FOI request, we understand that you are seeking -

the following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*

- a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
- b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

Please confirm in writing whether the above scope is correct. Once we have received your confirmation, we will commence further consultation with relevant FWO business units to understand how many relevant documents the FWO is likely to hold, and will be in touch.

Sincerely

Annabel Kent | Director (a/g) – Customer Feedback and Information Access
Fair Work Ombudsman

s.22 – Irrelevant to request

Fair Work Infoline 13 13 94

www.fairwork.gov.au

[subscribe to our eNewsletter](#)



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of Infor
rk Om

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Tuesday, 12 November 2019 12:58 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: IA-1072 - ABC 417 Visa Holders (Katri Uibu) - Draft Stakeholder Email
 [SEC=OFFICIAL:Sensitive]
 Attachments: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL] s.22
 s.22 - Migrant Workers.pdf

OFFICIAL: Sensitive

s.22 – Irrelevant to request
 Hi

Please see below draft email to Directors of Policy, SRAR and Media that outlines our proposed approach regarding the ABC 417 visa holders FOI request from Katri Uibu.

The attachments referred to in the draft email are attached to this email.

As s.22 advised, decision letter will be ready this afternoon.

If there is anything further I can do, please let me know.

Thanks

s.22 – Irrelevant to request

DRAFT

Subject: IA-1072 – ABC FOI Request regarding 417 Visa Holders

To: s.22 – Irrelevant to request

CC:

Dear Colleagues,

Requesting your input by Friday 15 November – discretionary release of data to ABC journalist

CFIA is currently managing an FOI request from Ms Katri Uibu, an ABC journalist, for information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa (see attached email for background).

After consultations across the agency, we intend to issue a practical refusal decision on 20 November 2019, on the basis that the work involved to complete this level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations' (s24A FOI Act).

While we believe this position is defensible, we are seeking your view on discretionally releasing the following FWO data:

Aggregate FWO data relating to complaints received from 417 visa-holders for the 2017-18 and 2018-19 financial years that includes:

- a. the total monies recovered by the FWO; and
- b. the number of matters resulting in the use of:

- Infringement notices
- Compliance notices
- Enforceable undertakings, and
- Civil litigation.

The benefits of this approach are that although we are refusing access to the particular documents sought, we are offering alternative information that can easily be obtained from our systems. We are hopeful that this approach may limit negative media, an appeal and/or subsequent FOI requests.

We adopted a similar approach to processing a request in 2018 from s.22 (freelance Journalist) in relation to migrant workers (see attached PDF). This information (except monies recovered) was also contained within the [“Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program”](#) (at Appendix 1).

We propose that any discretionary release of data to Ms Uibu would be in a similar format to what was released to s.22

Could you please consider this proposed approach and confirm your approval or advise of any concerns you have by COB Friday 15 November?

If you are agreeable to this approach, we will work with SRAR to prepare the data and can consult further prior to its release.

Kind regards,

s.22 – Irrelevant to request

Director (a/g) – Customer Feedback and Information Access

Fair Work Ombudsman

s.22 – Irrelevant to request

s.22 – Irrelevant

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Wednesday, 23 October 2019 12:35 PM
To: FWO - FOI Requests

Dear Ms Kent,

Yes, the scope is correct.

Thanks,
 Katri

From: FWO - FOI Requests <FOI@fwo.gov.au>
Sent: Monday, 21 October 2019 1:09 PM
To: Katri Uibu <Uibu.Katri@abc.net.au>
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Ms Uibu

Thank you for your email on 15 October 2019.

Based on your responses to the questions posed regarding the scope of your FOI request, we understand that you are seeking -

the following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*
 - a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

Please confirm in writing whether the above scope is correct. Once we have received your confirmation, we will commence further consultation with relevant FWO business units to understand how many relevant documents the FWO is likely to hold, and will be in touch.

Sincerely

Annabel Kent | Director (a/g) – Customer Feedback and Information Access
Fair Work Ombudsman

s.22 – Irrelevant to request



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MIGRANT WORKERS

Prepared by the Strategic Research,
Analysis and Reporting Team

March 2018



In the 2016-17 FY, the FWO completed 1,706 formal dispute lodgements relating to migrant workers.¹ While this is a decrease from the 1,894 completed in 2015-16, it was a proportional increase from 13% to 18% of all formal dispute lodgements completed by FWO in those years.

Formal dispute lodgements involving a migrant worker		
	2016-17	2015 – 16
Formal dispute lodgements completed – Visa Holders	1,706	1,894
% of All FWO Formal dispute lodgements completed	18%	13%

The most common allegation included in completed formal dispute lodgements in both years was underpayment of hourly rates. This allegation was present in 23% of formal dispute lodgement completed for migrant workers in 2016-17 and 39% the previous year.

Top 5 allegations ² in formal dispute lodgements involving a migrant worker				
	2016-17		2015 – 16	
1	Wages – Underpayment of Hourly Rate	23%	Wages Underpayment of Hourly Rate	39%
2	Wages – Not Paid for Time Worked	20%	Wages – Not Paid for Time Worked	32%
3	Penalties – Weekend	6%	Wages and Conditions	6%
4	Leave - Annual Leave	5%	Leave – Annual Leave	4%
5	Superannuation Termination Overtime – Excess of ordinary hours	4%	Over time – Overtime Excess of Ordinary Hours	4%

31% of formal disputes lodged by migrant workers in 2016-17 were dealt with via compliance and enforcement activities. In 5% of those cases investigated, one of the four types of statutory enforcement outcomes available to the FWO under the Fair Work legislation³ or a formal letter of caution was applied. Where one or more of those outcomes is not appropriate (for example based on evidentiary issues or not satisfying the legislative requirements), investigations may be concluded or a compliance outcome applied in the form of findings of contraventions under the *Fair Work Regulations 2009* requiring certain actions to be taken.

The 31% of formal disputes involving migrant workers compares to 6% of all FWO disputes resolved through compliance and enforcement activities, with 1% having a compliance or enforcement outcome applied.

Outcomes ⁴		
Formal dispute lodgements completed involving a migrant worker	2016-17	2015 – 16
Education and Dispute Resolution	1,177 (69%)	1020 (54%)
Compliance and Enforcement:	529 (31%)	874 (46%)
- With enforcement outcome applied	93 (5%)	124 (7%)
ALL DISPUTES completed	2016-17	2015 – 16
Education and Dispute Resolution	25,332 (94%)	22,143 (90%)
Compliance and Enforcement:	1,585 (6%)	2,442 (10%)
- With enforcement outcome applied	293 (1%)	336 (1%)

¹ A formal dispute lodgement is classified as being from a migrant worker when the worker is identified as a visa holder. Individual demographic dispute data is available where a formal dispute is lodged with FWO. These formal dispute lodgements completed are a subset of all disputes completed by FWO.

² One formal dispute lodgement may include multiple allegations. Top 5 allegation percentages are based on the total number of allegations present in all formal dispute lodgements from visa holders.

³ Statutory enforcement outcomes include infringement notices, compliance notices, enforceable undertakings and civil litigation. Refer to the FWO's Compliance and Enforcement Policy for more information on the enforcement outcomes.

⁴ Education and Dispute Resolution activities provide information and support to employees and employers to resolve workplace disputes. Workplace disputes with indicators or allegations of serious non-compliance are referred for investigation and consideration of compliance and enforcement action.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Tuesday, 12 November 2019 7:49 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: IA-1072 - ABC 417 Visa Holders (Katri Uibu) - Draft Stakeholder Email
 [SEC=OFFICIAL:Sensitive]
 Attachments: s.22 - Irrelevant to request Migrant Workers.pdf

OFFICIAL: Sensitive

Thanks s.22 – Irrelevant Suggested amendments to email below. If you and s.22 are happy with them, please finalise and send asap on my behalf from the FWO email address. I've removed one of the intended attachments (background email) and included relevant info in the email instead. Saves people having to open attachments and see extra detail they don't need to see. Thanks! s.22 (PS – I recommend including in subject line of email – "Request for feedback ASAP – Info release to ABC (IA-1072)") Official: Sensitive

Subject: IA-1072 – ABC FOI Request regarding 417 Visa Holders

To: s.22 – Irrelevant to request

CC:

Dear Colleagues,

Request for feedback ASAP – Release of data to ABC journalist

CFIA is currently managing an FOI request from Ms Katri Uibu, an ABC journalist, for information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa. She has requested copies of all relevant complaints made over a two year period as well as documents showing the outcomes of the complaints including details about lost wages recovered.

Following extensive internal consultation and communication with the applicant, we intend to issue a practical refusal decision on the basis that the work involved to complete this level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations' (s24A FOI Act).

At the same time, we are proposing to release the following related data to the applicant on a discretionary basis -

Aggregate FWO data relating to complaints received from 417 visa-holders for the 2017-18 and 2018-19 financial years that includes:

- a. the total monies recovered by the FWO; and
- b. the number of matters resulting in the use of:
 - Infringement notices
 - Compliance notices
 - Enforceable undertakings, and
 - Civil litigation.

The above information can easily be obtained from the FWO's systems. We believe that by providing this information to the applicant whilst refusing access to the particular documents she has sought, we may limit any negative media, an appeal and/or subsequent FOI requests.

We adopted a similar approach to processing a request in 2018 from s.22 (freelance Journalist) in relation to migrant workers (see attached PDF). This information (except monies recovered) was also contained within the

[“Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program”](#) (at Appendix 1).

We propose that any discretionary release of the above data to Ms Uibu would be presented in a similar format to what was released to s.22

Could you please let us know if you are comfortable with this approach or have any concerns ASAO and by COB this Friday 15 November?

If the approach is supported, we will work with SRAR to prepare the data in preparation for release ASAP.

Thank you in advance. Please don't hesitate to contact s.22 – Irrelevant or me if you would like to discuss.

Kind regards,

s.22 – Irrelevant to request

Director (a/g) – Customer Feedback and Information Access

Fair Work Ombudsman

s.22 – Irrelevant to request

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MIGRANT WORKERS

Prepared by the Strategic Research,
Analysis and Reporting Team

March 2018



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s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 9:38 AM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: RE: IA-1072 - ABC 417 Visa Holders (Katri Uibu) - Draft Stakeholder Email [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Will do now ☺

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 12 November 2019 7:19 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: IA-1072 - ABC 417 Visa Holders (Katri Uibu) - Draft Stakeholder Email [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s.22 Suggested amendments to email below. If you and s.22 are happy with them, please finalise and send asap on my behalf from the FWO email address. I've removed one of the intended attachments (background email) and included relevant info in the email instead. Saves people having to open attachments and see extra detail they don't need to see. Thanks! s.22 (PS – I recommend including in subject line of email – "Request for feedback ASAP – Info release to ABC (IA-1072)") Official: Sensitive

Subject: IA-1072 – ABC FOI Request regarding 417 Visa Holders**To:** s.22 – Irrelevant to request**CC:**

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Aggregate FWO data relating to complaints received from 417 visa-holders for the 2017-18 and 2018-19 financial years that includes:

- a. the total monies recovered by the FWO; and

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Tuesday, 12 November 2019 8:41 PM
 To: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi guys. I had a brief look at this draft notice and can see where you are heading. I didn't review it all because I know there is more coming and I support the plan expressed by s.22 below –

There are two changes that will need to be made to this document. The first being input drafted regarding any discretionary release of data. The second is an update to the calculations – we have since obtained from SRAR the total number of disputes that involve a 417 visa-holder for the requested timeframe, and are able to estimate from that figure, and an estimate of the number of pages for each investigation, the time taken to review each matter to confirm whether it is within scope (this is a more defensible approach than asking business units to confirm how they'd go about providing the documents, because of the varying answers we received, so I suggested to s.22 that she work with s. to try and get some formulas in place and to work with SRAR to consider other matters we could adopt this approach for to streamline future requests).

- [IA-1072 Notice of Decision](#)

Let me know when you have a final version ready to finalise – I think you can prepare it assuming the internal stakeholders will confirm our approach re the discretionary release of data.

Thanks, s.22

s.22 – Irrelevant to request | Director (a/g) – Customer Feedback and Information Access
 Fair Work Ombudsman

s.22 – Irrelevant to request



Fair Work

OMBUDSMAN

Our reference: IA-1072

X December 2019

Ms Katri Uibu
Journalist
Australian Broadcasting Corporation

By email: uibu.katri@abc.net.au

FREEDOM OF INFORMATION REQUEST Notice of Decision

Dear Ms Uibu

I refer to your request on behalf of the Australian Broadcasting Corporation (**ABC**) to the Fair Work Ombudsman (**FWO**) for documents under the *Freedom of Information Act 1982* (**FOI Act**).

Scope of Request

Following consultation under section 24AB of the FOI Act regarding the original scope of your request, you submitted the following amended request scope:

The following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*
 - a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

Decision and Statement of Reasons

This letter sets out my decision in relation to your request, which I am authorised to make under section 23 of the FOI Act.

In making my decision, I took into account the wording of your request scope, the FOI Act, the Australian Information Commissioner's Guidelines (the **FOI Guidelines**)¹ and consultation with relevant FWO business units and FWO employees.

¹ <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

Practical Refusal — s 24AA

I have decided that a practical refusal reason exists pursuant to section 24AA of the FOI Act, because the work involved in processing your request would substantially and unreasonably divert the resources of the agency from its other operations.

Whilst the amendments to your scope request did reduce the overall likely number of relevant documents, it is still clear that the work required to process your request would substantially and unreasonably divert the FWO's resources from its other operations, within the meaning of section 24AA.

The FOI Guidelines state that in deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities:

- identifying, locating or collating documents within the filing system of the agency or minister;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents; and
- notifying an interim or final decision to the applicant.²

In the consultation letter sent to you regarding your original request scope, Mr Cameron Hankins explained that the FWO's information management systems do not have the required functionality to easily identify documents falling within the scope of your request. The same must be said for your amended request scope.

The complexities involved in identifying relevant documents are also linked to the specificity of the 417 visa-holder information you are seeking.

Information available on the website of the Department of Home Affairs (**DoHA**) notes that a 417 visa gives the holder a right to work in Australia for up to 12 months. If the visa holder has completed at least three months specific work in a regional area during this time, the visa holder is eligible, subject to meeting other requirements, to apply for a second 12-month working holiday visa.³

You are seeking information that relates to the three months' work (or longer) in a regional area that a 417 visa holder needs to undertake in order to be eligible to apply for a second 12 month working holiday visa.

When a visa holder seeks FWO assistance and provides information about their visa subclass, we record this information in a reportable way.⁴ However, when someone is completing 'specific work in a regional area', we do not record this subset of information in a way that is readily identifiable. This is for two reasons.

First, there is no distinct visa subclass that indicates a visa holder is performing 'specific work in a regional area'. This limits FWO's ability to easily distinguish which 417 visa holders who sought FWO assistance were performing work for the purpose of obtaining a second 12 month working holiday visa.

² FOI Guidelines, 3.116.

³ <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/work-holiday-417/second-working-holiday-417>.

⁴ Not all complainants provide this information when seeking FWO assistance.

Second, as a general rule we would also only record this information where it is known and relevant to the workplace dispute. For these matters, while this information is recorded, it is information that is primarily used for the purpose of handling the workplace dispute. The information would exist in documents such as emails, file notes and decision records. Therefore, although there is a certain amount of information of this nature held by the FWO, manual searches of each matter/investigation would need to be undertaken to identify and extract it. As previously advised in the section 24AB consultation notice dated 4 October 2019, this is further complicated by the fact that multiple business units across the FWO may hold documents in various formats in undertaking their functions.

This can be compared with inquiries, undertaken as part of FWO's statutory functions under section 682 of the *Fair Work Act 2009*, that captured information relating to 417 visa-holders. The FWO's 'Harvest Trail Inquiry Report' (**the 2018 Inquiry**) and 'Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program' (**the 2016 Inquiry**) involved manual input of information throughout the inquiries, captured with the intent of producing these reports.⁵

Importantly, these inquiries are significant, distinct bodies of work, which FWO dedicated resources to for this purpose, and which do not reflect the way individual requests for assistance are managed.

Specifically, the FWO commenced the 2016 Inquiry by obtaining information from the Department of Home Affairs to assist in the identification of employers who were 'signing off' on specified work during the 2013-2014 financial year. Following analysis of this data, the 2016 Inquiry engaged with employers who were high users of the program in regional areas and had a documented history of sourcing labour from 417 visa holders undertaking the three month specified work requirement. The 2016 Inquiry also commissioned a mass survey of 43,219 subclass 417 visa holders who had been granted a second year visa in the 2013-2014 financial year.⁶

During the FWO's 2018 Inquiry, there were 1,295 discrete education and compliance interactions with Harvest Trail participants (including but not limited to workers and business) and 836 completed investigations. Of the growers that provided data to the FWO about the kinds of workers they engaged, the Working Holiday visa subclass 417 was the most common visa type.⁷

In other words, most data and information relating to 417 visa-holders undertaking 'three months specific work in a regional area' was proactively sought and initially obtained through external sources for the purposes of the Inquiry work.

Processing timeframes

We consulted with eight FWO business units when considering the most efficient way to identify documents relevant to the scope of your request.

The work involved to complete the level of interrogation of FWO information management systems in order to process your request formed the basis for the notice of consultation sent to you in October, with reference to section 24AB of the FOI Act.

In that notice that included specific calculation and an explanation of the methodology used, we estimated that it would take approximately 855 hours to process your request in its original form.

⁵ Accessible through our website: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>.

⁶ FWO's Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program (November 2016), pages 13-14. Available at: <http://www.fairwork.gov.au/ArticleDocuments/763/417-visa-inquiry-report.pdf.aspx>.

⁷ FWO's Harvest Trail Inquiry Report (November 2018), page 31. Available at <https://www.fairwork.gov.au/ArticleDocuments/1461/fair-work-ombudsman-harvest-trail-inquiry-report.docx.aspx>.

When considering the revised scope of your request, I have estimated that it would take at least 132 hours to complete the preliminary search and retrieval stage of your FOI request. This would involve reviewing the documentation associated with each complaint from a 417 visa-holder to determine whether it relates to work performed in a specific regional area for the purpose of obtaining a second 12 month working holiday visa.

This estimated processing time does not include identifying, extracting and compiling the specific information contained within the documents you are seeking. Nor does it include preparing a decision and presenting the relevant information into a meaningful format for release.

There is no set number of hours of processing time that determines whether a practical refusal reason exists, but rather each case should be assessed on its own merits. Recent decisions by the Australian Information Commissioner has affirmed decisions by departments and agencies that practical refusal grounds may exist where requests would exceed 70 hours of work.⁸

The FWO is a relatively small agency and the team responsible for processing information access requests⁹ comprises four employees (overseen by one Director). Processing a request of this size would unreasonably impact the available resources and ability to respond to other information access requests, privacy matters and other functions performed by the team.

The FWO processes approximately 150 information access requests per annum. Assuming the information access and FOI staff members spend approximately 70 per cent of their work time on information access requests,¹⁰ they would spend around 6,300 hours processing these matters each year, equating to approximately 42 hours per request.

Given our estimation that it would take approximately 132 hours just to identify and retrieve the documents relevant to your request, it is clear that the overall processing time for your request is likely to more than triple the average processing time per request.

Your revised request has narrowed the scope by reducing the period for documents sought, and removing additional policy and briefing related materials. However, for the reasons outlined above, the FWO cannot reasonably identify and extract the information you are seeking without it presenting a substantial and unreasonable diversion of FWO resources from its other operations.

Data regarding disputes involving migrant workers

In the interests of assisting you in relation to your request, I confirm that we have collated some information that you may be interested in, relating to dispute matters handled by the FWO involving migrant workers over the past two financial years. This information is provided to you on a discretionary basis in accordance with section 718(2) of the *Fair Work Act 2009*.

Review Rights

I have attached a document setting out your rights of review of this decision in accordance with the FOI Act (**Attachment A**).

⁸ For example, in *'NX' and Australian Trade and Investment Commission (Freedom of Information)* [2018] AICmr 18 (2 February 2018), a practical refusal decision was issued for an FOI request involving an estimated further 63 hours of processing of 610 documents, and involving consultation with five external third parties, see: <https://www.oaic.gov.au/freedom-of-information/foi-decisions/ic-review-decisions/2018-aicmr-18>.

⁹ Information access requests include FOI Requests and request for disclosures pursuant to section 718(2) of the *Fair Work Act 2009*, as outlined further in the FWO's Information Access Policy (see: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/accessing-our-information>).

¹⁰ Based on 48 weeks' work per annum (factoring in annual leave).

Contact details

If you would like to discuss the matter further or need any further information, please email me via foi@fwo.gov.au.

Yours sincerely

Annabel Kent
Assistant Director – Information Governance
Fair Work Ombudsman

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Attachment A

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

By Post: 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 an IC review, please refer to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>. You can download a review form and/or file your application online at <https://forms.business.gov.au/aba/oaic/foi-review/>

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

s.22 – Irrelevant

From: FWO - FOI Requests
Sent: Wednesday, 13 November 2019 9:43 AM
To: s.22 – Irrelevant to request
Cc:
Subject: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]
Attachments: s.22 – Irrelevant to request - Migrant Workers.pdf

Follow Up Flag: Follow up
Flag Status: Completed

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Dear Colleagues,

Request for feedback ASAP – Release of data to ABC journalist

CFIA is currently managing an FOI request from Ms Katri Uibu, an ABC journalist, for information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa. She has requested copies of all relevant complaints made over a two year period as well as documents showing the outcomes of the complaints including details about lost wages recovered.

Following extensive internal consultation and communication with the applicant, we intend to issue a practical refusal decision on the basis that the work involved to complete this level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations' (s24A FOI Act).

At the same time, we are proposing to release the following related data to the applicant on a discretionary basis -

Aggregate FWO data relating to complaints received from 417 visa-holders for the 2017-18 and 2018-19 financial years that includes:

- a. the total monies recovered by the FWO; and
- b. the number of matters resulting in the use of:
 - Infringement notices
 - Compliance notices
 - Enforceable undertakings, and
 - Civil litigation.

The above information can easily be obtained from the FWO's systems. We believe that by providing this information to the applicant whilst refusing access to the particular documents she has sought, we may limit any negative media, an appeal and/or subsequent FOI requests.

We adopted a similar approach to processing a request in 2018 from s.22 (freelance Journalist) in relation to migrant workers (see attached PDF). This information (except monies recovered) was also contained within the ["Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program"](#) (at Appendix 1).

We propose that any discretionary release of the above data to Ms Uibu would be presented in a similar format to what was released to s.22

Could you please let us know if you are comfortable with this approach or have any concerns ASAP and by COB this Friday 15 November?

If the approach is supported, we will work with SRAR to prepare the data in preparation for release ASAP.

Thank you in advance. Please don't hesitate to contact s.22 or me if you would like to discuss.

Kind regards,

s.22 – Irrelevant to request

Director (a/g) – Customer Feedback and Information Access

Fair Work Ombudsman

s.22 – Irrelevant to request

MIGRANT WORKERS

Prepared by the Strategic Research,
Analysis and Reporting Team

March 2018



In the 2016-17 FY, the FWO completed 1,706 formal dispute lodgements relating to migrant workers.¹ While this is a decrease from the 1,894 completed in 2015-16, it was a proportional increase from 13% to 18% of all formal dispute lodgements completed by FWO in those years.

Formal dispute lodgements involving a migrant worker		
	2016-17	2015 – 16
Formal dispute lodgements completed – Visa Holders	1,706	1,894
% of All FWO Formal dispute lodgements completed	18%	13%

The most common allegation included in completed formal dispute lodgements in both years was underpayment of hourly rates. This allegation was present in 23% of formal dispute lodgement completed for migrant workers in 2016-17 and 39% the previous year.

Top 5 allegations ² in formal dispute lodgements involving a migrant worker				
	2016-17		2015 – 16	
1	Wages – Underpayment of Hourly Rate	23%	Wages Underpayment of Hourly Rate	39%
2	Wages – Not Paid for Time Worked	20%	Wages – Not Paid for Time Worked	32%
3	Penalties – Weekend	6%	Wages and Conditions	6%
4	Leave - Annual Leave	5%	Leave – Annual Leave	4%
5	Superannuation Termination Overtime – Excess of ordinary hours	4%	Over time – Overtime Excess of Ordinary Hours	4%

31% of formal disputes lodged by migrant workers in 2016-17 were dealt with via compliance and enforcement activities. In 5% of those cases investigated, one of the four types of statutory enforcement outcomes available to the FWO under the Fair Work legislation³ or a formal letter of caution was applied. Where one or more of those outcomes is not appropriate (for example based on evidentiary issues or not satisfying the legislative requirements), investigations may be concluded or a compliance outcome applied in the form of findings of contraventions under the *Fair Work Regulations 2009* requiring certain actions to be taken.

The 31% of formal disputes involving migrant workers compares to 6% of all FWO disputes resolved through compliance and enforcement activities, with 1% having a compliance or enforcement outcome applied.

Outcomes ⁴		
Formal dispute lodgements completed involving a migrant worker	2016-17	2015 – 16
Education and Dispute Resolution	1,177 (69%)	1020 (54%)
Compliance and Enforcement:	529 (31%)	874 (46%)
- With enforcement outcome applied	93 (5%)	124 (7%)
ALL DISPUTES completed	2016-17	2015 – 16
Education and Dispute Resolution	25,332 (94%)	22,143 (90%)
Compliance and Enforcement:	1,585 (6%)	2,442 (10%)
- With enforcement outcome applied	293 (1%)	336 (1%)

¹ A formal dispute lodgement is classified as being from a migrant worker when the worker is identified as a visa holder. Individual demographic dispute data is available where a formal dispute is lodged with FWO. These formal dispute lodgements completed are a subset of all disputes completed by FWO.

² One formal dispute lodgement may include multiple allegations. Top 5 allegation percentages are based on the total number of allegations present in all formal dispute lodgements from visa holders.

³ Statutory enforcement outcomes include infringement notices, compliance notices, enforceable undertakings and civil litigation. Refer to the FWO's Compliance and Enforcement Policy for more information on the enforcement outcomes.

⁴ Education and Dispute Resolution activities provide information and support to employees and employers to resolve workplace disputes. Workplace disputes with indicators or allegations of serious non-compliance are referred for investigation and consideration of compliance and enforcement action.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Wednesday, 13 November 2019 9:45 AM
To: FWO - FOI Requests
Subject: RE: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

Categories: s.22 – Irrelevant to request, Saved to SharePoint

OFFICIAL: Sensitive

I'm fine with this approach s.22 – thanks for letting me know. Perhaps just loop in s.22 as well given the migrant worker focus of this request.

Cheers

s.22 – Irrelevant to request

From: FWO - FOI Requests
Sent: Wednesday, 13 November 2019 10:13 AM
To: s.22 – Irrelevant to request
Cc:
Subject: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive**OFFICIAL: Sensitive**

Dear Colleagues,

Request for feedback ASAP – Release of data to ABC journalist

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- a. the total monies recovered by the FWO; and
- b. the number of matters resulting in the use of:
 - Infringement notices
 - Compliance notices
 - Enforceable undertakings, and
 - Civil litigation.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 9:46 AM
 To: FWO - FOI Requests; s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: RE: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – , SRAR would be comfortable with this approach.

From: FWO - FOI Requests <FOI@fwo.gov.au>
 Sent: Wednesday, 13 November 2019 9:43 AM
 To: s.22 – Irrelevant to request
 s.22 – Irrelevant to request
 s.22 – Irrelevant to request
 Subject: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive**OFFICIAL: Sensitive**

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 - Compliance notices
 - Enforceable undertakings, and
 - Civil litigation.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 10:11 AM
 To: s.22 – Irrelevant to request
 Subject: RE: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant here is the data:

417 VISA HOLDERS	2018-19	2017- 18
Formal Dispute Lodgements received	534	694
Formal Dispute Lodgements completed	532	719
Monies recovered	\$174,839	\$782,747
Complainants paid	110	364

Row Labels	417 visa holders	Total issued
Compliance Notice	6	274
Enforceable Undertaking	1	17
Infringement Notice	7	563
Litigation	1	23

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 9:51 AM
 To: s.22 – Irrelevant to request
 Sub C (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to

s.22 is right. We probably need to show the stakeholders the data we're proposing to release for their consideration.

Do you know how long it would take to provide the raw data for us so we can circulate for consideration?

Happy to discuss if any clarity is required regarding the kind of data sought.

Cheers,

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 10:16 AM
 To: s.22 – Irrelevant to request
 Subject: RE: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi team, can I please see the data you are proposing to release? I assume it is not currently publicly available.

Thanks

s.22 - Irrelevant to request

Media Director

Fair Work Ombudsman

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Wednesday, 13 November 2019 10:13 AM

s.22 – Irrelevant to request

Subject: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

OFFICIAL: Sensitive

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The above information can easily be obtained from the FWO's systems. We believe that by providing this information to the applicant whilst refusing access to the particular documents she has sought, we may limit any negative media, an appeal and/or subsequent FOI requests.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Wednesday, 13 November 2019 12:12 PM
To: s.22 – Irrelevant to request
Subject: FW: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

From: s.22 – Irrelevant to request
Sent: Wednesday, 13 November 2019 12:03 PM
To: s.22 – Irrelevant to request
Subject: FW: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

s.22 - Irrelevant to request



s.22 - Irrelevant to request

s.22 – Irrelevant to request

Senior Media Adviser

Fair Work Ombudsman

s.22 – Irrelevant to request

Record my hours – available now



Fair Work Infoline 13 13 94

www.fairwork.gov.au

[subscribe to email updates](#)



~Please consider the environment before printing this message~

We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#).

From: s.22 – Irrelevant to request

Sent: Wednesday, 13 November 2019 10:59 AM

To: s.22 – Irrelevant to request

Subject: FW: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22, have you seen any of this data before? Have we provided it anywhere?

From: s.22 – Irrelevant to request

Sent: Wednesday, 13 November 2019 10:47 AM

To: s.22 – Irrelevant to request

Subject: RE: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22, below is the raw data SRAR produced just then. It would go into a document similar to what we released to s.22. On review of the data, some context may be required to explain the reduction in monies recovered or the data would be merged instead of covering two separate periods.

This data is not publicly available but similar to that released within the 417 inquiry report.

417 VISA HOLDERS	2018-19	2017- 18
Formal Dispute Lodgements received	534	694

Formal Dispute Lodgements completed	532	719
Monies recovered	\$174,839	\$782,747
Complainants paid	110	364

Row Labels	417 visa holders	Total issued
Compliance Notice	6	274
Enforceable Undertaking	1	17
Infringement Notice	7	563
Litigation	1	23

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 10:16 AM
 To: s.22 – Irrelevant to request
 Subject: RE: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

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 Thanks

s.22 – Irrelevant to request
 request
 Media Director
 Fair Work Ombudsman

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>
 Sent: Wednesday, 13 November 2019 10:13 AM
 To: s.22 – Irrelevant to request
 s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 s.22 – Irrelevant to request
 Subject: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Dear Colleagues,

Request for feedback ASAP – Release of data to ABC journalist

CFIA is currently managing an FOI request from Ms Katri Uibu, an ABC journalist, for information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa. She has requested copies of all relevant complaints made over a two year period as well as documents showing the outcomes of the complaints including details about lost wages recovered.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Wednesday, 13 November 2019 5:35 PM
To: s.22 – Irrelevant to request
Subject: RE: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]
Attachments: FW: 2018-19 visa holders stats [SEC=OFFICIAL]; FW: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

s.22 – Irrelevant to request

s.22 asked to chat and this is information she gathered about previous information provided.

s.22 – Irrelevant to request

s.22 – Irrelevant to request

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>

Date: 13 November 2019 at 10:12:35 am AEDT

s.22 – Irrelevant to request

Subject: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Dear Colleagues,

Request for feedback ASAP – Release of data to ABC journalist

CFIA is currently managing an FOI request from Ms Katri Uibu, an ABC journalist, for information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa. She has requested copies of all relevant complaints made over a two year period as well as documents showing the outcomes of the complaints including details about lost wages recovered.

Following extensive internal consultation and communication with the applicant, we intend to issue a practical refusal decision on the basis that the work involved to complete this level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations' (s24A FOI Act).

At the same time, we are proposing to release the following related data to the applicant on a discretionary basis -

Aggregate FWO data relating to complaints received from 417 visa-holders for the 2017-18 and 2018-19 financial years that includes:

- a. the total monies recovered by the FWO; and
- b. the number of matters resulting in the use of:
 - Infringement notices
 - Compliance notices
 - Enforceable undertakings, and
 - Civil litigation.

The above information can easily be obtained from the FWO's systems. We believe that by providing this information to the applicant whilst refusing access to the particular documents she has sought, we may limit any negative media, an appeal and/or subsequent FOI requests.

We adopted a similar approach to processing a request in 2018 from s.22 (freelance Journalist) in relation to migrant workers (see attached PDF). This information (except monies recovered) was also contained within the "[Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program](#)" (at Appendix 1).

OFFICIAL

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 11:42
 To: s.22 – Irrelevant to request
 Subject: FW: 2018-19 visa holders stats [SEC=OFFICIAL]

OFFICIAL

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 12:28 PM
 To: s.22 – Irrelevant to request >
 Subject: 2018-19 visa holders stats [SEC=OFFICIAL]

OFFICIAL

2018-19 visa holders stats (sourced from annual report – not yet provided in media response (we have pointed one journalist to the 83 per cent figure in the report))

While migrant workers make up 6 per cent of the Australian workforce, this group accounted for 22% of all formal disputes completed by the Fair Work Ombudsman in 2018-19. Last financial year, 83 per cent of the Fair Work Ombudsman's court actions alleged breaches of workplace laws by businesses employing migrant workers. We secured nearly \$1.8 million in court-ordered penalties for cases involving visa workers in 2018-19, and recovered almost \$3.2 million.

In addition, the 18-19 annual report confirms 24 per cent of anonymous reports came from migrant workers.

[Matt note: while we don't qualify that 22% figure at all in the annual report, IF we were to provide the raw number behind that 22% we may need to qualify that it's a percentage of all matters *where visa status was recorded*. *Visa status is not recorded for all workplace disputes (or wasn't at least in 17-18).*]

2017-18 visa holders stats (provided in media responses):

While migrant workers make up six per cent of the Australian workforce, this group accounted for 20% of all formal disputes completed by the Fair Work Ombudsman in 2017-18. Last financial year, over 60 per cent of the Fair Work Ombudsman's court actions alleged serious breaches of workplace laws by businesses employing migrant workers. We secured \$4.8 million penalties for decisions involving visa workers in 2017-18.

Need anything further let me know.

s.22 – Irrelevant to request
 Senior Media Adviser
 Fair Work Ombudsman

s.22 – Irrelevant to request

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Fair Work Infoline 13 13 94

www.fairwork.gov.au

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We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#).

d a f rk e an

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 11:42
 To: s.22 – Irrelevant to request
 Subject: FW: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

From: s.22 – Irrelevant to request
 Sent: Wednesday, 13 November 2019 12:03 PM
 To: s.22 – Irrelevant to request
 Subject: FW: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

The following was provided to SBS News by s.22 on 12 June 2019, after they requested data on the number of visa holders the FWO assists (and the type of work we do to assist them). I've found no additional numbers being provided specifically on 417s:

In 2017-18, the Fair Work Ombudsman assisted with 2,158* workplace disputes involving a visa holder (representing 20% of the total workplace disputes FWO assisted with in the year). Of these, 719 requests involved Working Holiday Makers and 421 involved international students.

In 2017-18, the FWO secured \$4.8 million in penalties for decisions involving visa holders, and we assisted in the recovery of over \$2 million in underpayments for visa holders. In the first half of 2018-19, the FWO has already recovered \$1.47 million for visa holders.

It is worth noting that the court actions that concluded in 2017-18 also included some of the highest penalties the FWO has ever secured, such as a \$510,840 penalty in relation to a contract cleaning company that exploited three Taiwanese women on working holiday visas.

The FWO continues to address visa holder exploitation by conducting inquiries to examine workplace practices in sectors employing large numbers of migrant workers, including our Harvest Trail Inquiry report released late last year.

In 2016, the Fair Work Ombudsman also released a report after it concluded its Inquiry into the experiences of overseas workers in Australia on the 417 Working Holiday visa, following a spike in requests for assistance from backpackers over the preceding three year period. The report can be accessed here.

The FWO also recently released its priorities for 2019-20. A key focus of our work will be protecting vulnerable workers, many of whom are young and visa holders. Further information about the priorities is available here.

We encourage any workers who need assistance to contact the Fair Work Ombudsman on 13 13 94 (a translation service is available on 13 14 50), or to visit www.fairwork.gov.au where information is available in 40 languages other than English.

Visa holders should be aware that, in line with an agreement with the Department of Home Affairs, they can seek assistance from the Fair Work Ombudsman without fear of their visa being cancelled. More information is available on our Visa holders and migrants page.

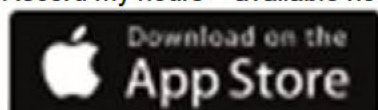
*NOTE: 2,158 is 20 per cent of the total workplace disputes FWO assisted with where visa status was recorded. Visa status is not recorded for all workplace disputes.

-ends-

s.22 – Irrelevant | Senior Media Adviser
Fair Work Ombudsman

s.22 – Irrelevant to request

Record my hours – available now



Fair Work Infoline 13 13 94

www.fairwork.gov.au

[subscribe to email updates](#)



~Please consider the environment before printing this message~

We welcome feedback about your experience with us. It helps us to know what we're doing well and what changes we need to make. Tell us what you think about our services, or request a review of a decision, by completing [our online feedback form](#).

From: s.22 – Irrelevant to request
Sent: Wednesday, 13 November 2019 10:59 AM
To: s.22 – Irrelevant to request
Subject: FW: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22, have you seen any of this data before? Have we provided it anywhere?

From: s.22 – Irrelevant to request
Sent: Wednesday, 13 November 2019 10:47 AM
To: s.22 – Irrelevant to request
Subject: RE: Request for feedback ASAP – Info release to ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi Meg, below is the raw data SRAR produced just then. It would go into a document similar to what we released to s.22. On review of the data, some context may be required to explain the reduction in monies recovered or the data would be merged instead of covering two separate periods.

This data is not publicly available but similar to that released within the 417 inquiry report.

417 VISA HOLDERS	2018-19	2017- 18
Formal Dispute Lodgements received	534	694

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 15 November 2019 10:57
 To: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Updated as discussed.

s.22 – Irrelevant to request

FOI CHARGES ESTIMATE TOOL - SIMPLE (insert data in shaded boxes only)				
GENERAL DATA ESTIMATE (terms in red are explained on the notes sheet)				
Pages (approx) of material in scope	47775	in A4 pages		
Number of discrete relevant documents (I divided 47775 by 3 which is the ave pages per document)	15,925			
Percentage (approx) of pages to disclose in whole	25%			
Percentage (approx) of pages requiring redaction	25%			
Percentage (approx) of content that is applicant's own personal information (I have used 25% for each section above to equal a total of 50% which will account for the review and extraction of data)	0%			
Number of third parties to consult				
PROCESS - search and retrieval		TIME per task	charge time:	COST @ \$15 per hr
Time required to execute searches - enter hours (including part hours eg 0.5)	5	5.00	\$75.00	
Preparing schedules detailing all relevant documents (basic data entry eg doc no, date, description) - enter minutes per 10 documents	5	132.71	\$1,990.63	
<i>Search & Retrieval Subtotal</i>		137.71	\$2,065.63	

PROCESS - decision-making	TIME per task	charge time:	COST @ \$20 per hr
Examine relevant pages for decision making - enter minutes per page	1	796.25	\$15,925.00
Redacting pages that are partially disclosed - enter minutes per page	3	597.19	\$11,943.75
Consult third parties - enter average per third party in hours	0	0.00	\$0.00
Preparation and notification of decision			
Writing statement of reasons - enter hours	5	5.00	\$100.00
Complete schedule by recording decision @ 4 documents per minute		66.35416667	\$1,327.08
<i>Decision-making Subtotal (before deduction of 5 hours)</i>		1464.79	\$29,295.83
<i>Decision-making Subtotal (after deduction of first 5 hours free for all)</i>		1459.79	\$29,195.83

Please find details below to support the calculations within the practical refusal letter.

- SRAR data indicates our information systems show we have received 1470 matters during the period 1 May 2017 to 30 August 2019 which involve 417 visa workers.
- These matters could range from basic enquiries to more drawn out investigations, including litigations.
- Based on FWO statistics, 70% of matters are likely to have been resolved in the earlier stages and 30% of matters which are likely to have progressed to an investigation.
- Recent processing undertaken within CFIA indicates there are on average 100 pages per matter. This figure has been used for the 30% of matters which are likely to have progressed to an investigation.
- The matters finalised using Dispute Resolution have assumed a 50 page average.
- Each of the 1470 matters quoted by SRAR would need to be reviewed to determine:
 - a) Whether the worker has *'undertaken three months of regional work for second-year Working Holiday visa purposes'* and
 - b) Then extract and compile *Documents that show the outcomes...including:*
 - i. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - ii. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*
- 441 matters (30%) x 100 pages = 44,100
- 1029 matters (70%) x 50 pages = 51,450
- TOTAL PAGES: 95,550
- I estimate that approximately 50% of each file would need to be reviewed to be able to determine whether the matter would be in scope of the request. This equates to 47,775 pages to be reviewed.

- I believe this 50% figure is a reasonable and conservative estimate as some matters would have this information stated in the initial RFA and then the decision letter, whereas some would need a more extensive review of peripheral materials including evidence, ROCs/ROIs etc.
- We also need to consider the compilation of the data and presenting it into a suitable format – such as in the s.22 – Irrelevant to request. However, the time taken to do this work should be covered in the other processing times within the charges tool.

Using the AGS charges tool, I have arrived at the following processing time frame – the final hours need to be added into the decision letter:

1459 hours

Although the scope was reduced, as we now have a **more accurate** figure of the matters which may fall within the scope of the request, using a recent estimate of the average number of pages and discreet documents contained within each matter, this accounts for the increase in the processing timeframe.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Tuesday, 12 November 2019 11:40 AM

To: s.22 – Irrelevant to request

Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Review of stakeholder email done. Can you please review and if agreeable accept changes and delete comments and send to s. 1? I think we just need to note that we should commit to a date for issuing the decision early next week.

I'll jump into the decision after lunch.

Cheers,

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Thursday, 7 November 2019 12:55 PM

To: s.22 – Irrelevant to request

Cc:

Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 15 November 2019 11:56
 To: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Having further discussed and considered how we can estimate times at this stage, I have amended my estimate below, which is BEFORE any consideration is given to processing timeframes:

- Search and retrieval of all documents for the 1470 matters: 15mins per matter (?) = 367 hours
- Reviewing each matter to identify whether they are within scope: 5 mins per matter (?) = 122 hours
- TOTAL = 489 hours
- If you used 5 mins for the S&R = 244 hours total.

Only then could we assess additional processing timeframes to identify, extract and compile the information the applicant is seeking.

Thanks

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 15 November 2019 10:57 AM
 To: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Updated as discussed.

s.22 – Irrelevant to request

FOI CHARGES ESTIMATE TOOL - SIMPLE

(insert data in shaded boxes only)

GENERAL DATA ESTIMATE

(terms in red are explained on the notes sheet)

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Number of third parties to consult		

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TIME per task charge time: COST @ \$15 per hr

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 - a) Whether the worker has *'undertaken three months of regional work for second-year Working Holiday visa purposes'* and
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- 1029 matters (70%) x 50 pages = 51,450
- TOTAL PAGES: 95,550
- I estimate that approximately 50% of each file would need to be reviewed to be able to determine whether the matter would be in scope of the request. This equates to 47,775 pages to be reviewed.
- I believe this 50% figure is a reasonable and conservative estimate as some matters would have this information stated in the initial RFA and then the decision letter, whereas some would need a more extensive review of peripheral materials including evidence, ROCs/ROIs etc.
- We also need to consider the compilation of the data and presenting it into a suitable format – such as in the s.22 - Irrelevant to request However, the time taken to do this work should be covered in the other processing times within the charges tool.

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s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 12 November 2019 11:40 AM
 To: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

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s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Thursday, 7 November 2019 12:55 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22

Updated versions in the links below.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 5 November 2019 1:24 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Friday, 15 November 2019 2:42 PM
 To: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL, DLM=Sensitive]

**OFFICIAL
Sensitive**

I will update now

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 15 November 2019 2:08 PM
 To: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive][SEC=OFFICIAL:Sensitive]

Thanks. I think this covers it. It's good to know that we're reasonably estimating 132 hours for the s&r alone. That's a bit over 5 mins over per matter. That sounds right to me when you consider it doesn't capture the process of preparing the docs for the next stage.

This can be reflected in the decision letter. I'll review Monday.

Thanks

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 15 November 2019 2:45 pm
 To: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no [160/19](#) (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Sorry for the confusion....

We have 1470 potentially in scope matters.

Roughly 30% of matters that involved FWO C&E activities @ an average of 100 pages each.

Roughly 70% of matters resolved through education and dispute resolution assistance @ an average of 50 pages each.

- 441 matters (30%) x100 pages = 44,100

- 1029 matters (70%) x 50 pages = 51,450
- **TOTAL PAGES: 95,550**

As our agreed first step we need to determine if the matter is in scope.

To do this, we would need to review an average of 50% of the documents for each matter.

- TOTAL PAGES: 95,550
- 50% x 95,550 = 47,775
- Scanning these pages at 10 seconds per page for identifying relevant information in order to determine whether the matter is in scope = 132 hours

s.22 – Irrelevant
to request

From: s.22 – Irrelevant to request
Sent: Friday, 15 November 2019 1:27 PM
To: s.22 – Irrelevant to request
Subject: RE: FOI inquiry ABC ref no [160/19](#) (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Thanks s.22 – Irrelevant
to request

For our purposes, please confirm my understanding and correct if wrong.

S&R would entail loading documents and decision records associated with each of the 1,470 matters. The documents will be contained within CustomerNET and Titan/Nexus. (Do we have an estimate of how many documents/decision records that is? It's ok if not).

So that figure is based on an estimate that the 30% of matters that involved FWO C&E activities and 70% of matters resolved through education and dispute resolution assistance. I also note that the 30% of matters would likely hold documents over both systems, while the remaining 70% of matters should be limited to CNET.

The 122 hours then reflects the time taken to review the documents. This reflects that 30% of matters have 100 pages of documents, and we would be required to review 50 pages of documents to determine whether they are in scope. And that we'd be required to review 25 of the 50 total pages associated with the remaining 70% of matters.

If so, I think these figures are very defensible.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Friday, 15 November 2019 12:56 PM
To: s.22 – Irrelevant to request
Subject: FW: FOI inquiry ABC ref no [160/19](#) (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

s.22 – Irrelevant to request
 Hi

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 Subject: FW: FOI inquiry ABC ref no [160/19](#) (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Updated as discussed.

s.22 – Irrelevant to request

FOI CHARGES ESTIMATE TOOL - SIMPLE
 (insert data in shaded boxes only)

GENERAL DATA ESTIMATE

(terms in red are explained on the notes sheet)

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ii. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

- 441 matters (30%) x100 pages = 44,100

- 1029 matters (70%) x 50 pages = 51,450

- TOTAL PAGES: 95,550

- I estimate that approximately 50% of each file would need to be reviewed to be able to determine whether the matter would be in scope of the request. This equates to 47,775 pages to be reviewed.
- I believe this 50% figure is a reasonable and conservative estimate as some matters would have this information stated in the initial RFA and then the decision letter, whereas some would need a more extensive review of peripheral materials including evidence, ROCs/ROIs etc.
- We also need to consider the compilation of the data and presenting it into a suitable format – such as in the s.22 – Irrelevant to request. However, the time taken to do this work should be covered in the other processing times within the charges tool.

Using the AGS charges tool, I have arrived at the following processing time frame – the final hours need to be added into the decision letter:

1459 hours

Although the scope was reduced, as we now have a **more accurate** figure of the matters which may fall within the scope of the request, using a recent estimate of the average number of pages and discreet documents contained within each matter, this accounts for the increase in the processing timeframe.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 12 November 2019 11:40 AM
 To: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no [160/19](#) (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Review of stakeholder email done. Can you please review and if agreeable accept changes and delete comments and send to [redacted]? I think we just need to note that we should commit to a date for issuing the decision early next week.

I'll jump into the decision after lunch.

Cheers,

s.22 – Irrelevant to request

From: [redacted]
Sent: Thursday, 7 November 2019 12:55 PM
To: [redacted]
Cc: [redacted]
Subject: FW: FOI inquiry ABC ref no [160/19](#) (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi [redacted]

Updated versions in the links below.

s.22 – Irrelevant to request

From: [redacted]
Sent: Tuesday, 5 November 2019 1:24 PM
To: [redacted]
Cc: [redacted]
Subject: RE: FOI inquiry ABC ref no [160/19](#) (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

s.22 – Irrelevant

From: s.22 – Irrelevant
 Sent: Thursday, 21 November 2019 4:34 PM
 To: s.22 – Irrelevant
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

fyi

From: s.22
 Sent: Thursday, 21 November 2019 5:01 PM
 To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

s.22 –
 Irrelevant to
 request

Linked below is the updated decision letter with tracked changes. There's still a placeholder for once we confirm what if any data we provide.

Regarding disputes data more broadly. There are two kinds reported in our annual report. The first is 'formal disputes' which is what is reported on in the data provided to us by SRAR. These include requests for assistance submitted through My Account, paper based forms and those that make it through to a compliance team. This is because these forms include a lot of required/optional fields that customers fill out when seeking our assistance, including their visa-status.

The remaining matters, which appear to form the majority, are usually ones that arise from infoline enquiries. Increasingly ASA is providing assistance to resolve disputes without the requirement to lodge a formal dispute. For example CSD may provide some initial self-resolution assistance and then refer to a dispute resolution team, without requiring the employee to formally request our assistance (as an aside, there is now a privacy script read out that is the same as what is in the RfA, that the customer must consent to). This means that certain information is not captured during the intake process.

If we are seeking to detail the distinction in any meaningful way, including in writing or verbally to either applicant, I think we will require written confirmation from SRAR or others about this distinction. However this is probably sufficient as a basis to understand the difference.

Regards,

s.22 – Irrelevant to request

s.22 – Irrelevant to request
 From: s.22 – Irrelevant to request
 Sent: Tuesday, 5 November 2019 2:24 PM
 To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: SensitiveConfidential & Deliberative

Hi s.22 – Irrelevant to request

Please see the following drafts for your review, per s.22 request below:

- [IA-1072 Notice of Decision](#)
- [Email to Directors of Policy, SRAR and Media](#), that outlines our proposed approach.

Regarding the due date...there are two approaches here (thanks s. for you discussion and clarification on this!):

- The first being that we consider the revised scope as a new request and begin the statutory processing timeframes from the date this was confirmed 23 October 2019, therefore due date would be 30 days from then.
- The second being that we consider it the same original request which was due on 18 October, but which was paused for s24AB consultation after 16 days. Then once the revised scope was confirmed it recommenced the day after, being 24 October and the remaining 14 days brings us to 6 November.

Let me know if there's anything further I can do on this.

Thanks

s.22 – Irrelevant to request

From: KENT,Annabel <Annabel.Kent@fwo.gov.au>
Sent: Friday, 1 November 2019 1:31 PM
To: WOCKNER,Jennifer <Jennifer.Wockner@fwo.gov.au>
Cc: HANKINS,Cameron <Cameron.Hankins@fwo.gov.au>; MENZIES,Daniel <Daniel.Menzies@fwo.gov.au>
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Confidential & Deliberative

Hi s. (FYI s.22) Below is s.22 – Irrelevant follow-up assessment of this matter, confirming your thoughts and adding some extra useful analysis and scope for action (I've highlighted some key parts)... Have a read and chat to s.22 if you have any follow-up questions and concerns... I'm really grateful to both of you for your work on this.

Please now go ahead and prepare an email from me to Directors of Policy, SRAR and Media, copying in s.22 and s., that outlines our proposed approach to send the applicant a letter that includes:

1. an access refusal decision with brief explanation of reasons why (expand), and
2. an offer to provide the applicant with the data about 417 visa holders highlighted in yellow below. I want to be clearer about how we define 'compliance outcomes'. Probably worth having a chat to someone like s.22 in SRAR to confirm that SRAR can provide what we think they can.

Please send draft email to s.22 for his review by Wednesday morning..... we'll aim to get the email off by the end of next week. I'm presuming our statutory deadline for this matter is 22 Nov (it wasn't in Corp Board report) given applicant confirmed scope on 23 Nov? Please double check.

Thanks – good teamwork on this one! s.22 or I will call the applicant prior to sending the letter and after we've confirmed the approach with stakeholders.

s.22 – Irrelevant to request

s.22 – Irrelevant to request

Director (a/g) – Customer Feedback and Information Access

Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Friday, 1 November 2019 1:26 PM

To: s.22 – Irrelevant to request

Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi,

So in terms of the actual scope, I think s. is right. But I have also thought about what we might be able to provide.

There are two types of 417 visa holders. A 417 visa gives you the right to work in Australia for up to 12 months. If you [‘have completed three months specific work in a regional area’](#) your visa is extended a further 12 months.

What the applicant is seeking is information which relates to those three months’ work (or longer) to obtain your second year under the visa. We do not distinctly record when someone is working in that three month period (and it may not always be relevant to the matter at hand). Also, there is no distinct visa category while you are performing that three months’ work. It’s both an issue with how matters are recorded in our system but that there’s nothing setting the two types of visa categories apart at DoHA’s end either. There is also nothing that distinctly records that one is performance ‘specific work in a regional area’, you provide ordinary documents when applying for your second year visa.

s.22 – Irrelevant from SRAR has advised that they can provide a list of all the matters involving 417 visa holders, with the related matter number and monies recovered. It is possible to do a manual search, however, we’d very likely be looking at in excess of a thousand matters for the period between 1 May 2017 and 30 August 2019.

I think we can quite clearly explain the limitation of our system if we are to refuse access. We can also explain, if we wanted, that our prior inquiry involved manual input and information was captured with the intent of producing a report at the end, which is not standard practice for all matters.

In terms of if there is any data that could be provided, **which would not necessarily be in scope of the request but which might be of interest to the applicant: we could provide the total monies recovered over the period, or sets of periods, for all 417 visa holders. We could also provide information about any compliance outcomes. SRAR could easily produce this kind of information.**

Whether we release this information is a matter for us to consider proposing, I imagine being guided by the views of our internal stakeholders – **mainly policy, SRAR and media.**

Let me know if you’d like to discuss.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Monday, 28 October 2019 4:46 PM

To: s.22 – Irrelevant to request

Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

FYI

From: s.22 – Irrelevant to
Sent: Friday, 25 October 2019 9:04 AM
To: s.22 – Irrelevant to request
Cc:
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi s.22

It is my view that we issue a Access Refusal on the basis that documents cannot be found or do not exist as our systems do not capture data sets that relate to the year level of the Visa Holder and time period worked in a regional area.

There is possibly information that relates to the scope request however manual searches of each matter/campaign etc would need to done to this which was the basis for our previous access refusal notice.

You will note in the table below my summary of responses from our internal stakeholders relating to the original scope request.

Moving forward I would suggest writing to our stakeholders and executives with advice that the scope request was revised by the ABC and of our intention to refuse access.

s.22 – Irrelevant to

Business Unit - Contact	Documents
General Protections – s.22 – Irrelevant to request	A lot of documents would exist for our team but we'd need to look at hundreds of investigations then they would have hundreds of thousands of documents or more, to work out if there is anything that would search by attribute so would have to look at every matter to see if any deal with 417 visa holders and then read all documents for relevant matters.
International Labour Strategy – s.22 – Irrelevant to request	ILS are likely to have SE briefs, other briefs and papers prepared for the MWT, and potentially email s.22 (Home Affairs) about pay slips, further details below for your consideration.
Oversees Workers Team s.22 – Irrelevant to request	6 investigations related to this issue. Email communication with Home Affairs regarding referral of matters/meetings. Currently undertaking Inquiry in to the regional work requirement relating to report released in October.
Intelligence Team – s.22 – Irrelevant to request	Intelligence Team produces narrative driven reports for an operations purpose that contain descriptions of FWO dispute interactions and assistance provided to 417 Visa workers in regional areas. Intelligence reports are not searchable within the FWO information systems by geography or Visa type. Intelligence Team would therefore need to abstract and review reports across industries, businesses and visa types– this is likely to exceed 200 reports (average of 5 pages each) and will require operational knowledge for the purpose of the report.
SRAR – s.22 – Irrelevant to request	A dataset comprising of a list of FWO disputes completed in relation to 417 visa holders could be recovered with payment date from FWO CRM systems. Employer location can be provided in the dataset in order to identify those that relate to employers in regional areas. No data sets available for the location of Visa Holder.

	SRAR produces a number of reports /analysis pieces that include data regarding 417 visa holders in reports/Senate Estimate data / Operational reports and analysis reports which hold commentary (e cohort / Horticultural reports)
Operations – Compliance and Enforcement s.22 – Irrelevant to request	There will be contravention letters, CN's and LoC's that may contain this information and there would be documents given the request spreads over a significant period. This information would be contained in Titan and would be very difficult to pull from Nexus as this is an archived system and Titan would be problematic.
Proactive Compliance s.22 – Irrelevant to request	Campaign matters relating to employers of Visa workers (assessments). Difficult to extract information and would require a manual search of each matter/campaign.
Policy s.22 – Irrelevant to request	Briefings and correspondence relating to FWO Senate Estimates. Content on regional work is limited to Publically available information on 417 visa holders including questions on notice, submissions and Senate enquiries, Annual reports

From: KENT,Annabel <Annabel.Kent@fwo.gov.au>
Sent: Thursday, 24 October 2019 10:15 PM
To: WOCKNER,Jennifer <Jennifer.Wockner@fwo.gov.au>
Cc: HANKINS,Cameron <Cameron.Hankins@fwo.gov.au>
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Hi [redacted]. Are you happy to pick this one up again now that scope has been confirmed? Just have a think about next steps and we can discuss on Monday. Thanks, [redacted]

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Wednesday, 23 October 2019 1:05 PM
To: FWO - FOI Requests <FOI@fwo.gov.au>
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Dear Ms Kent,

Yes, the scope is correct.

Thanks,
Katri

From: FWO - FOI Requests <FOI@fwo.gov.au>
Sent: Monday, 21 October 2019 1:09 PM
To: Katri Uibu <Uibu.Katri@abc.net.au>
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Ms Uibu

Thank you for your email on 15 October 2019.

Based on your responses to the questions posed regarding the scope of your FOI request, we understand that you are seeking -

the following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;
2. Documents that show the outcomes of the above complaints, including:
 - a. information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and
 - b. information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.

Please confirm in writing whether the above scope is correct. Once we have received your confirmation, we will commence further consultation with relevant FWO business units to understand how many relevant documents the FWO is likely to hold, and will be in touch.

Sincerely

Annabel Kent | Director (a/g) – Customer Feedback and Information Access
Fair Work Ombudsman

s.22 – Irrelevant to request

Fair Work Infoline 13 13 94

www.fairwork.gov.au

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MIGRANT WORKERS

Disputes completed 2017-18 & 2018-19 FYs

In the 2018-19 FY, the FWO completed 1,647 formal dispute lodgements relating to migrant workers¹. While this is a decrease from the 2,158 completed in 2017-18, it was a proportional increase from 20% to 22% of all formal dispute lodgements completed by FWO in those years.

Formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
Formal dispute lodgements completed – Visa holders	1,647	2,158
% of all FWO formal dispute lodgements completed	22%	20%

In 2018-19, 532 formal dispute lodgements involved 417 Working Holiday Makers and 719 matters were recorded in the previous FY.

The most common allegation for all migrant workers included in completed formal dispute lodgements in both years was workers not being paid for time worked. This allegation was present in 23% of formal dispute lodgements.

Top 5 allegations ² in formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
1	Wages – Not Paid for Time Worked (23%)	Wages – Not Paid for Time Worked (24%)
2	Wages – Underpayment of Hourly Rate (16%)	Wages – Underpayment of Hourly Rate (19%)
3	Wages and Conditions (10%)	Termination (10%)
4	Termination (9%)	Wages and Conditions (9%)
5	Leave – Annual Leave (6%)	Leave – Annual Leave (5%)

¹ A formal dispute is one that is submitted through specific channels whereby the worker can self-identify demographic information. Individual demographic dispute data is available where a formal dispute is lodged with the FWO. Formal dispute lodgements completed are a subset of all disputes completed by FWO.

² One formal dispute lodgement may include multiple allegations. Top 5 allegation percentages are based on the total number of allegations present in all formal dispute lodgements from visa holders.

14% of formal disputes completed for migrant workers in 2018-19 were dealt with via compliance and enforcement activities. In 3% of those cases investigated, one of the four types of statutory enforcement outcomes available to the FWO under the Fair Work legislation³ or a formal letter of caution was applied. Where one or more of those outcomes is not appropriate (for example based on evidentiary issues or not satisfying the legislative requirements), investigations may be concluded or a compliance outcome applied in the form of findings under the *Fair Work Regulations 2009* requiring certain actions to be taken.

The 14% of disputes involving migrant workers compares to 4% of all FWO disputes resolved through compliance and enforcement activities, with 1% having a compliance or enforcement outcome applied.

Outcomes ⁴		
Formal dispute lodgements completed involving a migrant worker	2018-19	2017-18
Education and dispute resolution	1,412 (86%)	1,805 (84%)
Compliance and enforcement:	235 (14%)	353 (16%)
- With enforcement outcome applied	56 (3%)	106 (5%)
All FWO disputes completed	2018-19	2017-18
Education and dispute resolution	27,874 (96%)	27,074 (96%)
Compliance and enforcement:	1,256 (4%)	1,201 (4%)
- With enforcement outcome applied	269 (1%)	291 (1%)

³ Statutory enforcement outcomes include infringement notices, compliance notices, enforceable undertakings and civil litigation. Refer to the FWO's Compliance and Enforcement Policy for more information on the enforcement outcomes.

⁴ Education and Dispute Resolution activities provide information and support to employees and employers to resolve workplace disputes. Workplace disputes with indicators or allegations of serious non-compliance are referred for investigation and consideration of compliance and enforcement action.

s.22 – Irrelevant

From: s.22 – Irrelevant to
 Sent: Friday, 22 November 2019 10:39 AM
 To: s.22 –
 Cc: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]
 Attachments: IA-1072 - Ms Katri Uibu - Migrant Workers - Disputes completed 2017-18 & 2018-19 FYs.pdf

OFFICIAL: Sensitive

Here it is. This would be the final version if the content is settled. I've only sent a draft previously. It has the same watermark for what was included for s.22

It is the same as the other sheet prepared for the s.22 - Irrelevant to but has an additional sentence noting disputes specifically relating to 417 visa-holders. It also clarifies that dispute type relates to all migrant workers.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Thursday, 21 November 2019 5:46 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi. Thank you, this looks good.... But I'll need the pdf document to send to stakeholders too – final version – can you please send it to me? Apologies if you've already sent it to me, I couldn't see it in chain below...

From: s.22 – Irrelevant to request
 Sent: Thursday, 21 November 2019 4:31 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Linked below is the updated decision letter with tracked changes. There's still a placeholder for once we confirm what if any data we provide.

Regarding disputes data more broadly. There are two kinds reported in our annual report. The first is 'formal disputes' which is what is reported on in the data provided to us by SRAR. These include requests for assistance submitted through My Account, paper based forms and those that make it through to a compliance team. This is because these forms include a lot of required/optional fields that customers fill out when seeking our assistance, including their visa-status.

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Regards,

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Tuesday, 5 November 2019 2:24 PM
To: s.22 – Irrelevant to request
Cc: s.22 – Irrelevant to request
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Confidential & Deliberative

Hi s.22 – Irrelevant

Please see the following drafts for your review, per Annabel's request below:

- [IA-1072 Notice of Decision](#)
- [Email to Directors of Policy, SRAR and Media](#), that outlines our proposed approach.

Regarding the due date...there are two approaches here (thanks s. for you discussion and clarification on this!):

- The first being that we consider the revised scope as a new request and begin the statutory processing timeframes from the date this was confirmed 23 October 2019, therefore due date would be 30 days from then.
- The second being that we consider it the same original request which was due on 18 October, but which was paused for s24AB consultation after 16 days. Then once the revised scope was confirmed it recommenced the day after, being 24 October and the remaining 14 days brings us to 6 November.

Let me know if there's anything further I can do on this.

Thanks

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
Sent: Friday 1 November 2019 1:31 PM
To: s.22 – Irrelevant to request
Cc:
Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

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MIGRANT WORKERS

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⁴ Education and Dispute Resolution activities provide information and support to employees and employers to resolve workplace disputes. Workplace disputes with indicators or allegations of serious non-compliance are referred for investigation and consideration of compliance and enforcement action.

s.22 – Irrelevant

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Monday, 25 November 2019 9:29 AM
To: FWO - FOI Requests
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Follow Up Flag: Follow up
Flag Status: Completed

Categories: s.22 – Irrelevant to request Saved to SharePoint

Good morning,
 Could you please advise when the documents will be released under the FOI Act?
 Kind regards,
 Katri Uibu
 ABC News
 0474901768

From: Katri Uibu
Sent: Wednesday, 23 October 2019 1:05 PM
To: FWO - FOI Requests
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

Dear Ms Kent,
 Yes, the scope is correct.
 Thanks,
 Katri

From: FWO - FOI Requests <FOI@fwo.gov.au>
Sent: Monday, 21 October 2019 1:09 PM
To: Katri Uibu <Uibu.Katri@abc.net.au>
Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Ms Uibu
 Thank you for your email on 15 October 2019
 Based on your responses to the questions posed regarding the scope of your FOI request, we understand that you are seeking -
the following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*
 - a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

Please confirm in writing whether the above scope is correct. Once we have received your confirmation, we will commence further consultation with relevant FWO business units to understand how many relevant documents the FWO is likely to hold, and will be in touch.

Sincerely


Annabel Kent | Director (a/g) – Customer Feedback and Information Access

s.22 – Irrelevant to request

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Phone call with applicant ☰

Subject *	Phone call with applicant		
Call From *	 Cameron Hankins		
Call To *	Katri Uibu		
Phone Number	Direction	Outgoing

Description

Received request for status update on 22.11.19. Returned call on 25.11.19. Advised that request is being processed, draft decision created and is awaiting review and clearance. We expect to have the matter finalised by the end of the week. Applicant had no further questions.

Regarding

 IA-1072 - Direct FOI Request - ABC (Katri Uibu)

Duration

15 minutes

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Monday, 2 December 2019 10:50 AM
 To: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]
 Attachments: IA-1072 - Ms Katri Uibu - Migrant Workers - Disputes completed 2017-18 & 2018-19 FYs.pdf

From: s.22
 Sent: Friday, 29 November 2019 3:15 PM
 To: s.22 – Irrelevant to request
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Can you please send me asap version of the attached without that big watermark? I don't think we need it and it's a bit distracting. Thanks.

I'll then try and get our internal stakeholder email out asap regarding our proposed approach. I'd like to try and get the decision out next week if possible.

Thanks

s.22 – Irrelevant to request

Regarding disputes data more broadly. There are two kinds reported in our annual report. The first is 'formal disputes' which is what is reported on in the data provided to us by SRAR. These include requests for assistance submitted through My Account, paper based forms and those that make it through to a compliance team. This is because these forms include a lot of required/optional fields that customers fill out when seeking our assistance, including their visa-status.

The remaining matters, which appear to form the majority, are usually ones that arise from infoline enquiries. Increasingly ASA is providing assistance to resolve disputes without the requirement to lodge a formal dispute. For example CSD may provide some initial self-resolution assistance and then refer to a dispute resolution team, without requiring the employee to formally request our assistance (as an aside, there is now a privacy script read out that is the same as what is in the RfA, that the customer must consent to). This means that certain information is not captured during the intake process.

If we are seeking to detail the distinction in any meaningful way, including in writing or verbally to either applicant, I think we will require written confirmation from SRAR or others about this distinction. However this is probably sufficient as a basis to understand the difference.

Regards,

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 5 November 2019 2:24 PM
 To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Confidential & Deliberative

Hi s.22 – Irrelevant to request

Please see the following drafts for your review, per s.22 request below:

- [IA-1072 Notice of Decision](#)
- [Email to Directors of Policy, SRAR and Media](#), that outlines our proposed approach

Regarding the due date...there are two approaches here (thanks Dan for you discussion and clarification on this!):

- The first being that we consider the revised scope as a new request and begin the statutory processing timeframes from the date this was confirmed 23 October 2019, therefore due date would be 30 days from then.
- The second being that we consider it the same original request which was due on 18 October, but which was paused for s24AB consultation after 16 days. Then once the revised scope was confirmed it recommenced the day after, being 24 October and the remaining 14 days brings us to 6 November.

Let me know if there's anything further I can do on this.

Thanks

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Friday, 1 November 2019 1:31 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Confidential & Deliberative

Hi s. (FYI s.22) Below is s.22 follow-up assessment of this matter, confirming your thoughts and adding some extra useful analysis and scope for action (I've highlighted some key parts)... Have a read and chat to s.22 – if you have any follow-up questions and concerns... I'm really grateful to both of you for your work on this.

Please now go ahead and prepare an email from me to Directors of Policy, SRAR and Media, copying in s.22 – and s.22 that outlines our proposed approach to send the applicant a letter that includes:

1. an access refusal decision, with brief explanation of reasons why (expand), and



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MIGRANT WORKERS

Disputes completed 2017-18 & 2018-19 FYs

In the 2018-19 FY, the FWO completed 1,647 formal dispute lodgements relating to migrant workers¹. While this is a decrease from the 2,158 completed in 2017-18, it was a proportional increase from 20% to 22% of all formal dispute lodgements completed by FWO in those years.

Formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
Formal dispute lodgements completed – Visa holders	1,647	2,158
% of all FWO formal dispute lodgements completed	22%	20%

In 2018-19, 532 formal dispute lodgements involved 417 Working Holiday Makers and 719 matters were recorded in the previous FY.

The most common allegation for all migrant workers included in completed formal dispute lodgements in both years was workers not being paid for time worked. This allegation was present in 23% of formal dispute lodgements.

Top 5 allegations ² in formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
1	Wages – Not Paid for Time Worked (23%)	Wages – Not Paid for Time Worked (24%)
2	Wages – Underpayment of Hourly Rate (16%)	Wages – Underpayment of Hourly Rate (19%)
3	Wages and Conditions (10%)	Termination (10%)
4	Termination (9%)	Wages and Conditions (9%)
5	Leave – Annual Leave (6%)	Leave – Annual Leave (5%)

¹ A formal dispute is one that is submitted through specific channels whereby the worker can self-identify demographic information. Individual demographic dispute data is available where a formal dispute is lodged with the FWO. Formal dispute lodgements completed are a subset of all disputes completed by FWO.

² One formal dispute lodgement may include multiple allegations. Top 5 allegation percentages are based on the total number of allegations present in all formal dispute lodgements from visa holders.

14% of formal disputes completed for migrant workers in 2018-19 were dealt with via compliance and enforcement activities. In 3% of those cases investigated, one of the four types of statutory enforcement outcomes available to the FWO under the Fair Work legislation³ or a formal letter of caution was applied. Where one or more of those outcomes is not appropriate (for example based on evidentiary issues or not satisfying the legislative requirements), investigations may be concluded or a compliance outcome applied in the form of findings under the *Fair Work Regulations 2009* requiring certain actions to be taken.

The 14% of disputes involving migrant workers compares to 4% of all FWO disputes resolved through compliance and enforcement activities, with 1% having a compliance or enforcement outcome applied.

Outcomes ⁴		
Formal dispute lodgements completed involving a migrant worker	2018-19	2017-18
Education and dispute resolution	1,412 (86%)	1,805 (84%)
Compliance and enforcement:	235 (14%)	353 (16%)
- With enforcement outcome applied	56 (3%)	106 (5%)
All FWO disputes completed	2018-19	2017-18
Education and dispute resolution	27,874 (96%)	27,074 (96%)
Compliance and enforcement:	1,256 (4%)	1,201 (4%)
- With enforcement outcome applied	269 (1%)	291 (1%)

³ Statutory enforcement outcomes include infringement notices, compliance notices, enforceable undertakings and civil litigation. Refer to the FWO's Compliance and Enforcement Policy for more information on the enforcement outcomes.

⁴ Education and Dispute Resolution activities provide information and support to employees and employers to resolve workplace disputes. Workplace disputes with indicators or allegations of serious non-compliance are referred for investigation and consideration of compliance and enforcement action.

s.22 – Irrelevant

From: s.22 – [REDACTED]
Sent: Monday, 16 December 2019 4:21 PM
To: s.22 – Irrelevant to request [REDACTED]
Subject: FW: IA-1072 - Ms Katri Uibu - Migrant Workers - Disputes completed 2017-18 2018-19 FYs.pdf [SEC=OFFICIAL:Sensitive]
Attachments: IA-1072 - Ms Katri Uibu - Migrant Workers - Disputes completed 2017-18 2018-19 FYs.pdf; FWO data re Migrant Worker matters Dec 2019.dotx

OFFICIAL: Sensitive

Hi guys. I'm still trying to look for a word version of the attached pdf... s.22 – Irrelevant and I found a word version of a much earlier version (second attachment), but it's substantially different from the attached.... (second page).... It's not a biggie as we can retype the second page....

Anyone have it handy? Then I can make suggested final changes and send to stakeholders tonight for approval...

Thanks and sorry I'm only picking this up now

s.22

From: s.22 – Irrelevant to request [REDACTED]
Sent: Monday, 2 December 2019 11:24 AM
To: s.22 – Irrelevant to request [REDACTED]
Subject: IA-1072 - Ms Katri Uibu - Migrant Workers - Disputes completed 2017-18 2018-19 FYs.pdf [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Done ☺

MIGRANT WORKERS

Disputes completed 2017-18 & 2018-19 FYs

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MIGRANT WORKERS

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The most common allegation included in completed formal dispute lodgements in both years was workers not being paid for time worked. This allegation ~~was present~~ appeared in 23% of formal dispute lodgements.

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Formatted: Superscript

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Formatted: Normal, Paragraph, Border: Top: (Single solid line, Auto, 0.5 pt Line width), Tab stops: 8 cm, Centered + 16 cm, Right

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s.22 – Irrelevant

From: s.22 – Irrelevant
 Sent: Monday, 16 December 2019 7:56 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: RE: Proposed FOI decision for ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi
 I tracked some minor amendments as I couldn't remember if this is still on my list!
 Thanks

s.22 – Irrelevant to request

Executive Director – Finance, Assurance & Business Services

Fair Work Ombudsman

s.22 – Irrelevant to request



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~Please consider the environment before printing this message~

From: s.22 – Irrelevant to request
 Sent: Monday, 16 December 2019 6:51 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: Proposed FOI decision for ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 and s.22

For your info and review if you wish -

Attached via below link is our proposed response to ABC journalist Katri Uibu – a notice of a practical refusal decision under s24 of the FOI Act (substantial and unreasonable diversion of resources) -

[IA-1072 Notice of Decision](#)

I don't think the decision is at all controversial, but please let me know if anything jumps out for you as inaccurate or inappropriate.

As foreshadowed with internal stakeholders, we are planning to provide Ms Uibu with some data re migrant worker disputes that is consistent with previously released data.

I am just tidying up that word document and expect to run it past the Media, Policy and SRAR teams again tomorrow, along with the key parts of the attached decision. I will send you a copy to consider also.

Happy to discuss. I am very keen to try and get the decision package to Ms Uibu by the end of this week and ideally before I go on leave on **s.22 – Irrelevant**

Thank you

s.22 – Irrelevant to request

Assistant Director – Information Governance

Fair Work Ombudsman

s.22 – Irrelevant to request

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Tuesday, 17 December 2019 9:00 PM
 To: s.22 – Irrelevant to request
 Cc: [REDACTED]
 Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 Attachments: Migrant Workers - Disputes completed 2017-18 and 2018-19 FYs.docx

OFFICIAL: Sensitive

Hi s.22. Are you able to please spend some time tomorrow (Wed) urgently trying to update the relevant word doc? I've attached it again to this email....

If you're able to make some suggested tracked changes to the doc that address ILS' main concerns (below), that would be a great start for me to then pick up asap on Thursday morning and discuss with s.22 and s.22 again....

It should never have got to this point, but let's discuss learnings (for me too) after this matter has been finalised.

I have committed to getting some info to the ABC journalist by Friday, so even if we strip the document right back and just provide her limited data and only non-controversial explanations, that would be better than nothing.

Please call me tomorrow if you hit a roadblock, otherwise I'll talk to you asap on Thursday.

Thanks,

s.22 – Irrelevant to request

From: FWO - FOI Requests

Sent: Tuesday, 17 December 2019 6:42 PM

To: s.22

Cc: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

Hi s.22 – Irrelevant

Thank you so much and thank goodness we included your team in this round of consultation. I understand your concerns and think we clearly need to do more work to ensure the information released is more consistent with the current narrative around migrant workers. The document is largely consistent with a document previously released to ABC under FOI, but I don't know whether ILS was consulted at that time. In any case, let's try and alter the response this time.

As we are under considerable time pressure to get some information to the journalist by this Friday, I hope you don't mind me copying in others at this time. We will work on updating the word document before consulting with you, s.22 and s.22 again.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 17 December 2019 5:18 PM
 To: FWO - FOI Requests <FOI@fwo.gov.au>

Cc: JUHASZ,Jolanka <Jolanka.Juhasz@fwo.gov.au>; TRUNDLE,Carey <Carey.Trundle@fwo.gov.au>

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi Annabel

Thank you for the opportunity to comment. **s.22 - Irrelevant to** and I have reviewed and are thoughts are consolidated below:

- Our current 'narrative' around migrant workers is that this cohort is a priority for the FWO, we offer them tailored assistance and we are focussed on encouraging migrant workers to seek our help by removing barriers that make them reluctant to contact us – the data and supporting information in the proposed response doesn't convey this.
- The comparison of 2017-18 to 2018-19 data doesn't appear to add any value, if anything it suggests that less migrant workers are approaching the FWO for assistance (which may or may not be the case) but in any case may result in criticism directed towards the FWO.
- Remove reference to disputes completed *for* migrant workers – as we don't represent either party it would be more appropriate to say '14% of formal disputes *involving* migrant workers...'
- Re-structure the information on the second page to make it easier to digest, suggest one paragraph about % of migrant worker disputes that progress to C and E compared to all disputes, and a second paragraph about factors that impact whether enforcement outcomes are appropriate.
- Include information about the % of litigations commenced in 2018/19 which involved a migrant worker – this statistic demonstrates how we are using our resources to prioritise migrant workers and aligns with our narrative.
- Reconsider inclusion of the data table on the second page – or include more supporting information/footnotes to explain our operating model and make clear that education and dispute resolution activities don't involve findings of non-compliance.
- This may have already been considered, but given the journalist is requesting information about 417 visa holders, suggest that the response could focus on that cohort rather than migrant workers more broadly, with some explanatory words around the way we collect data (which is touched upon in the letter from Annabel).

Please let me know if you'd like to chat at all.

Thanks again

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 17 December 2019 1:43 PM

To: **s.22 – Irrelevant to request**

s.22 – Irrelevant to request

Subject: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Hi everyone,

Request for your input by this Friday 20 November – release of data to ABC journalist

We are trying to finalise an FOI decision this week and are seeking your teams' urgent assistance please. I apologise for the short turnaround.

You may recall earlier emails and discussions regarding the FOI request from Ms Katri Uibu, an ABC journalist, for detailed information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa.

We intend to issue the attached Notice of Decision - a practical refusal decision (under section 24 of the FOI Act) - on the basis that the work involved to complete the required level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations'.

Action

We would like to provide Ms Uibu with data about formal disputes lodged by migrant workers over the past two financial years, including data about the allegations raised in those disputes and the enforcement outcomes applied.

Could your teams please consider the attached form of data and let us know asap of any suggested amendments, deletions or concerns? (See first word doc attachment)

We have adopted the same approach in response to previous FOI requests from journalists seeking information about migrant workers. I understand there may be some concern still about the second page of data. SRAR have kindly collated the data and we have worked together on some of the accompanying explanations that I am not confident about.

Please call me directly if you would prefer to discuss rather than email. I appreciate it is a super busy time of year and apologise again for the urgency.

Thanks and kind regards,

s.22 – Irrelevant to request

Assistant Director – Information Governance

Fair Work Ombudsman

s.22 – Irrelevant to request

Alternative data the Media team has provided me -

2018-19 visa holders stats

While migrant workers make up **6%** of the Australian workforce, this group accounted for **22%** of all formal disputes completed by the Fair Work Ombudsman in 2018-19. In addition, **24%** of anonymous reports came from migrant workers

Last financial year, **83%** of the Fair Work Ombudsman's court actions alleged breaches of workplace laws by businesses employing migrant workers.

We secured over **\$1.7 million** in court-ordered penalties for cases involving visa workers in 2018-19.

We recovered over **\$3.1 million** for migrant workers.

2018-19 FRAC stats

While the hospitality industry accounts for **7%** of the labour force, this group accounted for **17%** of all disputes the FWO assisted with and **36%** of all anonymous reports we received in the last financial year.

Last financial year, **56%** of the Fair Work Ombudsman's court actions alleged breaches of workplace laws by the FRAC industry.

We secured over **\$1.6 million** in court-ordered penalties for cases involving fast food, restaurant and cafés.

We recovered over **\$5.1 million** for hospitality workers.

MIGRANT WORKERS

Disputes completed - 2017-18 & 2018-19 financial year

In the 2018-19 financial year, the FWO completed 1,647 formal dispute lodgements relating to migrant workers¹. While this is a decrease from the 2,158 completed in the 2017-18 financial year, it represents a proportional increase from 20% to 22% of all formal dispute lodgements completed by FWO in those years.

Formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
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% of all FWO formal dispute lodgements completed	22%	20%

In the 2018-19 financial year, 532 formal dispute lodgements involved 417 Working Holiday Makers. This compares with 719 matters recorded in the previous financial year.

The most common allegation raised by migrant workers amongst the completed formal dispute lodgements over both financial years relates to workers not being paid for time worked. This allegation featured in 23% of the formal dispute lodgements.

Top 5 allegations ² in formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
1	Wages – Not Paid for Time Worked (23%)	Wages – Not Paid for Time Worked (24%)
2	Wages – Underpayment of Hourly Rate (16%)	Wages – Underpayment of Hourly Rate (19%)
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¹ A formal dispute is one that is submitted through specific FWO channels that enable the worker to self-identify demographic information. Formal dispute lodgements completed are a subset of all disputes completed by FWO.

² One formal dispute lodgement may include multiple allegations. The "Top 5" allegation percentages are based on the total number of allegations present in all formal disputes lodged by visa holders.

14% of formal disputes completed for migrant workers in 2018-19 were dealt with via compliance and enforcement activities. In 3% of disputes that progressed to the investigation stage, an enforcement outcome or a formal letter of caution was applied.³ There are several reasons why an enforcement outcome will not be appropriate, including when there are issues relating to a lack of reliable evidence or if other present factors mean the legislative requirements for a particular statutory outcome are not met. Sometimes, investigations lead to the FWO making findings under the *Fair Work Regulations 2009*.

In comparison to the above-mentioned 14% statistic, 4% of all FWO disputes are resolved through compliance and enforcement activities, with 1% leading to the application of a compliance or enforcement outcome in accordance with the *Fair Work Act 2009* and the FWO's Compliance & Enforcement Policy.

Outcomes⁴		
<i>Formal dispute lodgements completed involving a migrant worker</i>	2018-19	2017-18
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- With enforcement outcome applied	269 (1%)	291 (1%)

³ The 4 available enforcement outcomes possible under the *Fair Work Act 2009* include infringement notices, compliance notices, enforceable undertakings and civil litigation. More information is available via the FWO's Compliance and Enforcement Policy available via www.fwo.gov.au.

⁴ Education and Dispute Resolution activities provide information and support to employees and employers to resolve workplace disputes. Workplace disputes with indicators or allegations of serious non-compliance are referred for investigation and consideration of compliance and enforcement action.

s.22 – Irrelevant

From: s.22 – Irrelevant
 Sent: Tuesday, 17 December 2019 10:44 AM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: RE: Proposed FOI decision for ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

That's done 😊

Just one remaining comment about the DoHA abbreviation to be removed.

s.22

From: s.22 – Irrelevant to request
 Sent: Tuesday, 17 December 2019 10:00 AM
 To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: FW: Proposed FOI decision for ABC (IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22

Could you please review and update Attachment A to this letter, and make sure our template is updated also?
 Thanks -

[IA-1072 Notice of Decision](#)

I'd also be grateful if you could do one more proof read of the letter before sending link to me. I'll send it to internal stakeholders asap today.

Thank you! In the meantime, I'll be updating the extra data I'm hoping we can send to the applicant at the same time.

s.22 – Irrelevant to request

Assistant Director – Information Governance

Fair Work Ombudsman

s.22 – Irrelevant to request



Fair Work

OMBUDSMAN

Our reference: IA-1072

X December 2019

Ms Katri Uibu
Journalist
Australian Broadcasting Corporation

By email: uibu.katri@abc.net.au

FREEDOM OF INFORMATION REQUEST Notice of Decision

Dear Ms Uibu

I refer to your request on behalf of the Australian Broadcasting Corporation (ABC) to the Fair Work Ombudsman (FWO) for documents under the *Freedom of Information Act 1982 (FOI Act)*.

Scope of Request

Following consultation under section 24AB of the FOI Act regarding the original scope of your request, you submitted the following amended request scope:

The following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*
 - a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

Decision and Statement of Reasons

This letter sets out my decision in relation to your request, which I am authorised to make under section 23 of the FOI Act.

In making my decision, I took into account the wording of your request scope, the FOI Act, the Australian Information Commissioner's Guidelines (the **FOI Guidelines**)¹ and consultation with relevant FWO business units and FWO employees.

¹ <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>

Practical Refusal — s 24AA

I have decided that a practical refusal reason exists pursuant to section 24AA of the FOI Act, because the work involved in processing your request would substantially and unreasonably divert the resources of the agency from its other operations.

Whilst the amendments to your scope request did reduce the overall likely number of relevant documents, it is still clear that the work required to process your request would substantially and unreasonably divert the FWO's resources from its other operations, within the meaning of section 24AA.

The FOI Guidelines state that in deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities:

- identifying, locating or collating documents within the filing system of the agency or minister;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents; and
- notifying an interim or final decision to the applicant.²

In the consultation letter sent to you regarding your original request scope, Mr Cameron Hankins explained that the FWO's information management systems do not have the required functionality to easily identify documents falling within the scope of your request. The same must be said for your amended request scope.

The complexities involved in identifying relevant documents are also linked to the specificity of the 417 visa-holder information you are seeking.

Information available on the website of the Department of Home Affairs (DoHA) notes that a 417 visa gives the holder a right to work in Australia for up to 12 months. If the visa holder has completed at least three months specific work in a regional area during this time, the visa holder is eligible, subject to meeting other requirements, to apply for a second 12-month working holiday visa.³

Commented [T1]: Did Michelle's comments note that this is not a permitted use of abbreviation?

You are seeking information that relates to the three months' work (or longer) in a regional area that a 417 visa holder needs to undertake in order to be eligible to apply for a second 12 month working holiday visa.

When a visa holder seeks FWO assistance and provides information about their visa subclass, we record this information in a reportable way.⁴ However, when someone is completing 'specific work in a regional area', we do not record this subset of information in a way that is readily identifiable. This is for two reasons.

First, there is no distinct visa subclass that indicates a visa holder is performing 'specific work in a regional area'. This limits FWO's ability to easily distinguish which 417 visa holders who sought FWO assistance were performing work for the purpose of obtaining a second 12 month working holiday visa.

² FOI Guidelines, 3.116.

³ <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/work-holiday-417/second-working-holiday-417>.

⁴ Not all complainants provide his information when seeking FWO assistance.

Second, as a general rule we would also only record this information where it is known and relevant to the workplace dispute. For these matters, while this information is recorded, it is information that is primarily used for the purpose of handling the workplace dispute. The information would exist in documents such as emails, file notes and decision records. Therefore, although there is a certain amount of information of this nature held by the FWO, manual searches of each matter/investigation would need to be undertaken to identify and extract it. As previously advised in the section 24AB consultation notice dated 4 October 2019, this is further complicated by the fact that multiple business units across the FWO may hold documents in various formats in undertaking their functions.

This can be compared with inquiries, undertaken as part of FWO's statutory functions under section 682 of the *Fair Work Act 2009*, that captured information relating to 417 visa-holders. The FWO's 'Harvest Trail Inquiry Report' (**the 2018 Inquiry**) and 'Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program' (**the 2016 Inquiry**) involved manual input of information throughout the inquiries, captured with the intent of producing these reports.⁵

Importantly, these inquiries are significant, distinct bodies of work, which FWO dedicated resources to for this purpose, and which do not reflect the way individual requests for assistance are managed.

Specifically, the FWO commenced the 2016 Inquiry by obtaining information from the Department of Home Affairs to assist in the identification of employers who were 'signing off' on specified work during the 2013-2014 financial year. Following analysis of this data, the 2016 Inquiry engaged with employers who were high users of the program in regional areas and had a documented history of sourcing labour from 417 visa holders undertaking the three month specified work requirement. The 2016 Inquiry also commissioned a mass survey of 43,219 subclass 417 visa holders who had been granted a second year visa in the 2013-2014 financial year.⁶

During the FWO's 2018 Inquiry, there were 1,295 discrete education and compliance interactions with Harvest Trail participants (including, but not limited to workers and business) and 836 completed investigations. Of the growers that provided data to the FWO about the kinds of workers they engaged, the Working Holiday visa subclass 417 was the most common visa type.⁷

In other words, most data and information relating to 417 visa-holders undertaking 'three months specific work in a regional area' was proactively sought and initially obtained through external sources for the purposes of the Inquiry work.

Processing timeframes

We consulted with eight FWO business units when considering the most efficient way to identify documents relevant to the scope of your request.

The work involved to complete the level of interrogation of FWO information management systems in order to process your request formed the basis for the notice of consultation sent to you in October, with reference to section 24AB of the FOI Act.

In that notice that included specific calculation and an explanation of the methodology used, we estimated that it would take approximately 855 hours to process your request in its original form.

⁵ Accessible through our website: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>.

⁶ FWO's Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program (November 2016), pages 13-14. Available at: <http://www.fairwork.gov.au/ArticleDocuments/763/417-visa-inquiry-report-pdf.aspx>.

⁷ FWO's Harvest Trail Inquiry Report (November 2018), page 31. Available at <https://www.fairwork.gov.au/ArticleDocuments/1461/fair-work-ombudsman-harvest-trail-inquiry-report-docx.aspx>.

When considering the revised scope of your request, I have estimated that it would take at least 132 hours to complete the preliminary search and retrieval stage of your FOI request. This would involve reviewing the documentation associated with each complaint from a 417 visa-holder to determine whether it relates to work performed in a specific regional area for the purpose of obtaining a second 12 month working holiday visa.

This estimated processing time does not include identifying, extracting and compiling the specific information contained within the documents you are seeking. Nor does it include preparing a decision and presenting the relevant information into a meaningful format for release.

There is no set number of hours of processing time that determines whether a practical refusal reason exists, but rather each case should be assessed on its own merits. Recent decisions by the Australian Information Commissioner has affirmed decisions by departments and agencies that practical refusal grounds may exist where requests would exceed 70 hours of work.⁸

The FWO is a relatively small agency and the team responsible for processing information access requests⁹ comprises four employees (overseen by one Director). Processing a request of this size would unreasonably impact the available resources and ability to respond to other information access requests, privacy matters and other functions performed by the team.

The FWO processes approximately 150 information access requests per annum. Assuming the information access and FOI staff members spend approximately 70 per cent of their work time on information access requests,¹⁰ they would spend around 6,300 hours processing these matters each year, equating to approximately 42 hours per request.

Given our estimation that it would take approximately 132 hours just to identify and retrieve the documents relevant to your request, it is clear that the overall processing time for your request is likely to more than triple the average processing time per request.

Your revised request has narrowed the scope by reducing the period for documents sought, and removing additional policy and briefing related materials. However for the reasons outlined above, the FWO cannot reasonably identify and extract the information you are seeking without it presenting a substantial and unreasonable diversion of FWO resources from its other operations.

Data regarding disputes involving migrant workers

In the interests of assisting you in relation to your request, I confirm that we have collated some information that you may be interested in, relating to dispute matters handled by the FWO involving migrant workers over the past two financial years. This information is provided to you on a discretionary basis in accordance with section 718(2) of the *Fair Work Act 2009*.

Review Rights

I have attached a document setting out your rights of review of this decision in accordance with the FOI Act (**Attachment A**)

⁸ For example, in *'NX' and Australian Trade and Investment Commission (Freedom of Information)* [2018] AICmr 18 (2 February 2018), a practical refusal decision was issued for an FOI request involving an estimated further 63 hours of processing of 610 documents, and involving consultation with five external third parties, see: <https://www.oaic.gov.au/freedom-of-information/foi-decisions/ic-review-decisions/2018-aicmr-18>.

⁹ Information access requests include FOI Requests and request for disclosures pursuant to section 718(2) of the *Fair Work Act 2009*, as outlined further in the FWO's Information Access Policy (see: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/accessing-our-information>).

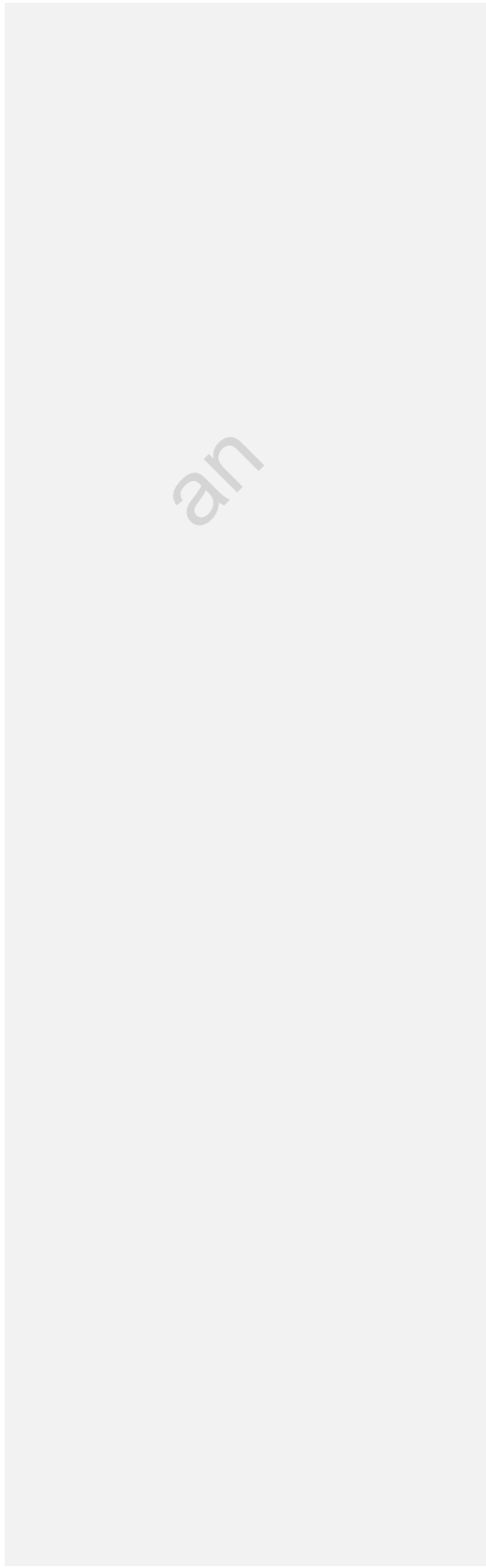
¹⁰ Based on 48 weeks' work per annum (factoring in annual leave).

Contact details

If you would like to discuss the matter further or need any further information, please email me via foi@fwo.gov.au.

Yours sincerely

Annabel Kent
Assistant Director – Information Governance
Fair Work Ombudsman



Attachment A

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

By Post: 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 an IC review, please refer to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>. You can download a review form and/or file your application online at <https://forms.business.gov.au/aba/oaic/foi-review/>

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

s.22 – Irrelevant

From: FWO - FOI Requests
 Sent: Tuesday, 17 December 2019 1:13 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 Attachments: Migrant Workers - Disputes completed 2017-18 and 2018-19 FYs.docx; IA-1072 - Notice of Decision.docx; Annual Report 2019_infographic.png

OFFICIAL: Sensitive**OFFICIAL: Sensitive**

Hi everyone,

Request for your input by this Friday 20 November – release of data to ABC journalist

We are trying to finalise an FOI decision this week and are seeking your teams' urgent assistance please. I apologise for the short turnaround.

You may recall earlier emails and discussions regarding the FOI request from Ms Katri Uibu, an ABC journalist, for detailed information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa.

We intend to issue the attached Notice of Decision - a practical refusal decision (under section 24 of the FOI Act) - on the basis that the work involved to complete the required level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations'.

Action

We would like to provide Ms Uibu with data about formal disputes lodged by migrant workers over the past two financial years, including data about the allegations raised in those disputes and the enforcement outcomes applied.

Could your teams please consider the attached form of data and let us know asap of any suggested amendments, deletions or concerns? (See first word doc attachment)

We have adopted the same approach in response to previous FOI requests from journalists seeking information about migrant workers. I understand there may be some concern still about the second page of data. SRAR have kindly collated the data and we have worked together on some of the accompanying explanations that I am not confident about.

Please call me directly if you would prefer to discuss rather than email. I appreciate it is a super busy time of year and apologise again for the urgency.

Thanks and kind regards,

s.22 – Irrelevant to request

Assistant Director – Information Governance

Fair Work Ombudsman

s.22 – Irrelevant to request

Alternative data the Media team has provided me -

2018-19 visa holders stats

While migrant workers make up **6%** of the Australian workforce, this group accounted for **22%** of all formal disputes completed by the Fair Work Ombudsman in 2018-19. In addition, **24%** of anonymous reports came from migrant workers

Last financial year, **83%** of the Fair Work Ombudsman's court actions alleged breaches of workplace laws by businesses employing migrant workers.

We secured over **\$1.7 million** in court-ordered penalties for cases involving visa workers in 2018-19.

We recovered over **\$3.1 million** for migrant workers.

2018-19 FRAC stats

While the hospitality industry accounts for **7%** of the labour force, this group accounted for **17%** of all disputes the FWO assisted with and **36%** of all anonymous reports we received in the last financial year.

Last financial year, **56%** of the Fair Work Ombudsman's court actions alleged breaches of workplace laws by the FRAC industry.

We secured over **\$1.6 million** in court-ordered penalties for cases involving fast food, restaurant and cafés.

We recovered over **\$5.1 million** for hospitality workers.

MIGRANT WORKERS

Disputes completed - 2017-18 & 2018-19 financial year

In the 2018-19 financial year, the FWO completed 1,647 formal dispute lodgements relating to migrant workers¹. While this is a decrease from the 2,158 completed in the 2017-18 financial year, it represents a proportional increase from 20% to 22% of all formal dispute lodgements completed by FWO in those years.

Formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
Formal dispute lodgements completed – Visa holders	1,647	2,158
% of all FWO formal dispute lodgements completed	22%	20%

In the 2018-19 financial year, 532 formal dispute lodgements involved 417 Working Holiday Makers. This compares with 719 matters recorded in the previous financial year.

The most common allegation raised by migrant workers amongst the completed formal dispute lodgements over both financial years relates to workers not being paid for time worked. This allegation featured in 23% of the formal dispute lodgements.

Top 5 allegations ² in formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
1	Wages – Not Paid for Time Worked (23%)	Wages – Not Paid for Time Worked (24%)
2	Wages – Underpayment of Hourly Rate (16%)	Wages – Underpayment of Hourly Rate (19%)
3	Wages and Conditions (10%)	Termination (10%)
4	Termination (9%)	Wages and Conditions (9%)
5	Leave – Annual Leave (6%)	Leave – Annual Leave (5%)

¹ A formal dispute is one that is submitted through specific FWO channels that enable the worker to self-identify demographic information. Formal dispute lodgements completed are a subset of all disputes completed by FWO.

² One formal dispute lodgement may include multiple allegations. The "Top 5" allegation percentages are based on the total number of allegations present in all formal disputes lodged by visa holders.

14% of formal disputes completed for migrant workers in 2018-19 were dealt with via compliance and enforcement activities. In 3% of disputes that progressed to the investigation stage, an enforcement outcome or a formal letter of caution was applied.³ There are several reasons why an enforcement outcome will not be appropriate, including when there are issues relating to a lack of reliable evidence or if other present factors mean the legislative requirements for a particular statutory outcome are not met. Sometimes, investigations lead to the FWO making findings under the *Fair Work Regulations 2009*.

In comparison to the above-mentioned 14% statistic, 4% of all FWO disputes are resolved through compliance and enforcement activities, with 1% leading to the application of a compliance or enforcement outcome in accordance with the *Fair Work Act 2009* and the FWO's Compliance & Enforcement Policy.

Outcomes⁴		
<i>Formal dispute lodgements completed involving a migrant worker</i>	2018-19	2017-18
Education and dispute resolution	1,412 (86%)	1,805 (84%)
Compliance and enforcement:	235 (14%)	353 (16%)
- With enforcement outcome applied	56 (3%)	106 (5%)
<i>All FWO disputes completed</i>	2018-19	2017-18
Education and dispute resolution	27,874 (96%)	27,074 (96%)
Compliance and enforcement:	1,256 (4%)	1,201 (4%)
- With enforcement outcome applied	269 (1%)	291 (1%)

³ The 4 available enforcement outcomes possible under the *Fair Work Act 2009* include infringement notices, compliance notices, enforceable undertakings and civil litigation. More information is available via the FWO's Compliance and Enforcement Policy available via www.fwo.gov.au.

⁴ Education and Dispute Resolution activities provide information and support to employees and employers to resolve workplace disputes. Workplace disputes with indicators or allegations of serious non-compliance are referred for investigation and consideration of compliance and enforcement action.



Fair Work

OMBUDSMAN

Our reference: IA-1072

X December 2019

Ms Katri Uibu
Journalist
Australian Broadcasting Corporation

By email: uibu.katri@abc.net.au

FREEDOM OF INFORMATION REQUEST Notice of Decision

Dear Ms Uibu

I refer to your request on behalf of the Australian Broadcasting Corporation (**ABC**) to the Fair Work Ombudsman (**FWO**) for documents under the *Freedom of Information Act 1982* (**FOI Act**).

Scope of Request

Following consultation under section 24AB of the FOI Act regarding the original scope of your request, you submitted the following amended request scope:

The following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*
 - a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

Decision and Statement of Reasons

This letter sets out my decision in relation to your request, which I am authorised to make under section 23 of the FOI Act.

In making my decision, I took into account the wording of your request scope, the FOI Act, the Australian Information Commissioner's Guidelines (the **FOI Guidelines**)¹ and consultation with relevant FWO business units and FWO employees.

¹ <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

Practical Refusal — s 24AA

I have decided that a practical refusal reason exists pursuant to section 24AA of the FOI Act, because the work involved in processing your request would substantially and unreasonably divert the resources of the agency from its other operations.

Whilst the amendments to your scope request did reduce the overall likely number of relevant documents, it is still clear that the work required to process your request would substantially and unreasonably divert the FWO's resources from its other operations, within the meaning of section 24AA.

The FOI Guidelines state that in deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities:

- identifying, locating or collating documents within the filing system of the agency or minister;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents; and
- notifying an interim or final decision to the applicant.²

In the consultation letter sent to you regarding your original request scope, Mr Cameron Hankins explained that the FWO's information management systems do not have the required functionality to easily identify documents falling within the scope of your request. The same must be said for your amended request scope.

The complexities involved in identifying relevant documents are also linked to the specificity of the 417 visa-holder information you are seeking.

Information available on the website of the Department of Home Affairs notes that a 417 visa gives the holder a right to work in Australia for up to 12 months. If the visa holder has completed at least three months specific work in a regional area during this time, the visa holder is eligible, subject to meeting other requirements, to apply for a second 12-month working holiday visa.³

You are seeking information that relates to the three months' work (or longer) in a regional area that a 417 visa holder needs to undertake in order to be eligible to apply for a second 12 month working holiday visa.

When a visa holder seeks FWO assistance and provides information about their visa subclass, we record this information in a reportable way.⁴ However, when someone is completing 'specific work in a regional area', we do not record this subset of information in a way that is readily identifiable. This is for two reasons.

First, there is no distinct visa subclass that indicates a visa holder is performing 'specific work in a regional area'. This limits FWO's ability to easily distinguish which 417 visa holders who sought FWO assistance were performing work for the purpose of obtaining a second 12 month working holiday visa.

² FOI Guidelines, 3.116.

³ <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/work-holiday-417/second-working-holiday-417>.

⁴ Not all complainants provide this information when seeking FWO assistance.

Second, as a general rule we would also only record this information where it is known and relevant to the workplace dispute. For these matters, while this information is recorded, it is information that is primarily used for the purpose of handling the workplace dispute. The information would exist in documents such as emails, file notes and decision records. Therefore, although there is a certain amount of information of this nature held by the FWO, manual searches of each matter/investigation would need to be undertaken to identify and extract it. As previously advised in the section 24AB consultation notice dated 4 October 2019, this is further complicated by the fact that multiple business units across the FWO may hold documents in various formats in undertaking their functions.

This can be compared with inquiries, undertaken as part of FWO's statutory functions under section 682 of the *Fair Work Act 2009*, that captured information relating to 417 visa-holders. The FWO's 'Harvest Trail Inquiry Report' (**the 2018 Inquiry**) and 'Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program' (**the 2016 Inquiry**) involved manual input of information throughout the inquiries, captured with the intent of producing these reports.⁵

Importantly, these inquiries are significant, distinct bodies of work, which FWO dedicated resources to for this purpose, and which do not reflect the way individual requests for assistance are managed.

Specifically, the FWO commenced the 2016 Inquiry by obtaining information from the Department of Home Affairs to assist in the identification of employers who were 'signing off' on specified work during the 2013-2014 financial year. Following analysis of this data, the 2016 Inquiry engaged with employers who were high users of the program in regional areas and had a documented history of sourcing labour from 417 visa holders undertaking the three month specified work requirement. The 2016 Inquiry also commissioned a mass survey of 43,219 sub class 417 visa holders who had been granted a second year visa in the 2013-2014 financial year.⁶

During the FWO's 2018 Inquiry, there were 1,295 discrete education and compliance interactions with Harvest Trail participants (including, but not limited to workers and business) and 836 completed investigations. Of the growers that provided data to the FWO about the kinds of workers they engaged, the Working Holiday visa subclass 417 was the most common visa type.⁷

In other words, most data and information relating to 417 visa-holders undertaking 'three months specific work in a regional area' was proactively sought and initially obtained through external sources for the purposes of the Inquiry work.

Processing timeframes

We consulted with eight FWO business units when considering the most efficient way to identify documents relevant to the scope of your request.

The work involved to complete the level of interrogation of FWO information management systems in order to process your request formed the basis for the notice of consultation sent to you in October, with reference to section 24AB of the FOI Act.

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⁵ Accessible through our website: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>.

⁶ FWO's Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program (November 2016), pages 13-14. Available at: <http://www.fairwork.gov.au/ArticleDocuments/763/417-visa-inquiry-report.pdf.aspx>.

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When considering the revised scope of your request, I have estimated that it would take at least 132 hours to complete the preliminary search and retrieval stage of your FOI request. This would involve reviewing the documentation associated with each complaint from a 417 visa-holder to determine whether it relates to work performed in a specific regional area for the purpose of obtaining a second 12 month working holiday visa.

This estimated processing time does not include identifying, extracting and compiling the specific information contained within the documents you are seeking. Nor does it include preparing a decision and presenting the relevant information into a meaningful format for release.

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The FWO is a relatively small agency and the team responsible for processing information access requests⁹ comprises four employees (overseen by one Director). Processing a request of this size would unreasonably impact the available resources and ability to respond to other information access requests, privacy matters and other functions performed by the team

The FWO processes approximately 150 information access requests per annum. Assuming the information access and FOI staff members spend approximately 70 per cent of their work time on information access requests,¹⁰ they would spend around 6,300 hours processing these matters each year, equating to approximately 42 hours per request.

Given our estimation that it would take approximately 132 hours just to identify and retrieve the documents relevant to your request, it is clear that the overall processing time for your request is likely to more than triple the average processing time per request.

Your revised request has narrowed the scope by reducing the period for documents sought, and removing additional policy and briefing related materials. However, for the reasons outlined above, the FWO cannot reasonably identify and extract the information you are seeking without it presenting a substantial and unreasonable diversion of FWO resources from its other operations.

Data regarding disputes involving migrant workers

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Review Rights

I have attached a document setting out your rights of review of this decision in accordance with the FOI Act (**Attachment A**).

⁸ For example, in *'NX' and Australian Trade and Investment Commission (Freedom of Information)* [2018] AICmr 18 (2 February 2018), a practical refusal decision was issued for an FOI request involving an estimated further 63 hours of processing of 610 documents, and involving consultation with five external third parties, see: <https://www.oaic.gov.au/freedom-of-information/foi-decisions/ic-review-decisions/2018-aicmr-18>.

⁹ Information access requests include FOI Requests and request for disclosures pursuant to section 718(2) of the *Fair Work Act 2009*, as outlined further in the FWO's Information Access Policy (see: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/accessing-our-information>).

¹⁰ Based on 48 weeks' work per annum (factoring in annual leave).

Contact details

If you would like to discuss the matter further or need any further information, please email me via foi@fwo.gov.au.

Yours sincerely

Annabel Kent
Assistant Director – Information Governance
Fair Work Ombudsman

an
rk
fa
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Attachment A

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

By Post: 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 an IC review, please refer to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>. You can download a review form and/or file your application online at <https://forms.business.gov.au/aba/oaic/foi-review-/>

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

Total monies recovered

\$40,204,976



Workers back paid: **17,718**



Completed disputes: **29,130**



17 enforceable undertakings entered into, with over **\$1.7 million** in unpaid wages recovered



Biggest EU recovery **\$447,717** for 1174 cleaners



EUs involving visa workers: **47%**



563 infringement notices issued, with **\$479,900** in on-the-spot fines



274 compliance notices issued, with more than **\$1 million** in unpaid wages recovered



23 litigations filed

Matters currently before courts:

67*

*as at 30 June 2019

Court ordered penalties:

\$4,400,772



Appeals commenced: **2**
Debt recovery actions: **8**



Record penalties for failing to comply with Fair Work Commission Orders - **\$105,000** ordered against business and director



13 fast food, restaurant and cafe litigation decisions handed down, with **\$1,637,661** in penalties ordered



Harvest Trail Inquiry - over **\$1 million** back paid to more than **2500** workers



18 litigation decisions handed down involving visa workers, with **\$1,775,236** in penalties ordered



Website visits: **17,846,171**



My account registrations: **132,411**



Pay tool visits: **4,559,387**



Email subscribers: **493,185**



Pay tool calculations: **6,162,221**



Calls answered: **383,206**



My account logins: **495,345**



Record my hours downloads: **20,039**



Find my award searches: **1,065,822**



Online enquiries answered: **62,790**



Online courses commenced: **38,491**



Views of in-language information: **125,815**



Pages translated: Over **253,000** (Most popular - Simplified Chinese with nearly **115,000** pages translated)

Social media followers:



123,323 Facebook



18,877 Twitter

AWARD: 'Best in Class Contact Centre with over 30 seats' at the Government Contact Centre Excellence Awards



AWARD: Silver at the 2018 GovDesign Awards for our young worker videos, produced in partnership with the Foundation for Young Australians



s.22 – Irrelevant

From: s.22 – Irrelevant
 Sent: Wednesday, 18 December 2019 10:58 AM
 To: s.22 – Irrelevant to
 Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 Attachments: Migrant Workers - Disputes completed 2017-18 and 2018-19 FYs.docx

OFFICIAL: Sensitive

s.22

just sent this to me. Not sure what version it is or if she has done anything with it.

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 10:26 AM
 To: s.22 – Irrelevant to request
 Subject: Fwd: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive][SEC=OFFICIAL: Sensitive]

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 10:33 am
 To: s.22 – Irrelevant to request
 CC:
 Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22, I have marked up the raw data I am not comfortable providing.
 As discussed with your team previously, I was not here when the previous info went out and the environment has changed.
 It is really important for us to be consistent with annual report data for all responses from the agency.
 I have a really hectic next couple of days before my leave (assisting s.22 with media). Can I please leave with you?

s.22 – Irrelevant to request
 Media Director
 Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 17 December 2019 9:15 PM
 To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

Hi s.22 s.22 - Irrelevant to request
 s.22 – Irrelevant to request Are you free around lunch time?

I'll be back in the office all day Thursday too when I need to finalise the matter. Worst case scenario, we'll just send the journalist the FOI decision refusing access to any information, but I'm really hoping we can at least get some basic data to her – there are risks with not doing so.

s.22 – Irrelevant to request

From: MACFARLAN, Meg <Meg.Macfarlan@fwo.gov.au>
Sent: Tuesday, 17 December 2019 7:27 PM
To: FWO - FOI Requests <FOI@fwo.gov.au>
Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive] [SEC=OFFICIAL: Sensitive]

Hi Annabel, can we please discuss this one further tomorrow? I am free at 11am

From: s.22 – Irrelevant to request
Date: 17 December 2019 at 6:41:50 pm AEDT
To: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

Hi s.22 – Irrelevant

Thank you so much and thank goodness we included your team in this round of consultation. I understand your concerns and think we clearly need to do more work to ensure the information released is more consistent with the current narrative around migrant workers. The document is largely consistent with a document previously released to ABC under FOI, but I don't know whether ILS was consulted at that time. In any case, let's try and alter the response this time.

As we are under considerable time pressure to get some information to the journalist by this Friday, I hope you don't mind me copying in others at this time. We will work on updating the word document before consulting with you, Jolanka and Carey again.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Tuesday, 17 December 2019 5:18 PM
To: FWO - FOI Requests <FOI@fwo.gov.au>
Cc: s.22 – Irrelevant to request
Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Thank you for the opportunity to comment. s.22 and I have reviewed and are thoughts are consolidated below:

- Our current 'narrative' around migrant workers is that this cohort is a priority for the FWO, we offer them tailored assistance and we are focussed on encouraging migrant workers to seek our help by removing barriers that make them reluctant to contact us – the data and supporting information in the proposed response doesn't convey this.
- The comparison of 2017-18 to 2018-19 data doesn't appear to add any value, if anything it suggests that less migrant workers are approaching the FWO for assistance (which may or may not be the case) but in any case may result in criticism directed towards the FWO.

- Remove reference to disputes completed *for* migrant workers – as we don't represent either party it would be more appropriate to say '14% of formal disputes *involving* migrant workers...'
- Re-structure the information on the second page to make it easier to digest, suggest one paragraph about % of migrant worker disputes that progress to C and E compared to all disputes, and a second paragraph about factors that impact whether enforcement outcomes are appropriate.
- Include information about the % of litigations commenced in 2018/19 which involved a migrant worker – this statistic demonstrates how we are using our resources to prioritise migrant workers and aligns with our narrative.
- Reconsider inclusion of the data table on the second page – or include more supporting information/footnotes to explain our operating model and make clear that education and dispute resolution activities don't involve findings of non-compliance.
- This may have already been considered, but given the journalist is requesting information about 417 visa holders, suggest that the response could focus on that cohort rather than migrant workers more broadly, with some explanatory words around the way we collect data (which is touched upon in the letter from Annabel).

Please let me know if you'd like to chat at all.

Thanks again

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 17 December 2019 1:43 PM

To: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Hi everyone,

Request for your input by this Friday 20 November – release of data to ABC journalist

We are trying to finalise an FOI decision this week and are seeking your teams' urgent assistance please. I apologise for the short turnaround.

You may recall earlier emails and discussions regarding the FOI request from Ms Katri Uibu, an ABC journalist, for detailed information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa.

We intend to issue the attached Notice of Decision - a practical refusal decision (under section 24 of the FOI Act) - on the basis that the work involved to complete the required level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations'.

Action

We would like to provide Ms Uibu with data about formal disputes lodged by migrant workers over the past two financial years, including data about the allegations raised in those disputes and the enforcement outcomes applied.



Australian Government

Fair Work

OMBUDSMAN

MIGRANT WORKERS

Disputes completed - 2017-18 & 2018-19 financial year

In the 2018-19 financial year, the FWO completed 1,647 formal dispute lodgements relating to migrant workers¹. While this is a decrease from the 2,158 completed in the 2017-18 financial year, it represents a proportional increase from 20% to 22% of all formal dispute lodgements completed by FWO in those years.

Formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
Formal dispute lodgements completed – Visa holders	1,647	2,158
% of all FWO formal dispute lodgements completed	22%	20%

In the 2018-19 financial year, 532 formal dispute lodgements involved 417 Working Holiday Makers. This compares with 719 matters recorded in the previous financial year.

The most common allegation raised by migrant workers amongst the completed formal dispute lodgements over both financial years relates to workers not being paid for time worked. This allegation featured in 23% of the formal dispute lodgements.

Top 5 allegations ² in formal dispute lodgements involving a migrant worker		
	2018-19	2017-18
1	Wages – Not Paid for Time Worked (23%)	Wages – Not Paid for Time Worked (24%)
2	Wages – Underpayment of Hourly Rate (16%)	Wages – Underpayment of Hourly Rate (19%)
3	Wages and Conditions (10%)	Termination (10%)
4	Termination (9%)	Wages and Conditions (9%)
5	Leave – Annual Leave (6%)	Leave – Annual Leave (5%)

¹ A formal dispute is one that is submitted through specific FWO channels that enable the worker to self-identify demographic information. Formal dispute lodgements completed are a subset of all disputes completed by FWO.

² One formal dispute lodgement may include multiple allegations. The "Top 5" allegation percentages are based on the total number of allegations present in all formal disputes lodged by visa holders.

14% of formal disputes completed for migrant workers in 2018-19 were dealt with via compliance and enforcement activities. In 3% of disputes that progressed to the investigation stage, an enforcement outcome or a formal letter of caution was applied.³ There are several reasons why an enforcement outcome will not be appropriate, including when there are issues relating to a lack of reliable evidence or if other present factors mean the legislative requirements for a particular statutory outcome are not met. Sometimes, investigations lead to the FWO making findings under the *Fair Work Regulations 2009*.

In comparison to the above-mentioned 14% statistic, 4% of all FWO disputes are resolved through compliance and enforcement activities, with 1% leading to the application of a compliance or enforcement outcome in accordance with the *Fair Work Act 2009* and the FWO's Compliance & Enforcement Policy.

Outcomes ⁴		
Formal dispute lodgements completed involving a migrant worker	2018-19	2017-18
Education and dispute resolution	1,412 (86%)	1,805 (84%)
Compliance and enforcement:	235 (14%)	353 (16%)
- With enforcement outcome applied	56 (3%)	106 (5%)
All FWO disputes completed	2018-19	2017-18
Education and dispute resolution	27,874 (96%)	27,074 (96%)
Compliance and enforcement:	1,256 (4%)	1,201 (4%)
- With enforcement outcome applied	269 (1%)	291 (1%)

³ The 4 available enforcement outcomes possible under the *Fair Work Act 2009* include infringement notices, compliance notices, enforceable undertakings and civil litigation. More information is available via the FWO's Compliance and Enforcement Policy available via www.fwo.gov.au.

⁴ Education and Dispute Resolution activities provide information and support to employees and employers to resolve workplace disputes. Workplace disputes with indicators or allegations of serious non-compliance are referred for investigation and consideration of compliance and enforcement action.

s.22 – Irrelevant

From: s.22
 Sent: Wednesday, 18 December 2019 10:50 AM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 [SEC=OFFICIAL: Sensitive]

Thanks s.22. Very grateful. Yes, we can handle it from here. Thank you again.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 10:33 am
 To: s.22 – Irrelevant
 CC: s.22 – Irrelevant
 Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi Annabel, I have marked up the raw data I am not comfortable providing.

As discussed with your team previously, I was not here when the previous info went out and the environment has changed.

It is really important for us to be consistent with annual report data for all responses from the agency.

I have a really hectic next couple of days before my leave (assisting s.22 with media). Can I please leave with you?

s.22 – Irrelevant
 Media Director
 Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 –
 Sent: Tuesday, 17 December 2019 9:15 PM
 To: s.22 – Irrelevant
 Cc: s.22 – Irrelevant to request
 Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 Hi s.22, s.22 – Irrelevant to request

Are you free around lunch time?

I'll be back in the office all day Thursday too when I need to finalise the matter. Worst case scenario, we'll just send the journalist the FOI decision refusing access to any information, but I'm really hoping we can at least get some basic data to her – there are risks with not doing so.

s.22 – Irrelevant
 From: s.22 – Irrelevant to request

Sent: Tuesday, 17 December 2019 7:27 PM
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 Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive] [SEC=OFFICIAL: Sensitive]
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From: FWO - FOI Requests <FOI@fwo.gov.au>

Date: 17 December 2019 at 6:41:50 pm AEDT

To: s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

Hi s.22

Thank you so much and thank goodness we included your team in this round of consultation. I understand your concerns and think we clearly need to do more work to ensure the information released is more consistent with the current narrative around migrant workers. The document is largely consistent with a document previously released to ABC under FOI, but I don't know whether ILS was consulted at that time. In any case, let's try and alter the response this time.

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s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Tuesday, 17 December 2019 5:18 PM

To: FWO - FOI Requests <FOI@fwo.gov.au>

Cc: s.22 – Irrelevant to request

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22

Thank you for the opportunity to comment. s.22, s.22 and I have reviewed and are thoughts are consolidated below:

- Our current 'narrative' around migrant workers is that this cohort is a priority for the FWO, we offer them tailored assistance and we are focussed on encouraging migrant workers to seek our help by removing barriers that make them reluctant to contact us – the data and supporting information in the proposed response doesn't convey this.
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- This may have already been considered, but given the journalist is requesting information about 417 visa holders, suggest that the response could focus on that cohort rather than migrant workers more broadly, with some explanatory words around the way we collect data (which is touched upon in the letter from Annabel).

Please let me know if you'd like to chat at all.

Thanks again

s.22 – Irrelevant

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 17 December 2019 1:43 PM

To: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Hi everyone,

Request for your input by this Friday 20 November – release of data to ABC journalist

We are trying to finalise an FOI decision this week and are seeking your teams' urgent assistance please. I apologise for the short turnaround.

You may recall earlier emails and discussions regarding the FOI request from Ms Katri Uibu, an ABC journalist, for detailed information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa.

We intend to issue the attached Notice of Decision - a practical refusal decision (under section 24 of the FOI Act) - on the basis that the work involved to complete the required level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations'.

Action

We would like to provide Ms Uibu with data about formal disputes lodged by migrant workers over the past two financial years, including data about the allegations raised in those disputes and the enforcement outcomes applied.

Could your teams please consider the attached form of data and let us know asap of any suggested amendments, deletions or concerns? (See first word doc attachment)

We have adopted the same approach in response to previous FOI requests from journalists seeking information about migrant workers. I understand there may be some concern still about the second page of data. SRAR have kindly collated the data and we have worked together on some of the accompanying explanations that I am not confident about.

Please call me directly if you would prefer to discuss rather than email. I appreciate it is a super busy time of year and apologise again for the urgency.

Thanks and kind regards,

s.22 – Irrelevant to request

Assistant Director – Information Governance

Fair Work Ombudsman

s.22 – Irrelevant to request

Alternative data the Media team has provided me -

2018-19 visa holders stats

While migrant workers make up **6%** of the Australian workforce, this group accounted for **22%** of all formal disputes completed by the Fair Work Ombudsman in 2018-19. In addition, **24%** of anonymous reports came from migrant workers

Last financial year, **83%** of the Fair Work Ombudsman's court actions alleged breaches of workplace laws by businesses employing migrant workers.

We secured over **\$1.7 million** in court-ordered penalties for cases involving visa workers in 2018-19.

We recovered over **\$3.1 million** for migrant workers.

2018-19 FRAC stats

While the hospitality industry accounts for **7%** of the labour force, this group accounted for **17%** of all disputes the FWO assisted with and **36%** of all anonymous reports we received in the last financial year.

Last financial year, **56%** of the Fair Work Ombudsman's court actions alleged breaches of workplace laws by the FRAC industry.

We secured over **\$1.6 million** in court-ordered penalties for cases involving fast food, restaurant and cafés.

We recovered over **\$5.1 million** for hospitality workers.

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Thursday, 21 November 2019 4:31 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Linked below is the updated decision letter with tracked changes. There's still a placeholder for once we confirm what if any data we provide.

Regarding disputes data more broadly. There are two kinds reported in our annual report. The first is 'formal disputes' which is what is reported on in the data provided to us by SRAR. These include requests for assistance submitted through My Account, paper based forms and those that make it through to a compliance team. This is because these forms include a lot of required/optional fields that customers fill out when seeking our assistance, including their visa-status.

The remaining matters, which appear to form the majority, are usually ones that arise from infoline enquiries. Increasingly ASA is providing assistance to resolve disputes without the requirement to lodge a formal dispute. For example CSD may provide some initial self-resolution assistance and then refer to a dispute resolution team, without requiring the employee to formally request our assistance (as an aside, there is now a privacy script read out that is the same as what is in the RfA, that the customer must consent to). This means that certain information is not captured during the intake process.

If we are seeking to detail the distinction in any meaningful way, including in writing or verbally to either applicant, I think we will require written confirmation from SRAR or others about this distinction. However this is probably sufficient as a basis to understand the difference.

Regards,

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Tuesday, 5 November 2019 2:24 PM
 To: s.22 – Irrelevant to request
 Cc: s.22 – Irrelevant to request
 s.22 – Irrelevant to request
 Subject: RE: FOI inquiry ABC ref no 160/19 (our reference: IA-1072) [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive**Confidential & Deliberative**

Hi s.22 – Irrelevant

Please see the following drafts for your review, per s.22 request below:

- [IA-1072 Notice of Decision](#)
- [Email to Directors of Policy, SRAR and Media](#), that outlines our proposed approach.

Regarding the due date...there are two approaches here (thanks s.22 for you discussion and clarification on this!):

s.22 – Irrelevant

From: s.22 – Irrelevant
 Sent: Wednesday, 18 December 2019 3:10 PM
 To: s.22 – Irrelevant to request
 Subject: FW: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 Attachments: Migrant Workers - 2018-19 FY (003).docx
 Importance: High

OFFICIAL: Sensitive

Hi s.22 – Irrelevant

Sorry for my email before, I obviously meant to send it to s.22 – so thanks for forwarding it for me.

This version has updates attached and some questions for your consideration.

Let me know if you would like me to forward around to our stakeholders again, or would prefer to do it yourself.

Regards

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 2:32 PM
 To: s.22 – Irrelevant to request
 Subject: FW: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 Importance: High

OFFICIAL: Sensitive

Updated – with replies to your comments. Also changed view to ‘simple markup’ as it was getting a little messy.
 Thanks.

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 2:25 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: Fwd: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive][SEC=OFFICIAL: Sensitive]
 Importance: High

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 3:22 pm
 To: s.22 – Irrelevant to request
 Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

I have reviewed and it looks pretty good. I have a couple of questions that I think we might need to consider, but you have done a great job putting this together.

Have a read and let me know what you think, I can send it up once we are both across it ☺

s.22 –
Irrelevant to
request

From: s.22 – Irrelevant to request
Sent: Wednesday, 18 December 2019 11:43 AM
To: s.22 – Irrelevant to request
Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
Importance: High

OFFICIAL: Sensitive

Sorry, missed a change when I merged the documents.
 Try again – attached.

From: s.22 – Irrelevant to request
Sent: Wednesday, 18 December 2019 11:36 AM
To: s.22 – Irrelevant to request
Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
Importance: High

OFFICIAL: Sensitive

s.22 –
Hi Irrelevant to
request

See updated version **attached** (which incorporated s.22 most recent email and her track changes) and make the following notes to address ILS' comments.

- Our current 'narrative' around migrant workers is that this cohort is a priority for the FWO, we offer them tailored assistance and we are focussed on encouraging migrant workers to seek our help by removing barriers that make them reluctant to contact us – the data and supporting information in the proposed response doesn't convey this. **Added some preliminary commentary to be reviewed by ILS.**
- The comparison of 2017-18 to 2018-19 data doesn't appear to add any value, if anything it suggests that less migrant workers are approaching the FWO for assistance (which may or may not be the case) but in any case may result in criticism directed towards the FWO. **Removed 17-18 data.**
- Remove reference to disputes completed *for* migrant workers – as we don't represent either party it would be more appropriate to say '14% of formal disputes *involving* migrant workers...' **Updated.**
- Re-structure the information on the second page to make it easier to digest, suggest one paragraph about % of migrant worker disputes that progress to C and E compared to all disputes, and a second paragraph about factors that impact whether enforcement outcomes are appropriate.
- Include information about the % of litigations commenced in 2018/19 which involved a migrant worker – this statistic demonstrates how we are using our resources to prioritise migrant workers and aligns with our narrative. **Included data from the Annual Report**
- Reconsider inclusion of the data table on the second page – or include more supporting information/footnotes to explain our operating model and make clear that education and dispute resolution activities don't involve findings of non-compliance. **Updated footnotes.**
- This may have already been considered, but given the journalist is requesting information about 417 visa holders, suggest that the response could focus on that cohort rather than migrant workers more broadly, with some explanatory words around the way we collect data (which is touched upon in the letter from Annabel). **I have left the data as is for now.**

s.22 – Irrelevant to
request

From: s.22 – Irrelevant to request

Sent: Tuesday, 17 December 2019 8:30 PM

To: s.22 – Irrelevant to request

Cc:

HANKINS,Cameron <Cameron.Hankins@fwo.gov.au>

Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 Are you able to please spend some time tomorrow (Wed) urgently trying to update the relevant word doc? I've attached it again to this email...

If you're able to make some suggested tracked changes to the doc that address ILS' main concerns (below), that would be a great start for me to then pick up asap on Thursday morning and discuss with s.22 and s.22 again....

It should never have got to this point, but let's discuss learnings (for me too) after this matter has been finalised.

I have committed to getting some info to the ABC journalist by Friday, so even if we strip the document right back and just provide her limited data and only non-controversial explanations, that would be better than nothing.

Please call me tomorrow if you hit a roadblock, otherwise I'll talk to you asap on Thursday.

Thanks,

s.22 – Irrelevant to request

From: FWO - FOI Requests

Sent: Tuesday, 17 December 2019 6:42 PM

To: s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

Hi s.22 – Irrelevant

Thank you so much and thank goodness we included your team in this round of consultation. I understand your concerns and think we clearly need to do more work to ensure the information released is more consistent with the current narrative around migrant workers. The document is largely consistent with a document previously released to ABC under FOI, but I don't know whether ILS was consulted at that time. In any case, let's try and alter the response this time.

As we are under considerable time pressure to get some information to the journalist by this Friday, I hope you don't mind me copying in others at this time. We will work on updating the word document before consulting with you, s.22 and s.22 again.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Tuesday, 17 December 2019 5:18 PM

To: FWO - FOI Requests <FOI@fwo.gov.au>

Cc: s.22 – Irrelevant to request

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22

Thank you for the opportunity to comment. s.22 and I have reviewed and are thoughts are consolidated below:

- Our current 'narrative' around migrant workers is that this cohort is a priority for the FWO, we offer them tailored assistance and we are focussed on encouraging migrant workers to seek our help by removing barriers that make them reluctant to contact us – the data and supporting information in the proposed response doesn't convey this.
- The comparison of 2017-18 to 2018-19 data doesn't appear to add any value, if anything it suggests that less migrant workers are approaching the FWO for assistance (which may or may not be the case) but in any case may result in criticism directed towards the FWO.
- Remove reference to disputes completed *for* migrant workers – as we don't represent either party it would be more appropriate to say '14% of formal disputes *involving* migrant workers...'
- Re-structure the information on the second page to make it easier to digest, suggest one paragraph about % of migrant worker disputes that progress to C and E compared to all disputes, and a second paragraph about factors that impact whether enforcement outcomes are appropriate.
- Include information about the % of litigations commenced in 2018/19 which involved a migrant worker – this statistic demonstrates how we are using our resources to prioritise migrant workers and aligns with our narrative.
- Reconsider inclusion of the data table on the second page – or include more supporting information/footnotes to explain our operating model and make clear that education and dispute resolution activities don't involve findings of non-compliance.
- This may have already been considered, but given the journalist is requesting information about 417 visa holders, suggest that the response could focus on that cohort rather than migrant workers more broadly, with some explanatory words around the way we collect data (which is touched upon in the letter from Annabel).

Please let me know if you'd like to chat at all.

Thanks again

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>

Sent: Tuesday, 17 December 2019 1:43 PM

To: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

OFFICIAL: Sensitive

Hi everyone,



Australian Government

Fair Work OMBUDSMAN

MIGRANT WORKERS DATA

Intelligence continues to tell us that migrant workers are one of the most vulnerable cohorts. They're over-represented in our disputes and compliance and enforcement outcomes. Vulnerable workers are an ongoing focus for the FWO and one of our 2019-2020 Compliance and Enforcement Priorities. The FWO offers migrant workers tailored assistance and we actively encourage migrant workers to seek our help by identifying and removing barriers that may make them reluctant to reach out.

Disputes completed ~~2017-18 &~~ 2018-19 financial year

In the 2018-19 financial year, the FWO completed 1,647 formal dispute lodgements relating to migrant workers⁴. While migrant workers make up 6% of the Australian workforce, this group accounted for 22% of all formal disputes² completed by the Fair Work Ombudsman in 2018-19. In addition, 24% of anonymous reports came from migrant workers. While this is a decrease from the 2,158 completed in the 2017-18 financial year, it represents a proportional increase from 20% to 22% of all formal dispute lodgements completed by FWO in these years.

Formal dispute lodgements involving a migrant worker <u>2018-2019</u>	
	2018-19
Formal dispute lodgements completed – Visa holders	1,647
% of all FWO formal dispute lodgements completed	22%

In the 2018-19 financial year, 532 formal dispute lodgements involved 417 Working Holiday Makers.³

In the 2018-19 financial year, 532 formal dispute lodgements involved 417 Working Holiday Makers. This compares with 710 matters recorded in the previous financial year.

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The most common allegation raised by migrant workers amongst the completed formal dispute lodgements ~~over both financial years~~ relates to workers not being paid for time worked. This allegation featured in 23% of ~~the~~ formal dispute lodgements.

Top 5 allegations ⁴ in formal dispute lodgements involving a migrant worker		
	Allegation	Percentage
1	Wages – Not Paid for Time Worked	23%
2	Wages – Underpayment of Hourly Rate	16%
3	Wages and Conditions	10%
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Top 5 allegations⁴ in formal dispute lodgements involving a migrant worker		
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2	Wages – Underpayment of Hourly Rate (16%)	Wages – Underpayment of Hourly Rate (10%)
3	Wages and Conditions (10%)	Termination (10%)
4	Termination (9%)	Wages and Conditions (9%)
5	Leave – Annual Leave (6%)	Leave – Annual Leave (5%)

Outcomes

14% of formal disputes completed ~~involving for~~ migrant workers in 2018-19 were dealt with via compliance and enforcement activities. ~~In 3% of disputes that progressed to the investigation stage, a compliance or an enforcement outcome or a formal letter of caution was applied was applied, in accordance with the Fair Work Act 2009 and the FWO's Compliance & Enforcement Policy.⁶ In comparison to the above mentioned 14% statistic, 4% of all FWO disputes are resolved through compliance and enforcement activities, with 1% leading to the application of a compliance or enforcement outcome in accordance with the Fair Work Act 2009 and the FWO's Compliance & Enforcement Policy.~~

There are several reasons why an enforcement outcome will not be appropriate, including when there are issues relating to a lack of reliable evidence or if other present factors mean the

⁴ One formal dispute lodgement may include multiple allegations. The "Top 5" allegation percentages are based on the total number of allegations present in all formal disputes lodged by visa holders.

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legislative requirements for a particular statutory outcome are not met. Sometimes, investigations lead to the FWO making findings under the *Fair Work Regulations 2009*.

~~In comparison to the above mentioned 14% statistic, 4% of all FWO disputes are resolved through compliance and enforcement activities, with 1% leading to the application of a compliance or enforcement outcome in accordance with the Fair Work Act 2009 and the FWO's Compliance & Enforcement Policy.~~

Outcomes ²	
Formal dispute lodgements completed involving a migrant worker	2018-19
Education and dispute resolution ⁸	4,442 (86%)
Compliance and enforcement: ⁹	235 (14%)
- With enforcement outcome applied	56 (3%)
All FWO disputes completed	2018-19
Education and dispute resolution	27,874 (96%)
Compliance and enforcement:	4,256 (4%)
- With enforcement outcome applied	269 (1%)

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~~In the in 2018-19 financial year, 83% of the Fair Work Ombudsman's court actions involved alleged breaches of workplace laws by businesses employing migrant workers. We secured over \$1.7 million in court-ordered penalties for cases involving visa workers and we recovered over \$3.1 million for migrant workers.~~

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s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 3:02 PM
 To: s.22 – Irrelevant to request
 Subject: FW: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 Attachments: Migrant Workers - 2018-19 FY (003).docx
 Importance: High

OFFICIAL: Sensitive

Updated – with replies to your comments. Also changed view to ‘simple markup’ as it was getting a little messy.
 Thanks.

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 2:25 PM
 To: s.22 – Irrelevant to request
 Cc: [REDACTED]
 Subject: Fwd: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive][SEC=OFFICIAL: Sensitive]
 Importance: High

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 3:22 pm
 To: s.22 – Irrelevant to request
 Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

I have reviewed and it looks pretty good. I have a couple of questions that I think we might need to consider, but you have done a great job putting this together.

Have a read and let me know what you think, I can send it up once we are both across it 😊

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
 Sent: Wednesday, 18 December 2019 11:43 AM
 To: s.22 – Irrelevant to request
 Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]
 Importance: High

OFFICIAL: Sensitive

Sorry, missed a change when I merged the documents.
 Try again – attached.

From: s.22 – Irrelevant
 Sent: Wednesday, 18 December 2019 11:36 AM
 To: s.22 – Irrelevant to request

Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

Importance: High

OFFICIAL: Sensitive

Hi **s.22 – Irrelevant**

See updated version **attached** (which incorporated **s.22** most recent email and her track changes) and make the following notes to address ILS' comments.

- Our current 'narrative' around migrant workers is that this cohort is a priority for the FWO, we offer them tailored assistance and we are focussed on encouraging migrant workers to seek our help by removing barriers that make them reluctant to contact us – the data and supporting information in the proposed response doesn't convey this. **Added some preliminary commentary to be reviewed by ILS.**
- The comparison of 2017-18 to 2018-19 data doesn't appear to add any value, if anything it suggests that less migrant workers are approaching the FWO for assistance (which may or may not be the case) but in any case may result in criticism directed towards the FWO. **Removed 17-18 data.**
- Remove reference to disputes completed *for* migrant workers – as we don't represent either party it would be more appropriate to say '14% of formal disputes *involving* migrant workers...' **Updated.**
- Re-structure the information on the second page to make it easier to digest, suggest one paragraph about % of migrant worker disputes that progress to C and E compared to all disputes, and a second paragraph about factors that impact whether enforcement outcomes are appropriate.
- Include information about the % of litigations commenced in 2018/19 which involved a migrant worker – this statistic demonstrates how we are using our resources to prioritise migrant workers and aligns with our narrative. **Included data from the Annual Report**
- Reconsider inclusion of the data table on the second page – or include more supporting information/footnotes to explain our operating model and make clear that education and dispute resolution activities don't involve findings of non-compliance. **Updated footnotes.**
- This may have already been considered, but given the journalist is requesting information about 417 visa holders, suggest that the response could focus on that cohort rather than migrant workers more broadly, with some explanatory words around the way we collect data (which is touched upon in the letter from Annabel). **I have left the data as is for now.**

s.22 – Irrelevant to request

From: **s.22 – Irrelevant to request**

Sent: Tuesday, 17 December 2019 8:30 PM

To: **s.22 – Irrelevant to request**

Cc:
s.22 – Irrelevant to request

Subject: FW: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi **s.22** Are you able to please spend some time tomorrow (Wed) urgently trying to update the relevant word doc? I've attached it again to this email...

If you're able to make some suggested tracked changes to the doc that address ILS' main concerns (below), that would be a great start for me to then pick up asap on Thursday morning and discuss with **s.22** and **s.22** again....

It should never have got to this point, but let's discuss learnings (for me too) after this matter has been finalised.

I have committed to getting some info to the ABC journalist by Friday, so even if we strip the document right back and just provide her limited data and only non-controversial explanations, that would be better than nothing.

Please call me tomorrow if you hit a roadblock, otherwise I'll talk to you asap on Thursday.

Thanks,

s.22 – Irrelevant to request

From: FWO - FOI Requests

Sent: Tuesday, 17 December 2019 6:42 PM

To: s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

Hi s.22 – Irrelevant

Thank you so much and thank goodness we included your team in this round of consultation. I understand your concerns and think we clearly need to do more work to ensure the information released is more consistent with the current narrative around migrant workers. The document is largely consistent with a document previously released to ABC under FOI, but I don't know whether ILS was consulted at that time. In any case, let's try and alter the response this time.

As we are under considerable time pressure to get some information to the journalist by this Friday, I hope you don't mind me copying in others at this time. We will work on updating the word document before consulting with you, s.22 and s.22 again.

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request

Sent: Tuesday, 17 December 2019 5:18 PM

To: s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

Subject: RE: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

OFFICIAL: Sensitive

Hi s.22 – Irrelevant to request

Thank you for the opportunity to comment. s.22, s.22 and I have reviewed and are thoughts are consolidated below:

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Sent: Tuesday, 17 December 2019 1:43 PM

To: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Cc: s.22 – Irrelevant to request

s.22 – Irrelevant to request

Subject: Request for assistance by Friday re FOI request [SEC=OFFICIAL:Sensitive]

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Hi everyone,

Request for your input by this Friday 20 November – release of data to ABC journalist

We are trying to finalise an FOI decision this week and are seeking your teams' urgent assistance please. I apologise for the short turnaround.

You may recall earlier emails and discussions regarding the FOI request from Ms Katri Uibu, an ABC journalist, for detailed information relating to complaints received from 417 visa-holders while undertaking work to obtain a second-year visa.

We intend to issue the attached Notice of Decision - a practical refusal decision (under section 24 of the FOI Act) - on the basis that the work involved to complete the required level of interrogation of FWO information management systems would 'substantially and unreasonably divert the resources of the agency from its other operations'.

Action

We would like to provide Ms Uibu with data about formal disputes lodged by migrant workers over the past two financial years, including data about the allegations raised in those disputes and the enforcement outcomes applied.



Australian Government

Fair Work OMBUDSMAN

MIGRANT WORKERS DATA

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Disputes completed ~~2017-18 &~~ 2018-19 financial year

In the 2018-19 financial year, the FWO completed 1,647 formal dispute lodgements relating to migrant workers⁴. While migrant workers make up 6% of the Australian workforce, this group accounted for 22% of all formal disputes² completed by the Fair Work Ombudsman in 2018-19. In addition, 24% of anonymous reports came from migrant workers. While this is a decrease from the 2,158 completed in the 2017-18 financial year, it represents a proportional increase from 20% to 22% of all formal dispute lodgements completed by FWO in these years.

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s.22 – Irrelevant

From: FWO - FOI Requests
Sent: Thursday, 19 December 2019 7:31 PM
To: Katri Uibu
Subject: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]
Attachments: IA-1072 - Notice of Decision.pdf

OFFICIAL

Dear Katri

Please find attached Notice of Decision in response to your Freedom of Information request.

I acknowledge the delays in providing this decision to you and appreciate that the decision may not be what you were expecting.

As outlined in more detail in the attached Notice - As a result of our consultation with you, you were able to narrow the scope of your broad request, but the scope of your amended request was still too broad for us to be able to process in accordance with the *Freedom of Information Act 1982*, the FOI guidelines provided by the Australian Information Commissioner and the FWO's resources.

If you would like to discuss the decision and where you could find more publically available information about the FWO's work on migrant worker matters, I would be happy to talk to you as soon as possible in the New Year. I am on leave until Christmas Eve and then the FWO's office is closed until 2 January 2020.

Sincerely

Annabel

Annabel Kent | Assistant Director – Information Governance
Fair Work Ombudsman

s.22 – Irrelevant to request

www.fairwork.gov.au [subscribe to our eNewsletter](#)





Fair Work

OMBUDSMAN

Our reference: IA-1072

19 December 2019

Ms Katri Uibu
Journalist
Australian Broadcasting Corporation

By email: uibu.katri@abc.net.au

Dear Ms Uibu

FREEDOM OF INFORMATION REQUEST Notice of Decision

I refer to your request on behalf of the Australian Broadcasting Corporation (**ABC**) to the Fair Work Ombudsman (**FWO**) for documents under the *Freedom of Information Act 1982* (**FOI Act**).

Scope of Request

Following consultation under section 24AB of the FOI Act regarding the original scope of your request, you submitted the following amended request scope:

The following documents that contain information about the assistance the Fair Work Ombudsman has provided to subclass 417 visa holders, who have undertaken three months of regional work for second-year Working Holiday visa purposes –

1. *Documents that show all complaints of underpayments, made by 417 visa holders during the period 1 May 2017 to 30 August 2019;*
2. *Documents that show the outcomes of the above complaints, including:*
 - a. *information about any wages or other monetary entitlements that FWO assisted to recover for the 417 visa workers; and*
 - b. *information about how many cases resulted in outcomes that were favourable to the complainants and what those outcomes were.*

Decision and Statement of Reasons

This letter sets out my decision in relation to your request, which I am authorised to make under section 23 of the FOI Act.

In making my decision, I took into account the wording of your request scope, the FOI Act, the Australian Information Commissioner's Guidelines (the **FOI Guidelines**)¹ and consultation with relevant FWO business units and FWO employees.

¹ <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

Practical Refusal — s 24AA

I have decided that a practical refusal reason exists pursuant to section 24AA of the FOI Act, because the work involved in processing your request would substantially and unreasonably divert the resources of the agency from its other operations.

Whilst the amendments to your scope request did reduce the overall likely number of relevant documents, it is still clear that the work required to process your request would substantially and unreasonably divert the FWO's resources from its other operations, within the meaning of section 24AA.

The FOI Guidelines state that in deciding if a practical refusal reason exists, an agency must have regard to the resources required to perform the following activities:

- identifying, locating or collating documents within the filing system of the agency or minister;
- examining the documents;
- deciding whether to grant, refuse or defer access;
- consulting with other parties;
- redacting exempt material from the documents;
- making copies of documents; and
- notifying an interim or final decision to the applicant.²

In the consultation letter sent to you regarding your original request scope, Mr Cameron Hankins explained that the FWO's information management systems do not have the required functionality to easily identify documents falling within the scope of your request. The same must be said for your amended request scope.

The complexities involved in identifying relevant documents are also linked to the specificity of the 417 visa-holder information you are seeking.

Information available on the website of the Department of Home Affairs notes that a 417 visa gives the holder a right to work in Australia for up to 12 months. If the visa holder has completed at least three months specific work in a regional area during this time, the visa holder is eligible, subject to meeting other requirements, to apply for a second 12-month working holiday visa.³

You are seeking information that relates to the three months' work (or longer) in a regional area that a 417 visa holder needs to undertake in order to be eligible to apply for a second 12 month working holiday visa.

When a visa holder seeks FWO assistance and provides information about their visa subclass, we record this information in a reportable way.⁴ However, when someone is completing 'specific work in a regional area', we do not record this subset of information in a way that is readily identifiable. This is for two reasons.

First, there is no distinct visa subclass that indicates a visa holder is performing 'specific work in a regional area'. This limits FWO's ability to easily distinguish which 417 visa holders who sought FWO assistance were performing work for the purpose of obtaining a second 12 month working holiday visa.

² FOI Guidelines, 3.116.

³ <https://immi.homeaffairs.gov.au/visas/getting-a-visa/visa-listing/work-holiday-417/second-working-holiday-417>.

⁴ Not all complainants provide this information when seeking FWO assistance.

Second, as a general rule we would also only record this information where it is known and relevant to the workplace dispute. For these matters, while this information is recorded, it is information that is primarily used for the purpose of handling the workplace dispute. The information would exist in documents such as emails, file notes and decision records. Therefore, although there is a certain amount of information of this nature held by the FWO, manual searches of each matter/investigation would need to be undertaken to identify and extract it. As previously advised in the section 24AB consultation notice dated 4 October 2019, this is further complicated by the fact that multiple business units across the FWO may hold documents in various formats in undertaking their functions.

This can be compared with inquiries, undertaken as part of FWO's statutory functions under section 682 of the *Fair Work Act 2009*, that captured information relating to 417 visa-holders. The FWO's 'Harvest Trail Inquiry Report' (**the 2018 Inquiry**) and 'Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program' (**the 2016 Inquiry**) involved manual input of information throughout the inquiries, captured with the intent of producing these reports.⁵

Importantly, these inquiries are significant, distinct bodies of work, which FWO dedicated resources to for this purpose, and which do not reflect the way individual requests for assistance are managed.

Specifically, the FWO commenced the 2016 Inquiry by obtaining information from the Department of Home Affairs to assist in the identification of employers who were 'signing off' on specified work during the 2013-2014 financial year. Following analysis of this data, the 2016 Inquiry engaged with employers who were high users of the program in regional areas and had a documented history of sourcing labour from 417 visa holders undertaking the three month specified work requirement. The 2016 Inquiry also commissioned a mass survey of 43,219 sub class 417 visa holders who had been granted a second year visa in the 2013-2014 financial year.⁶

During the FWO's 2018 Inquiry, there were 1,295 discrete education and compliance interactions with Harvest Trail participants (including, but not limited to workers and business) and 836 completed investigations. Of the growers that provided data to the FWO about the kinds of workers they engaged, the Working Holiday visa subclass 417 was the most common visa type.⁷

In other words, most data and information relating to 417 visa-holders undertaking 'three months specific work in a regional area' was proactively sought and initially obtained through external sources for the purposes of the Inquiry work.

Processing timeframes

We consulted with eight FWO business units when considering the most efficient way to identify documents relevant to the scope of your request.

The work involved to complete the level of interrogation of FWO information management systems in order to process your request formed the basis for the notice of consultation sent to you in October, with reference to section 24AB of the FOI Act.

In that notice that included specific calculation and an explanation of the methodology used, we estimated that it would take approximately 855 hours to process your request in its original form.

When considering the revised scope of your request, I have estimated that it would take at least 132 hours to complete the preliminary search and retrieval stage of your FOI request. This would involve reviewing the documentation associated with each complaint from a 417 visa-holder to

⁵ Accessible through our website: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/inquiry-reports>.

⁶ FWO's Inquiry into the wages and conditions of people working under the 417 Working Holiday Visa Program (November 2016), pages 13-14. Available at: <http://www.fairwork.gov.au/ArticleDocuments/763/417-visa-inquiry-report.pdf.aspx>.

⁷ FWO's Harvest Trail Inquiry Report (November 2018), page 31. Available at <https://www.fairwork.gov.au/ArticleDocuments/1461/fair-work-ombudsman-harvest-trail-inquiry-report.docx.aspx>.

determine whether it relates to work performed in a specific regional area for the purpose of obtaining a second 12 month working holiday visa.

This estimated processing time does not include identifying, extracting and compiling the specific information contained within the documents you are seeking. Nor does it include preparing a decision and presenting the relevant information into a meaningful format for release.

There is no set number of hours of processing time that determines whether a practical refusal reason exists, but rather each case should be assessed on its own merits. Recent decisions by the Australian Information Commissioner has affirmed decisions by departments and agencies that practical refusal grounds may exist where requests would exceed 70 hours of work.⁸

The FWO is a relatively small agency and the team responsible for processing information access requests⁹ comprises four employees (overseen by one Director). Processing a request of this size would unreasonably impact the available resources and ability to respond to other information access requests, privacy matters and other functions performed by the team.

The FWO processes approximately 150 information access requests per annum. Assuming the information access and FOI staff members spend approximately 70 per cent of their work time on information access requests,¹⁰ they would spend around 6,300 hours processing these matters each year, equating to approximately 42 hours per request.

Given our estimation that it would take approximately 132 hours just to identify and retrieve the documents relevant to your request, it is clear that the overall processing time for your request is likely to more than triple the average processing time per request.

Your revised request has narrowed the scope by reducing the period for documents sought, and removing additional policy and briefing related materials. However, for the reasons outlined above, the FWO cannot reasonably identify and extract the information you are seeking without it presenting a substantial and unreasonable diversion of FWO resources from its other operations.

Review Rights

I have attached a document setting out your rights of review of this decision in accordance with the FOI Act (**Attachment A**).

Contact details

If you would like to discuss the matter further or need any further information, please email me via foi@fwo.gov.au.

Yours sincerely



Annabel Kent
Assistant Director – Information Governance
Fair Work Ombudsman

⁸ For example, in *'NX' and Australian Trade and Investment Commission (Freedom of Information)* [2018] AICmr 18 (2 February 2018), a practical refusal decision was issued for an FOI request involving an estimated further 63 hours of processing of 610 documents, and involving consultation with five external third parties, see: <https://www.oaic.gov.au/freedom-of-information/foi-decisions/ic-review-decisions/2018-aicmr-18>.

⁹ Information access requests include FOI Requests and request for disclosures pursuant to section 718(2) of the *Fair Work Act 2009*, as outlined further in the FWO's Information Access Policy (see: <https://www.fairwork.gov.au/about-us/access-accountability-and-reporting/accessing-our-information>).

¹⁰ Based on 48 weeks' work per annum (factoring in annual leave).

Attachment A

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

By Post: 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 an IC review, please refer to <https://www.oaic.gov.au/freedom-of-information/reviews-and-complaints/information-commissioner-review/>. You can download a review form and/or file your application online at <https://forms.business.gov.au/aba/oaic/foi-review-/>

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

s.22 – Irrelevant

From: s.22 – Irrelevant to request
 Sent: Thursday, 19 December 2019 7:37 PM
 To: s.22 – Irrelevant to request
 Cc:
 Subject: FW: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL:Sensitive]
 Attachments: IA-1072 - Notice of Decision.pdf

OFFICIAL: Sensitive

FYI and for file, thanks

s.22 – Irrelevant to request

I discussed this matter with s.22 earlier this evening. She agreed that we are not in a position to be able to provide Ms Uibu with any of the proposed information regarding the data about the FWO's work on migrant worker disputes. Whilst we were able to collate some potentially useful information for Ms Uibi, we were not able to obtain sufficient consensus in time from internal stakeholders (including SES), in order to be able to provide the data to her.

Let's talk asap next year about how we approach similar matters in 2020. Whilst the approach was successfully adopted for the s.22 matter, it is clear now that the environment has changed and there are increasing sensitivities regarding information releases that don't perfectly align with information that is already publically available.

Thanks

s.22 – Irrelevant to request

From: FWO - FOI Requests <FOI@fwo.gov.au>
Sent: Thursday, 19 December 2019 8:01 PM
To: Katri Uibu <Uibu.Katri@abc.net.au>
Subject: Notice of Decision - FO request (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Katri

Please find attached Notice of Decision in response to your Freedom of Information request.

I acknowledge the delays in providing this decision to you and appreciate that the decision may not be what you were expecting.

As outlined in more detail in the attached Notice - As a result of our consultation with you, you were able to narrow the scope of your broad request, but the scope of your amended request was still too broad for us to be able to process in accordance with the *Freedom of Information Act 1982*, the FOI guidelines provided by the Australian Information Commissioner and the FWO's resources.

If you would like to discuss the decision and where you could find more publically available information about the FWO's work on migrant worker matters, I would be happy to talk to you as soon as possible in the New Year. I am on leave until Christmas Eve and then the FWO's office is closed until 2 January 2020.

Sincerely

Annabel

Annabel Kent | Assistant Director – Information Governance
Fair Work Ombudsman

s.22 – Irrelevant to request

www.fairwork.gov.au

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Released under the
Freedom of Information Act
by the Fair Work Ombudsman

s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Thursday, 19 December 2019 9:33 PM
To: s.22 – Irrelevant to request
Cc:
Subject: Fwd: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]
Attachments: IA-1072 - Notice of Decision.pdf

Hi s.22, s.22 and s.22. FYI only - We decided not to provide the ABC with any of the proposed data re migrant worker disputes. If the journalist pushes for it next year via FOI, I might come back to you with an updated version of the data incorporating feedback. Thank you for your earlier assistance at such a busy time. And have a lovely Christmas! s.22 – Irrelevant

From: FWO - FOI Requests <FOI@fwo.gov.au>
Sent: Thursday, 19 December 2019 8:01 pm
To: Katri Uibu <Uibu.Katri@abc.net.au>
Subject: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]

OFFICIAL

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Please find attached Notice of Decision in response to your Freedom of Information request.

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If you would like to discuss the decision and where you could find more publically available information about the FWO's work on migrant worker matters, I would be happy to talk to you as soon as possible in the New Year. I am on leave until Christmas Eve and then the FWO's office is closed until 2 January 2020.

Sincerely

Annabel

Annabel Kent | Assistant Director – Information Governance
Fair Work Ombudsman

s.22 – Irrelevant to request

www.fairwork.gov.au

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s.22 – Irrelevant

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Monday, 6 January 2020 3:45 PM
To: FWO - FOI Requests
Subject: RE: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]

Categories: s.22 Saved to SharePoint

Thank you for that!

From: FWO - FOI Requests
Sent: Monday, 6 January 2020 4:00 PM
To: Katri Uibu
Subject: RE: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Katri

Thank you for your correspondence of 5 January 2020.

Annabel is currently on leave and will return to work on Thursday 9 January 2020.

I have left a message for Annabel to contact you upon her return to work.

Regards

Jennifer

Jennifer Wockner | Information Governance Officer

Fair Work Ombudsman

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Sunday, 5 January 2020 12:50 PM
To: FWO - FOI Requests <FOI@fwo.gov.au>
Subject: RE: Notice of Decision - FOI request (IA 1072) [SEC=OFFICIAL]

Hi Annabel,

Thank you for this. Could you please provide a phone number? I would like to call and discuss tomorrow.

Thanks,

Katri

From: FWO - FOI Requests <FOI@fwo.gov.au>
Sent: Thursday, 19 December 2019 8:01 PM
To: Katri Uibu <Uibu.Katri@abc.net.au>
Subject: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Dear Katri

Please find attached Notice of Decision in response to your Freedom of Information request.

I acknowledge the delays in providing this decision to you and appreciate that the decision may not be what you were expecting.

As outlined in more detail in the attached Notice - As a result of our consultation with you, you were able to narrow the scope of your broad request, but the scope of your amended request was still too broad for us to be able to process in accordance with the *Freedom of Information Act 1982*, the FOI guidelines provided by the Australian Information Commissioner and the FWO's resources.

If you would like to discuss the decision and where you could find more publically available information about the FWO's work on migrant worker matters, I would be happy to talk to you as soon as possible in the New Year. I am on leave until Christmas Eve and then the FWO's office is closed until 2 January 2020.

Sincerely

Annabel

Annabel Kent | Assistant Director – Information Governance

Fair Work Ombudsman

s.22 – Irrelevant to request

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s.22 – Irrelevant

From: s.22 – Irrelevant to request
Sent: Monday, 13 January 2020 9:55 AM
To: s.22 – Irrelevant to request
Subject: FW: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]

Categories: Saved to SharePoint

For file, thanks

From: KENT,Annabel
Sent: Monday, 13 January 2020 10:25 AM
To: 'Katri Uibu' <Uibu.Katri@abc.net.au>
Subject: RE: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]

Hi Katri. Yes, I have a short window tomorrow morning. I will call you then. Annabel

Annabel Kent | Assistant Director – Information Governance
Fair Work Ombudsman

From: Katri Uibu <Uibu.Katri@abc.net.au>
Sent: Monday, 13 January 2020 9:59 AM
To: KENT,Annabel <Annabel.Kent@fwo.gov.au>
Subject: RE: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]

Hi Annabel,

Could we do sooner please? Would tomorrow work?

Thanks,
Katri

From: KENT,Annabel <Annabel.Kent@fwo.gov.au>
Sent: Monday, 13 January 2020 9:36 AM
To: Katri Uibu <Uibu.Katri@abc.net.au>
Subject: RE: Notice of Decision - FOI request (IA-1072) [SEC=OFFICIAL]

OFFICIAL

Hi Katri

Would this coming Thursday morning (16 Jan) suit you for a discussion? I will call you. Let me know if you have a preferred time.

Regards

Annabel

Annabel Kent | Assistant Director – Information Governance
Fair Work Ombudsman

s.22 – Irrelevant to request

From: s.22 – Irrelevant to request
To: [REDACTED]
Subject: Discussion with ABC journalist [SEC=OFFICIAL]
Date: Tuesday, 14 January 2020 10:57:45
Attachments: [IA-1072 - Notice of Decision.pdf](#)

OFFICIAL

FYI and for file please s.22 (IA-1072) –

Following her request for a discussion, I telephoned Katri Uibu, ABC journalist – regarding the FOI Notice of Decision (attached) she received just before Christmas.

Katri wished to clarify a few points of her request scope, to check whether we had misunderstood what information she was seeking, prior to the decision being made. In particular, she wanted to discuss some of the reasoning included on pages 2 and 3 of the Notice of Decision about the apparent specificity of the visa sub-class information she was seeking.

I confirmed that one of the main reasons for the decision to refuse access was the fact that we would need to open every single matter related to these particular visa workers to extract the information she was seeking.

Katri said she would discuss the FWO's position with her FOI editor Michael McKinnon. I confirmed that I had spoken to Mr McKinnon about a similar FOI request he had submitted personally late last year.

Katri said she would probably submit another FOI request on the same topic over the next few days and may call me back. She expressed frustration with the FWO's failure to provide more information about the FWO's work to address allegations of underpayment towards 417 visa-holders. I said I acknowledged her frustration and that my team was continuing to try and collate relevant information that individuals were seeking via information requests on the topic. She asked when and how that information would be released. I said I didn't know because any decision to release information outside of FOI was not within my role.

s.22 – Irrelevant

– I'd appreciate the opportunity to discuss the implications of this discussion and related matters at our next catch-up.

s.22 – Irrelevant to request

Assistant Director – Information Governance

Fair Work Ombudsman

s.22 – Irrelevant to request