
Guidance Note No.	2	Guidance Note Title	FWO Document Access Policy ¹
Publication History		Relevant legislation or materials	<i>Fair Work Act 2009</i> <i>Freedom of Information Act 1982</i>
First issued	10 July 2009		

1. The purpose of FWO Guidance Notes

- 1.1. Guidance Notes are a means by which the Office of the Fair Work Ombudsman (**FWO**) publishes and disseminates advice on the interpretation of the laws it enforces or about its internal policies and or procedures.
- 1.2. The FWO will publish Guidance Notes from time to time on a range of subject matters concerning the *Fair Work Act 2009* (**FW Act**). The general public are welcome to suggest subject matter for future Guidance Notes.

2. This Guidance Note

- 2.1. This Guidance Note sets out guidelines to be followed by the FWO in relation to access to documents held by the FWO and, in particular, those documents received or obtained by the FWO in the course of an investigation by a party to the investigation. It is to be referred to as:
 - (a) Guidance Note 2; or
 - (b) the FWO Document Access Policy.
- 2.2. This Guidance Note addresses the following topics:
 - (a) The purpose of FWO Guidance Notes (paragraph 1);
 - (b) This Guidance Note (paragraph 2);
 - (c) About the Fair Work Ombudsman (paragraph 3);
 - (d) General policy in relation to access to documents (paragraph 4);
 - (e) Documents which are publicly available (paragraph 5);

¹ This Guidance Note 2 ("FWO Document Policy") was endorsed by the FWO Executive Board on 10 July 2009.

- (f) Requests by parties to an investigation (paragraph 6);
 - (g) Requests by members of the public (paragraph 7);
 - (h) Applications under the FOI Act (paragraph 8);
 - (i) Where to send requests for documents (paragraph 9);
- 2.3. The purpose of this Guidance Note is two fold. First, it operates as a guide for the FWO in determining access to documents held by the FWO and, in particular, those documents received or obtained by the FWO in the course of an investigation by a party to the investigation.
- 2.4. Secondly, it aims to provide the community with a better understanding of how access to documents held by the FWO can be obtained.
- 2.5. This Guidance Note does not have the force of statute.

3. About the Fair Work Ombudsman

- 3.1. The Fair Work Ombudsman, Nicholas Wilson, is a statutory office holder pursuant to section 681 of the FW Act.
- 3.2. The Office of the Fair Work Ombudsman is a statutory office pursuant to section 696 of the FW Act.
- 3.3. Prior to the commencement of operations of the FWO on 1 July 2009, the FWO's functions were largely fulfilled by the Office of the Workplace Ombudsman (previously the Office of Workplace Services (**OWS**)) and the Workplace Authority (previously the Office of the Employment Advocate (**OEA**)). Prior to 27 March 2006 the functions were fulfilled by the then Department of Employment and Workplace Relations. The FWO is independent of the management of the Department of Education, Employment and Workplace Relations.
- 3.4. In broad terms, the FWO:
- (a) promotes harmonious, productive and cooperative workplace relations;
 - (b) assists employees and employers to understand their rights and obligations;
 - (c) provides advice and disseminates information;
 - (d) promotes and monitors compliance with Commonwealth workplace laws;

- (e) investigates complaints;
 - (f) inquires into, and investigates, any act or practice that may be contrary to Commonwealth workplace laws;
 - (g) commences proceedings or makes applications to enforce Commonwealth workplace laws and, where appropriate, seeks a penalty for contravention of Commonwealth workplace laws; and
 - (h) represents workers who are, or might become, a party to proceedings.
- 3.5. The Fair Work Ombudsman appoints Fair Work Inspectors empowered to investigate and enforce compliance with a range of Commonwealth workplace laws including, but not limited to, general protections, minimum wages and entitlements and orders of Fair Work Australia.

4. General policy in relation to access to documents

- 4.1. Where a request for documents is made to the FWO, we will consider whether the documents can be made available without requiring an application be made under the *Freedom of Information Act 1982 (Cth)* (**FOI Act**).
- 4.2. In particular, the FWO will consider whether the documents can be disclosed under the powers conferred by section 718 of the FW Act, and delegated to Fair Work Inspectors in accordance with section 718(2) of the FW Act under a Delegation of Powers and Functions signed by the Fair Work Ombudsman on 2 July 2009. Generally speaking, documents disclosed in accordance with the FW Act are exempt from the operation of privacy laws.
- 4.3. The purpose of the policy is to promote efficient and timely access to certain documents held by the FWO. In particular, the policy is designed to assist parties to an investigation (e.g. complainants or employers responding to a claim) in seeking access to relevant documents on file which relate to their matter.
- 4.4. The granting of access to documents under this policy is at the sole discretion of the FWO. The FWO reserves the right to refuse access to documents requested under this policy. Where this occurs a person seeking documents may choose to make a formal FOI application whereupon a decision on access to the documents will be made in accordance with the terms of the FOI Act.

5. Documents which are publicly available

- 5.1. Where a request relates to a publicly available document, the FWO will not require an application be made under the FOI Act.
- 5.2. The FWO provides access to many publicly available documents, such as blank claim forms, fact sheets, guidance notes and media releases on our website at www.fwo.gov.au. The FWO also provides links on our website to legislation relevant to our functions and decisions in matters the FWO has litigated.

6. Requests by parties to an investigation

Parties to an investigation may request the FWO provide access to documents relating to their matter.

6.1. *Making a request to access documents*

- (a) The request should be made to the Fair Work Inspector responsible for the investigation. In considering whether to provide a party to the investigation with access to the documents, the Fair Work Inspector will determine whether they can be released under section 718(2) of the FW Act.
- (b) Generally speaking, it will be considered appropriate for a Fair Work Inspector to disclose certain documents to parties to the investigation. Note: FWO will delete personal information relating to others prior to releasing documents (such as names, addresses, phone numbers and email addresses). Documents which may be appropriate for release include:
 - copies of documents provided to the FWO by the requesting party
 - copies of any evidence provided by the other party to the investigation (such as time sheets, payslips, emails, diary records and statutory declarations or formal statements which relate to the requesting party)
 - copies of telephone discussions or interviews between the requesting party and FWO staff (where a record of conversation is made);
 - copies of correspondence between the FWO and other parties to the investigation relating to issues in dispute in the investigation ();
 - copies of documents containing the personal information of the requesting party; and

- copies of any tribunal or court decision or authority relied upon in making a decision.
- (c) Certain documents will not be released by the FWO under section 718(2) of the FW Act. These include:
- legal advice provided by the FWO's internal lawyers or by external legal providers in relation to the matter;
 - personal information relating to others;
 - internal working documents such as recommendations on the file or internal conference notes relating to the matter; and
 - commercially sensitive information.
- (d) In determining whether to grant such a request, in accordance with section 718(2)(a) of the FW Act, the FWO will have regard to whether the disclosure of information is necessary and / or appropriate. The decision will be made by the Fair Work Inspector responsible for the investigation in conjunction with the Fair Work Inspector's Executive Level 2 Manager.
- (e) Where the Fair Work Inspector has any doubts about releasing documents, the Fair Work Inspector may consult with the FWO's Legal Group about whether they should release the document.
- (f) The Fair Work Inspector will provide the person requesting documents with a letter approving the request (in full or part) or rejecting the request, together with reasons for the decision. The Fair Work Inspector may also provide a schedule of the documents relating to the request.

6.2. ***Disclosure of information to parties to an investigation***

- (a) Where a party to an investigation provides the FWO with information in the course of an investigation, this information may be disclosed to the other parties to the investigation, especially if it is necessary in the interests of affording natural justice to those other parties.
- (b) Generally speaking, the FWO will only provide information to another party where that party has requested information relating to the investigation and where disclosure is permitted under section 718(2) of the FW Act.

- (c) If a person has provided documents to the FWO “in confidence”, then it may be that the investigation is impeded. However, the FWO will not release those documents under section 718(2) without the permission of the person who supplied the document. If the permission to release the documents is not given then, the FWO inform the party requesting access to the documents that they may make an application under the FOI Act. Such an application will then be subject to the FOI Act and disclosure may be made if it is required under the FOI Act.

7. Requests by members of the public

- 7.1. Members of the public may make a request for documents which they believe may be held by the FWO.
- 7.2. To reduce the formality associated with FOI requests, the FWO may provide members of the public with a schedule of documents within the scope of their request. If the documents within the schedule are not subject to any potential exemption under the FOI Act, the FWO may elect to provide the documents at no cost.
- 7.3. However, where a request is likely to involve a large number of documents or would involve considerable time or resources, the FWO may require a formal application under the FOI Act to assist it in recovering the fees and charges associated with the processing of such a request.
- 7.4. If the documents sought fall into categories of documents that may be potentially exempt from disclosure under the FOI Act, then the party seeking the documents will be directed to make a formal application under the FOI Act.

8. Applications under the FOI Act

- 8.1. Documents can be requested under the FOI Act at any time, and an FOI application may be made without first making an informal request under this policy.
- 8.2. Where a request under this policy and been refused (in whole or in part) the persons seeking the documents will be informed that they may make an application under the FOI Act in respect of the documents withheld. Of course, those documents may also be exempt from release under the FOI Act.



- 8.3. Persons making an application under the FOI Act should be aware that there are fees and processing charges associated with such an application.
- 8.4. For more information on applications under the FOI Act, please refer to the FWO's FOI fact sheet available from our [website](#).

9. Where to send requests for documents

- 9.1. Request for access to documents under this policy should in the first instance be made to the Fair Work Inspector handling the investigation. Where the person requesting access does not know the identity of the Fair Work Inspector handling the investigation they should direct their request to the address below.
- 9.2. FOI applications should be directed to the following address:

FOI Contact Officer
Fair Work Ombudsman
GPO Box 9887
Melbourne VIC 3001

Bill Loizides
Group Manager - Field Operation
Fair Work Ombudsman
10 July 2009