



Jon Molyneux

Our reference: 1-H82QGA8

22 March 2019

## Decision about your freedom of information request

Dear Jon Molyneux,

I refer to your request made under the *Freedom of Information Act 1982* (FOI Act), submitted to the ATO on 24 February 2019. Your request sought:

- Any correspondence you have had from the United Kingdom tax department, Her Majesty's Revenue and Customs (HMRC), in relation to the 05 April 2019 Disguised Remuneration Loan Charge likely to impact 720+ Australian residents who worked as contractors in the UK between 1999-2019?
- Any indication from HMRC how many Australian residents will be impacted by this over and above the 720 letters they have already sent to Australians?
- Any analysis undertaken internally to understand the potential scale of the impact on Australian tax residents?
- Any justifications from HMRC for effectively retrospectively taxing legal arrangements back to 1999?
- Any justifications for taxing Australian citizens and/or residents in 2019 who have not been UK tax residents for many years and/or who are not UK tax residents on 05/04/2019?

In addition, are you able to please provide an indication of where the Australian Tax Office stands on enforcing retroactive, or effectively retrospective, tax legislation from a foreign country?

I note that the FOI Act gives a right of access to documents, not information, and that an agency is not required to create new documents to satisfy an FOI request.

### Authority

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

### Decision

I have decided to refuse your request under section 24A of the FOI Act, on the basis that the documents you are seeking cannot be found, do not exist, or have not been received.

### Material on which my findings were based

In reaching my decision I relied on the following:

- the terms of your request;
- information provided by the relevant business area of the ATO;
- the FOI Act; and
- the guidelines issued by the Information Commissioner under section 93A of the FOI Act (the FOI Guidelines).

## Reasons for Decision

Subsection 24A(1) of the FOI Act provides:

- (1) An agency or Minister may refuse a request for access to a document if:
  - (a) all reasonable steps have been taken to find the document; and
  - (b) the agency or Minister is satisfied that the document:
    - (i) is in the agency's or Minister's possession but cannot be found; or
    - (ii) does not exist.

We have contacted the ATO's relevant business lines, including the ATO's International Engagement and Exchange of Information teams, and had officers from those business lines conduct a reasonable search of all relevant ATO computer systems and hard copy files that may contain documents within the scope of your request. We did not identify any documents that would fall within the scope of your request. For further information about what constitutes a reasonable search for documents, please see Part 3 of the FOI Guidelines.

On the basis of those searches and advice from relevant ATO officers, I am satisfied that all reasonable steps have been taken to find the documents, and that the documents do not exist.

## Your review rights

If you are dissatisfied with my decision, you may apply for internal review or Information Commissioner review of the decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

### *Internal review*

Under section 54 of the FOI Act, you may apply in writing to the ATO for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter, quoting our reference number at the top of this letter, and be lodged in one of the following ways:

email: **FOI@ato.gov.au**  
post: Australian Taxation Office, General Counsel, GPO Box 4889, Sydney  
NSW 2001.

Where possible please attach reasons why you believe review of the decision is necessary.

The internal review will be carried out by another officer within 30 days. If you have not been informed of the outcome of the review within that time, you may apply to the Australian Information Commissioner under section 54L of the FOI Act.

### *Information Commissioner review*

Under section 54L of the FOI Act, you may apply to the Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: **<https://forms.business.gov.au/aba/oaic/foi-review/>**  
email: **enquiries@oaic.gov.au**  
post: GPO Box 5218, Sydney NSW 2001  
in person: Level 3, 175 Pitt Street, Sydney NSW

Visit the Information Commissioner website, [www.oaic.gov.au/freedom-of-information/foi-reviews](http://www.oaic.gov.au/freedom-of-information/foi-reviews), for more information about Information Commissioner review.

## **Complaints**

Any complaint about the processing of your FOI request can be forwarded to the Information Commissioner. The complaint needs to be in writing and identify the agency against which the complaint is made. There is no particular form required to make a complaint, however using the online form is preferable.

online: [https://forms.business.gov.au/aba/landing.htm?formCode=ICCA\\_1](https://forms.business.gov.au/aba/landing.htm?formCode=ICCA_1)  
email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)  
post: GPO Box 5218, Sydney NSW 2001  
in person: Level 3, 175 Pitt Street, Sydney NSW

The Information Commissioner can be contacted on 1300 363 992 for the cost of a local call.

Yours sincerely,

**D Lux-Bridges**  
General Counsel  
Australian Taxation Office