

# TRANSCRIPT

## INTEGRITY AND OVERSIGHT COMMITTEE

### Inquiry into the Operation of the *Freedom of Information Act 1982*

Melbourne – Monday 18 March 2024

#### MEMBERS

Dr Tim Read – Chair

Hon Kim Wells – Deputy Chair

Ryan Batchelor

Jade Benham

Eden Foster

Paul Mercurio

Rachel Payne

Belinda Wilson

**WITNESSES**

Jude Hunter, Senior Legal Counsel and Manager, Freedom of Information and Privacy, and

Rebecca Cato, Legal Counsel, Freedom of Information and Privacy, WorkSafe Victoria.

**The CHAIR:** We are resuming the public hearing for the IOC's Inquiry into the Operation of the *Freedom of Information Act 1982*. To our witnesses, before you give your evidence there are some formal things to cover, so bear with me.

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Now I welcome from WorkSafe Victoria Jude Hunter, Senior Legal Counsel and Manager of Freedom of Information and Privacy, and Rebecca Cato, Legal Counsel for Freedom of Information and Privacy, both giving evidence at this hearing.

Let us start with some questions. We might start, but before you go, Paul Mercurio, I might just jump in quickly. In your submission you mentioned that people still make FOI requests, even though you have got an access-to-information scheme. What I did not pick up from that was why do people still make FOI [Freedom of Information] requests, given you have got this other scheme?

**Jude HUNTER:** Sometimes it is simply a matter of not realising that there is a separately legislated access-to-information [ATI] scheme in the *Workplace Injury Rehabilitation and Compensation [WIRC] Act*, and often people use the two terms, ATI and FOI, interchangeably. Generally we try to assist with that. If people do make a request purportedly under FOI for claims information, we let them know that this information is available for free from the WorkCover agent with fewer restrictions. But there are occasions where people may be dissatisfied with the outcome of their access-to-information request under the other Act, and then may seek to access the information through FOI.

**The CHAIR:** Are they able to get further information using FOI?

**Jude HUNTER:** It can generally be less information, because of the operation of section 25A(1), where if it is an unreasonable burden on the agency to process – and often claim files are quite large, whereas that provision does not apply under section 9 of the WIRC Act.

**The CHAIR:** Thank you very much.

**Kim WELLS:** Sorry, can I just follow up?

**The CHAIR:** Yes.

**Kim WELLS:** Sorry, just to clarify: you are saying that under your system the applicant might receive more information than it would be if they went through FOI. What is the difference? What information would you give that they would not get under FOI?

**Jude HUNTER:** WorkSafe agents will normally give access. It is a right of access to the whole, or to any information relevant to the worker's claim for compensation, so it does not necessarily have to be a document. It is basically the whole claim file that is available under that regime for free, and there are no restrictions on 'voluminous requests', which is often what people call them.

**Kim WELLS:** Okay, so you would not rule something out as voluminous?

**Jude HUNTER:** Not under the WIRC Act regime, no. There is no provision for that.

**Kim WELLS:** Okay.

**Jude HUNTER:** So it is often the best option for workers who have larger claim files, which is quite common.

**Kim WELLS:** Interesting.

**Paul MERCURIO:** I think my question is around that too, because the Committee has received evidence that WorkSafe is a leader with respect to its FOI practices. I am just thinking, why do you think it is thought [of] that [way]?

**Jude HUNTER:** I am glad to hear that. I have not read those submissions, but I think perhaps we did have very high and very good rates of timeliness in the last couple of years, but like a lot of other agencies, we are now seeing a pretty large increase in the number of requests. We have had a 50 per cent increase over the last three years. From 1200 or 1300 requests per year we are now pushing 2000, so we are unfortunately probably less of a leader in terms of timeliness. I think we just have good strong support and training for FOI officers to make good decisions. We access a lot of the training that OVIC provides. We have a good culture, which aids retention. Losing an FOI officer can have quite an effect on the rest of the team. People only need to give two weeks' notice, but it will take up to three months for an FOI officer to get recruited and then become a fully independent decision-maker and make confident decisions.

**Paul MERCURIO:** How many staff would you have working on FOI?

**Jude HUNTER:** We have five full-time FOI officers, and we are looking to increase that number to deal with what is becoming a backlog.

**Paul MERCURIO:** Okay. Thanks.

**The CHAIR:** Eden Foster.

**Eden FOSTER:** Thanks, Chair, and thank you, both, for coming in today. Just following on from the ATI scheme that you have as well as the FOI, from an administrative perspective, what would you say are the best features of the ATI scheme?

**Jude HUNTER:** For the injured workers it is definitely not having to put in a written request. There is no particular form; this suits the applicants and WorkSafe and its agents. There are no fees, so there is no administrative burden in processing application fees, and there are no other types of access charges either. There are fewer exemptions – the FOI Act has I think 14 exemptions and there are only five under the access-to-information scheme. They are borrowed from the FOI Act, so they are similar exemptions that apply in the FOI Act, but there are only five: section 30, 31, 32, 33 and 35 – exemptions for privileged information, some personal information, internal working documents and information obtained in confidence.

**Eden FOSTER:** Are there any disadvantages to the ATI scheme?

**Jude HUNTER:** I think agents – because it is mainly WorkCover agents who are processing these requests – I think I would have said it may be less timely, but probably now, where we are, it is still quicker. It is a 28-day time frame legislated. Because we inside WorkSafe on the FOI team do not generally process these requests, I might have to take that on notice and come back if I could.

**Eden FOSTER:** No worries. Thank you.

**The CHAIR:** Sure, that is fine.

**Belinda WILSON:** Can you elaborate on your view that FOI legislation should not apply to documents that can be obtained through other statutory release schemes?

**Jude HUNTER:** I think it basically comes down to the potential for duplication and the doubling up of work if there are two access pathways for exactly the same information. The *Workplace Injury Rehabilitation and Compensation Act* is an Act set up for the purpose of managing peoples' WorkCover claims, so it makes sense for the access to information to that claims information to fall within the provisions of the same Act. For

example – it does not happen very often but when it does happen, it does cause quite a burden to process – there may be a complaint in the ATI space and also a complaint to OVIC. There may be correspondence that has to be duplicated because you are dealing with an OVIC complaint or an OVIC review at the same time as you are perhaps dealing with a complaint direct to WorkSafe or a complaint that the agent has received.

We think it is consistent with the [FOI] Professional Standards 1.2, where if there is another pathway, then agencies must facilitate access to that pathway, and that is generally what we try to do. But if the Act is not clear that there should be just the one pathway, then the two pathways remain open. I think I said also before that the outcomes can be poor for an applicant – if they have access to both access regimes, it may create an expectation that ‘I am going to get more through FOI, so I’ll go that way too,’ but then with the application of provisions like section 25(a)(1) it is not a great outcome for an applicant who has a request refused because their request is voluminous.

**The CHAIR:** Kim Wells.

**Kim WELLS:** So you do not say, ‘Hey, listen, if you go through this stream, you are going to get a lot more information than through FOI’?

**Jude HUNTER:** We do.

**Kim WELLS:** You do?

**Jude HUNTER:** And we refer them to the agent. But on occasion some applicants say, ‘No, I don’t want the agent to do it, I want you to do it’, for example. I think OVIC’s position is – not speaking for OVIC – but is that if people do want to insist on FOI, then that regime should be used.

**Kim WELLS:** All right. Thanks.

**The CHAIR:** Jade Benham.

**Jade BENHAM:** How does the specialised knowledge of WorkSafe agents – even though you just said OVIC want you to do it rather than the agents – enhance WorkSafe’s access-to-information regime compared with –

**Jude HUNTER:** I think last year there were 16,000 requests for claims information processed under the WIRC Act, so we are only talking about a very small amount of cases where people will insist on FOI. So, I think, to answer your question, the advantage is that the people who are managing these claims are processing the requests for the information, so they have the corporate knowledge or the understanding of the types of documents and the types of exemptions, if any, that apply. And the skill set – because they have got dedicated teams with access to information officers sitting in the WorkSafe agents, they can access other colleagues who are managing claims for subject matter expertise.

**Jade BENHAM:** So there are dedicated staff within each WorkSafe office?

**Jude HUNTER:** No, within each WorkSafe agent’s office – the authorised agents under the WIRC Act, yes.

**Jade BENHAM:** Okay.

**Kim WELLS:** So just on that, are some agents better than other agents, or is there a standardised template that they have to follow in regard to the provision of information?

**Jude HUNTER:** There is a standardised template.

**Kim WELLS:** So you do not have any issues about one doing a better job than another? It is all standardised, and you are happy with that.

**Jude HUNTER:** That is not something that I am familiar with; I would not be able to answer that. The FOI team at WorkSafe does sometimes provide training to agents, which helps with consistency of decision-making.

**The CHAIR:** All right. Rachel Payne.

**Rachel PAYNE:** Thank you, Chair. Thank you for presenting to us today. We did just touch a little bit on consistency around decision-making, but my question is: What in your view would make it easier for agencies to determine whether exemptions apply to an FOI request and ensure consistency of decision-making with respect to exemptions?

**Jude HUNTER:** I think it comes down to training basically, and if there were amendments or a new regime brought in, I think more mandated training for decision-makers would assist in consistency. OVIC offer a very large range of resources and training, but it is up to different agencies and their teams whether or not they attend those. If that was mandatory, in the same way that a lawyer needs to do their 10 CPD [continuing professional development] points each year, I think this would assist. There is also the obligation of each principal officer under the FOI Act to provide a requisite amount or sufficient training and resources, so there is that. That is already contemplated, that people need to be trained properly, but perhaps that is an overarching and rather broad requirement of professional standards, not targeted.

**The CHAIR:** All right. Are there any further questions from the Committee?

**Paul MERCURIO:** We have had, throughout this inquiry, various people mention the use of AI [artificial intelligence], so I am just interested – are you using AI at all for the freedom of information or even the access to information? Are you talking about how you may implement it, or do you have any thoughts about how it may be used moving forward?

**Jude HUNTER:** We are not using any AI in our processing at the moment, and I do not think our agents are under the other regime either. I can see areas where it may become useful to speed up perhaps even applying exemptions to routine documents; WorkSafe has quite a number of routine documents. But I think it is something we would have to be very careful about. Even just with privacy and when you are inputting information into this AI software – where does it go? Where is it being stored? Often we are dealing with people's claims and health information, so we are at WorkSafe, probably like all agencies, thinking about AI and what policies we can put in place, but at the moment it is still quite early.

**Paul MERCURIO:** Very early, yes.

**The CHAIR:** Jade.

**Jade BENHAM:** Yes, I have got one. You mentioned earlier that the culture – this is another word that comes up often throughout these hearings – with regard to FOI at WorkSafe is very, very good. How have you managed to do that? And what leads to that, I suppose?

**Jude HUNTER:** I am not sure. I think WorkSafe is an attractive place to work. The head office in Geelong – people enjoy working there. I think it is a supportive environment; WorkSafe FOI officers are well trained. Due to the increase in requests that we have been receiving over the last couple of years, we reached the point where we had to stop allocating all requests immediately to our FOI team because their workloads were going up. That was a method that we put in place to protect the health and wellbeing of team members, and I think that has gone a long way to enabling WorkSafe to keep processing the requests that we can process. It does not assist of course with the timely processing of requests, though.

**Jade BENHAM:** Interesting. Okay. Thank you.

**Jude HUNTER:** As the health and safety regulator, we have got an obligation obviously to our own staff to not overload.

**Jade BENHAM:** Yes. Great.

**The CHAIR:** All right. If there are no further questions from the Committee –

**Belinda WILSON:** I know, we have zipped through it so fast.

**The CHAIR:** I was just going to say, is there anything else you would like us to hear about while you have got our attention?

**Jude HUNTER:** It is probably just around – what we would like to see is clarification. If you can access documents through one pathway, then that perhaps should be the pathway, provided there are adequate [complaint] and review rights and things in place. I think it is probably open to read both Acts at the moment, that both Acts do apply. But equally it would be consistent with the [FOI] Professional Standards to say, ‘If you’ve got a WorkCover claim and you want to seek information about it, this is the process outside of FOI.’ I think that would also assist OVIC as well. I have read their submission, and they also have a high case load of reviews and complaints to deal with.

**The CHAIR:** Good. All right then. Thank you, both, very much for coming in. Thanks for your submission, and thanks for those very clear answers. We will suspend the hearing now and resume shortly with our next witnesses.

**Witnesses withdrew.**