



Ref: DOIA 2021-0312

18 December 2020

Kelly Hill
fyi-request-13494-7133f953@requests.fyi.org.nz

Dear Kelly Hill

Thank you for your email of 10 August 2020 to the Ministry of Business, Innovation and Employment (MBIE) requesting, under the Official Information Act 1982 (the Act), the following information:

all communications letters emails records of conversations pertaining to the underpayment of holiday pay entitlements by McDonald's to their employees I understand they have reached an enforceable agreement with MBIE on a method to recalculate annual pay please include this along with any indicated time frame of completion

I have been advised Tracy Torrance, Team Leader, Labour Inspectorate Payroll has tried to discuss your request with you as McDonalds is not the legal employer and the scope of your request as stated is wide, with no defined timeframe. Ms Torrance followed up regarding the timeframe and in an email to Ms Torrance you stated the information should be for the time period from January 2015, further widening the scope of the request.

While compiling the documents within scope of your request, more than 230 emails were identified. A further attempt from Ms Torrance was made to clarify the scope of the information you required.

Ms Torrance subsequently contacted the Ombudsman Office regarding your request and your unwillingness to call her to discuss it. The Ombudsman Office advised they were satisfied with Ms Torrance's approach to providing the information you requested.

In an attempt to provide the information you require, I attach the signed Enforceable Undertaking with McDonald's head office regarding annual holidays signed on 7 May 2019. Please note, some information in this document is out of scope, or has been redacted under the following section of the Act:

9(2)(b)(ii) to protect information where the making available of the information would be likely to prejudice the commercial position of the person who supplied or who is the subject of the information.

I do not consider that the withholding of this information under section 9(2) is outweighed by public interest considerations in making the information available.



In February 2016 the Labour Inspectorate wrote to who they believed were the largest employers in New Zealand and asked them about their employees and payroll system. From the information provided employers were tranced for audit, prioritising those employers with the largest number of employees, variable working arrangements and who received additional pay (such as commission, bonuses and overtime) as these types of employees were more likely to have not received their minimum entitlements under the Holidays Act. Along with the audits MBIE has updated and created more than 50 tools and resources and worked with employers, payroll providers and other stakeholders to improve compliance through numerous working groups.

Some employers engaged had commenced their own review of Holidays Act non-compliance, it is important to note McDonalds was one of these employers. All employers engaged have had a form of non-compliance.

For more information around what the Labour Inspectorate is doing to address Holidays Act non-compliance please see <https://www.employment.govt.nz/#gref>.

In May 2018 a taskforce was created to bring business, workers, and Government together to identify and agree on permanent improvements to the Act. The Taskforce submitted its final report to the Minister in October 2019. The Government is currently considering the Taskforce's proposals and will respond to any recommendations in due course.

You have the right to seek an investigation and review by the Ombudsman of my decision to withhold information relating to this request, in accordance with section 28(3) of the Act. Information about how to make a complaint is available at: www.ombudsman.parliament.nz or Freephone 0800 802 602.

I would like to take this opportunity to apologise for the delay in our response and thank you for your patience. As noted in previous correspondence, the delay has been attributable in large part to the pandemic disruption.

Yours sincerely



Stu Lumsden
National Manager
Labour Inspectorate