

From: [Todd, Jonathan](#)
To: [Sinclair, Suzanne](#); [Smith, Susie](#)
Cc: [Hulbert, Catherine](#)
Subject: Right to Know website [SEC=UNCLASSIFIED]
Date: Thursday, 21 July 2016 10:30:18 AM

Hello Sue & Susie,

a note about how we propose dealing with FOI requests received via the Right to Know website in future, having regard to their failure to remove abusive material naming ATO GC staff that is on their website permanently, and our WHS responsibilities. I have staff who are upset about it, and unwilling to send material to the website with their names on it as a result. I think those concerns are legitimate and require some precautionary measures.

I am also advising / sounding out the OAIC about this in advance.

The strategy is:

When requests come in from the RTK website, we intend sending an email response from our FOI inbox with no staff names on it, along the lines that: the ATO does not process FOI requests via this website. Please send your request direct to foi@ato.gov.au, or lodge our paper form. Website and general phone number contacts will be provided.

This won't stop the request appearing on the RTK website, together with the generic response above. Applicants could also choose to post the interim correspondence and final material issued to them there or anywhere else if they make the effort. However, it will stop all the procedural correspondence and final material going up immediately as a matter of course.

It's possible someone could complain to OAIC about it, but we're not refusing to process the FOI request, simply directing that we want to receive it via official ATO channels. We are not preventing applicants being anonymous, they can easily send in the paper form, or create an anonymous email address more quickly than they can set up an account on the RTK website. The RTK website doesn't do anything we don't already offer, apart from putting all the procedural aspects of the FOI request in the public domain (which serves no useful purpose anyway), and collecting together whatever requests are made via their website. We already publish the final FOI documents that are released on our own disclosure log on the ATO website.

It's possible it could generate media attention if the RTK website operators or an applicant complained about it.

The alternative is to try and put through all the correspondence with just general contact details and no names on it, but that is actually more problematic under the FOI Act, as we would be actually processing the requests without meeting some of the requirements of the Act in doing so, which require a decision maker or contact for consultation to be named.

If as a result of this the website decided to change their practices and remove the offending material and take prompt action in the future, we could reconsider our position.

If you want more information (hard to explain exactly how the RTK website works in writing

concisely) or have any concerns let me know.

Regards,

Jonathan Todd

ATO General Counsel | Assistant Commissioner, ATOC
Australian Taxation Office

P 02 937 48303 [s 47E(d)] F 02 937 42277

Released under FOI Act 1982
Australian Taxation Office

From: [Todd.Jonathan](mailto:Todd.Jonathan@oaic.gov.au)
To: enquiries@oaic.gov.au
Subject: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]
Date: Friday, 22 July 2016 3:19:50 PM

Dear Sir/Madam

I write to advise how ATO General Counsel now intends to respond to FOI requests received via the 'Right to Know' website (www.righttoknow.org.au, 'RTK').

ATO General Counsel's response will be taken to fulfil the ATO's responsibilities under s 19 of the *Work, Health and Safety Act 2011* (Cth).

There has been a recent case where abusive material has been placed on the RTK website addressed at ATO officers named on the web page in preceding correspondence about an FOI request. The website administrators have failed to remove or redact the unacceptable content and denied responsibility for the material even though they are the publishers as website administrators.

The ATO is required to address the damage and the risks to staff health and welfare arising from this by taking reasonable steps to eliminate or minimise the risks.

As you are probably aware, the RTK website provides an internet platform for making FOI requests to Australian government organisations.

To utilise the platform users must:

- register for an account (providing details to RTK),
- type the request into the RTK website, together with other details such as the department the request is being made to

The RTK website then sends an email (with a specially generated email address consisting of a number code and RTK reference, eg 123456xyz@righttoknow.org.au) to the ATO's FOI inbox, FOI@ato.gov.au.

The only way the ATO can respond to the email is via the RTK website. All email correspondence to and from the RTK website from an applicant and the ATO is automatically published on the website without any intervention.

The administrators of the RTK website are themselves very difficult to contact. It appears that the website is essentially run on a part time and volunteer basis. No telephone numbers or business/service addresses are provided and the administrators can only be contacted via email. In our experience, email responses are very slow, often taking several days.

In the case we are concerned about, the ATO would probably not be successful in obtaining a court injunction to remove the offending material on the grounds it was defamatory, or threatening in a criminal sense. However, s 19 of the WHS Act imposes a lower standard in terms of the ATO's responsibilities as an employer.

We are on notice of a matter that has caused harm to the health and welfare of ATO officers in

the form of stress, anxiety and public damage to professional reputation. Under ss 17 & 18 of the WHS Act the ATO is required to take reasonable steps to eliminate or minimise that risk, in order to continue to provide the ATO's primary duty of care under s 19.

The ATO now intends to deal with FOI requests received via the RTK website as follows:

When requests come in from the RTK website, the ATO will send an email response from foi@ato.gov.au without staff names, along the lines of *'The ATO does not process FOI requests received via the RTK website. Please send your FOI request direct to foi@ato.gov.au, or lodge via paper form'*. Website links and general phone number contacts will also be provided.

The ATO's response will not prevent applications being made anonymously. Obtaining an anonymous email address from an email provider is easier, quicker and requires the provision of less personal information to a third party than obtaining an account at the RTK website.

We cannot address the WHS risks on a case by case basis. All correspondence to the RTK website is automatically published, including staff names. Unacceptable material can be added to the web page after the staff names have already been published. We have no satisfactory means of removing unacceptable material promptly, or at all.

There have also been several instances where misguided applicants have requested and/or obtained their own private material via RTK from government departments. The applications themselves constituted breaches of the applicants' privacy even though self-inflicted.

The major contributing factor to these misguided private applications is the failure to adequately warn applicants about making private applications on the RTK website and the lack of human intervention in the website's processes. These private applications generate unnecessary extra work for the ATO and other government departments in seeking to have those applications removed and otherwise dealt with.

From the ATO's perspective the RTK website adds no value to what we already do. FOI applicants are already able to make FOI requests by email or electronic form via the ATO website, anonymously if desired. All general 'public' material provided to applicants (that is not personal, private, subject to tax secrecy, commercial-in-confidence, etc.), is already published on the ATO disclosure log on the ATO website where it is accessible by anyone.

The publication of all the 'procedural' correspondence about the FOI request serves no useful purpose, it merely clutters the internet with information which is of no interest to anyone, and makes finding the material disclosed in response to the request more difficult than it is on the ATO's website. In short, the RTK website publication of procedural correspondence about FOI requests exposes ATO staff to unnecessary risks for no benefit.

If you would like to discuss this any further, please ring me on the number below.

Regards,

Jonathan Todd

Released under FOI Act 1982
Australian Taxation Office

Todd, Jonathan

From: Todd, Jonathan
Sent: Friday, 22 July 2016 3:20 PM
To: 'enquiries@oaic.gov.au'
Subject: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]

Dear Sir/Madam

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The only way the ATO can respond to the email is via the RTK website. All email correspondence to and from the RTK website from an applicant and the ATO is automatically published on the website without any intervention.

The administrators of the RTK website are themselves very difficult to contact. It appears that the website is essentially run on a part time and volunteer basis. No telephone numbers or business/service addresses are provided and the administrators can only be contacted via email. In our experience, email responses are very slow, often taking several days.

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The major contributing factor to these misguided private applications is the failure to adequately warn applicants about making private applications on the RTK website and the lack of human intervention in the website's processes. These private applications generate unnecessary extra work for the ATO and other government departments in seeking to have those applications removed and otherwise dealt with.

From the ATO's perspective the RTK website adds no value to what we already do. FOI applicants are already able to make FOI requests by email or electronic form via the ATO website, anonymously if desired. All general 'public' material provided to applicants (that is not personal, private, subject to tax secrecy, commercial-in-confidence, etc.), is already published on the ATO disclosure log on the ATO website where it is accessible by anyone.

The publication of all the 'procedural' correspondence about the FOI request serves no useful purpose, it merely clutters the internet with information which is of no interest to anyone, and makes finding the material disclosed in response to the request more difficult than it is on the ATO's website. In short, the RTK website publication of procedural correspondence about FOI requests exposes ATO staff to unnecessary risks for no benefit.

If you would like to discuss this any further, please ring me on the number below.

Regards,

Jonathan Todd

ATO General Counsel | Assistant Commissioner, ATOC

Australian Taxation Office

P 02 937 48303 [s 47E(d)] F 02 937 42277

From: [Meijs, Simon](#)
To: [Todd, Jonathan](#); [Hulbert, Catherine](#)
Subject: FW: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]
Date: Friday, 19 August 2016 2:58:00 PM

From: General Counsel Requests
Sent: Friday, 19 August 2016 2:57 PM
To: 'contact@righttoknow.org.au'
Subject: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]

Dear Right to Know website administrators

Confidential

I refer to current matters on your website in which the ATO has advised that FOI requests received via the RTK website will not be processed and that they should be resubmitted directly to the ATO, and the statements that this is in breach of OAIC guidelines.

I also refer to previous emails and telephone conversations in June and July about material on your website abusing ATO officers that you refused to remove or redact or take responsibility for publishing. I also note that despite publishing material automatically without any human intervention, the RTK website has no contact phone number, no address for service, and that email responses take several days.

The ATO has responsibilities to its staff under the *Workplace Health and Safety Act 2011* (Cth). We are on notice of a matter that has caused harm to the health and welfare of ATO officers in the form of stress, anxiety and public damage to professional reputation. Under ss 17 & 18 of the WHS Act the ATO is required to take reasonable steps to eliminate or minimise that risk, in order to continue to provide the ATO's primary duty of care under s 19. Significant civil and criminal sanctions apply for breach of the WHS Act to both the organisation and individuals.

In view of this, the ATO will not be dealing with FOI requests received via the RTK website. Applicants will be redirected to make their application directly with the ATO.

The ATO's response does not prevent applications being made anonymously. Anonymous applications can be made by using an anonymous email address, or the paper form.

All general material to which privacy and secrecy laws do not apply that is released to FOI applicants is already made publicly available on the ATO's FOI disclosure log available at www.ato.gov.au.

The OAIC have been advised that the ATO will no longer be processing FOI requests via

the RTK website.

FOI

General Counsel

Australian Taxation Office

Released under FOI Act 1982
Australian Taxation Office

From: [General Counsel Requests](#)
To: contact@righttoknow.org.au
Subject: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]
Date: Friday, 19 August 2016 2:56:00 PM

Dear Right to Know website administrators

Confidential

I refer to current matters on your website in which the ATO has advised that FOI requests received via the RTK website will not be processed and that they should be resubmitted directly to the ATO, and the statements that this is in breach of OAIC guidelines.

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All general material to which privacy and secrecy laws do not apply that is released to FOI applicants is already made publicly available on the ATO's FOI disclosure log available at www.ato.gov.au.

The OAIC have been advised that the ATO will no longer be processing FOI requests via the RTK website.

FOI

General Counsel

Australian Taxation Office

Released under FOI Act 1982
Australian Taxation Office

Todd, Jonathan

From: Todd, Jonathan
Sent: Friday, 19 August 2016 2:51 PM
To: Meijs, Simon
Subject: ATO dealings with Righttoknow website [DLM=Sensitive:Legal]

Dear Right to Know website administrators

Confidential

I refer to current matters on your website in which the ATO has advised that FOI requests received via the RTK website will not be processed and that they should be resubmitted directly to the ATO, and the statements that this is in breach of OAIC guidelines.

I also refer to previous emails and telephone conversations in June and July about material on your website abusing ATO officers that you refused to remove or redact or take responsibility for publishing. I also note that despite publishing material automatically without any human intervention, the RTK website has no contact phone number, no address for service, and that email responses take several days.

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All general material to which privacy and secrecy laws do not apply that is released to FOI applicants is already made publicly available on the ATO's FOI disclosure log available at www.ato.gov.au.

The OAIC have been advised of this practice.

From: [Galeotti, Julie](#)
To: [Prouse, Jane](#)
Subject: FW: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]
Date: Wednesday, 24 August 2016 3:22:25 PM

Julie Galeotti

Senior Legal Adviser, General Counsel
Australian Taxation Office
P 03 9285 1810

Think digital before you print

From: Hulbert, Catherine
Sent: Friday, 19 August 2016 9:44 AM
To: Durnan, Rod; McCafferty, Mary; Kim, Monica; Galeotti, Julie; Li, Elizabeth; Reich, Chad; Lux-Bridges, Denise
Subject: FW: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]

Good morning all, please see the message below which encapsulates our position on ATO dealings with the RTK website to date.

Kind regards

Catherine Hulbert

Senior Principal Lawyer | General Counsel | ATO Corporate
Phone: 02 9374 8845
Part time Wednesday - Friday

From: Todd, Jonathan
Sent: Friday, 19 August 2016 9:09 AM
To: Jepsen, David
Cc: Smith, Susie; Sinclair, Suzanne; Hulbert, Catherine
Subject: FW: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]

Hi David,

about a month ago I advised Susie that we were not going to process FOI request received via the Right to Know website because of WHS concerns. This step was taken because abusive material was put up, and the RTK administrators refused to remove it, denied responsibility for it even though they are publishers of it as website administrators, and were not even contactable promptly (it took them a couple of days even to respond to my email requesting the material be taken down, and then they refused to remove it).

We advised OAIC of this stance in advance of adopting it. We have now issued the statement a couple of times this week telling people to apply directly to the ATO not via RTK. It appears RTK have suggested to those applicants that they put up a further email to us on the site saying we can't do this and referring to OAIC guidelines (which have some fairly vague statements about being able to apply anonymously). We are of the view we are complying with the guidelines & the FOI Act. Anyone can make a request direct to the ATO using an anonymous email address if they want or anonymously on our paper form. We are simply fulfilling our WHS obligations by

not having staff names go out in all the procedural correspondence about an FOI application on a public website, where they are unprotected from unjustified abuse that would leave us liable under WHS laws. We are not going to have our FOI processing dictated by third party who adds nothing and takes no responsibility for their actions. We will also be suggesting OAIC will need to revise their guidelines in light of this, to take account of WHS responsibilities if necessary. GC staff names in the public domain like this has become more serious now because we are also dealing with large numbers of FOI requests from heavy criminals [s 47E(d)], [s 37(1)(a)] [REDACTED].

I don't expect this attract media attention, and will be resolved with further discussions with OAIC & RTK. If RTK agree to remove the abusive material still there, and to provide a manned contact number, address for service, and undertake to remove any unacceptable material promptly, we will reconsider our position on processing the requests via their website, although I don't think we can go back to using staff names on RTK requests. But in case of media attention, I've drafted the following for you to consider:

The ATO takes its workplace health and safety obligations to staff very seriously. We are not processing FOI requests via the Righttoknow website because of workplace health and safety and privacy concerns arising from the refusal of the website administrators to remove inappropriate material, and our inability to contact them promptly as they do not provide a contact phone number or address for service on their website.

FOI applications should be made directly to the ATO by email to foi@ato.gov.au or by using the paper form available at www.ato.gov.au. Anonymous applications can be made by using an anonymous email address or the paper form.

All general material to which privacy and secrecy laws do not apply released to FOI applicants is also made publicly available on the ATO's FOI disclosure log available at www.ato.gov.au.

My email to OAIC appears below.

Regards,

Jonathan Todd

ATO General Counsel | Assistant Commissioner, ATOC

P 02 937 48303 [s 47E(d)] [REDACTED]

From: Todd, Jonathan

Sent: Friday, 22 July 2016 3:20 PM

To: enquiries@oaic.gov.au

Subject: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]

Dear Sir/Madam

I write to advise how ATO General Counsel now intends to respond to FOI requests received via the 'Right to Know' website (www.righttoknow.org.au , 'RTK').

ATO General Counsel's response will be taken to fulfil the ATO's responsibilities under s 19 of the *Work, Health and Safety Act 2011* (Cth).

There has been a recent case where abusive material has been placed on the RTK website addressed at ATO officers named on the web page in preceding correspondence about an FOI request. The website administrators have failed to remove or redact the unacceptable content and denied responsibility for the material even though they are the publishers as website administrators.

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The administrators of the RTK website are themselves very difficult to contact. It appears that the website is essentially run on a part time and volunteer basis. No telephone numbers or business/service addresses are provided and the administrators can only be contacted via email. In our experience, email responses are very slow, often taking several days.

In the case we are concerned about, the ATO would probably not be successful in obtaining a court injunction to remove the offending material on the grounds it was defamatory, or threatening in a criminal sense. However, s 19 of the WHS Act imposes a lower standard in terms of the ATO's responsibilities as an employer.

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If you would like to discuss this any further, please ring me on the number below.

Regards,

Jonathan Todd

ATO General Counsel | Assistant Commissioner, ATOC
Australian Taxation Office

P 02 937 48303 [s 47E(d)] F 02 937 42277

From: [Todd, Jonathan](#)
To: [GC Staff List](#)
Cc: [England, Wendy](#); [Meijs, Simon](#)
Subject: ATO dealings with Righttoknow website [SEC=UNCLASSIFIED]
Date: Friday, 22 July 2016 3:37:52 PM

Hello all,

Having regard to WHS obligations, we will no longer be responding to FOI requests via the Righttoknow website. Applicants will be sent a standard email response with no name on it, and asked to resubmit the requests directly to the ATO via email or paper form. Anonymous requests will still be able to be made by setting up an email account that does not include identifying details.

This follows the posting of unacceptable material on the RTK website in response to procedural FOI correspondence that included the names of GC staff. The RTK administrators have failed to remove the material, and denied responsibility for it.

We are still finalising the technical details, but it will be along the following lines:

When requests come in from the RTK website, the ATO will send an email response from foi@ato.gov.au without staff names, along the lines of *'The ATO does not process FOI requests received via the RTK website. Please send your FOI request direct to foi@ato.gov.au, or lodge via paper form'*. Website links and general phone number contacts will also be provided.

I have notified OAIC of our adoption of this course.

In the event that the RTK website administrators change their practices we can consider revisiting the issue. Although it is hard to see how publishing the procedural correspondence about an FOI request ever serves any useful purpose.

If you have any concerns, ring Catherine or me.

Regards,

Jonathan Todd

ATO General Counsel | Assistant Commissioner, ATOC
Australian Taxation Office

P 02 937 48303 [s 47E(d)] F 02 937 42277