



Australian Government
Civil Aviation Safety Authority

LEGAL, INTERNATIONAL AND REGULATORY AFFAIRS
RMS Ref: F23/18755

19 June 2023

David Stafford

Via email: foi+request-10317-6217bcec@righttoknow.org.au

Dear David,

REQUEST FOR ACCESS UNDER THE *FREEDOM OF INFORMATION ACT 1982*

I refer to your email dated 16 May 2023 seeking access to documents under the *Freedom of Information Act 1982* (the Act). Your request was for:

Could you please provide documentation of the number of CIRRIIS reports by the occurrence type from Dec 2019 to present day for the Hobart Airspace.

On 17 May 2023, I wrote to you seeking clarification on the scope of your request namely if you were seeking the actual CIRRIIS reports or documents containing data of the number of CIRRIIS reports.

On 18 May 2023, you responded '*could you please provide the limited suite of CIRRIIS reports from Airservices Australia (AA) regarding Hobart Airspace. Additionally, as per Recommendation 2 of the CASA - Airspace Review of Hobart - December 2019, I request CASA provide the aeronautical risk review or if this was not done documentation outlining why it was not conducted.*'

On 18 May 2023, I acknowledged the revised scope of your request to be as follows:

*Please provide the limited suite of CIRRIIS reports from Airservices Australia (AA) regarding Hobart Airspace.
Additionally, as per Recommendation 2 of the CASA - Airspace Review of Hobart - December 2019, I request CASA provide the aeronautical risk review or if this was not done documentation outlining why it was not conducted.*

On 23 May 2023, I emailed you querying the second part of your request which refers to Recommendation 2 of the CASA - Airspace Review of Hobart - December 2019. I informed you I had been advised that the review referenced only has 1 recommendation, and could you please confirm that the aeronautical risk review you are seeking is in relation to this review and/or recommendation 1.

On 23 May 2023, you responded '*Appears the recommendation 2 was answered in the 2019 report p14, therefore please remove second part of my request.*'

On 23 May 2023, I acknowledged the revised scope of your request to be as follows:

Please provide the limited suite of CIRRIIS reports from Airservices Australia (AA) regarding Hobart Airspace. Date range: 1 Dec 2019 to 16 May 2023.

On 6 June 2023, I made a decision to impose charges in the amount of \$29.45 in relation to your application.

On 6 June 2023, you emailed contending that the charge should be waived, as you suggested there was genuine public interest in these documents.

I reject the need for payment to be made as the information being requested is for the general public interest as the reports will provide all members of the public the details required in regard to the 'safety concerns' Airservices Australia continue to use regarding runway30 into Hobart Airport. If there are safety concerns, then these reports will highlight the areas that need remittance.

Section 29 (Charges) Decision

I have considered your submission for a fee waiver and the grounds for my decision are outlined below in accordance with section 25D of the *Acts Interpretation Act 1901* (Cth).

Section 29(5) of the Act explains:

Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not impose the charge, the agency or Minister must take into account:

- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and*
- (b) whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.*

You have made a claim under subsection 29(5)(b) that access to the documents sought is in the public interest. Firstly, to make a decision that the charges are not imposed, I must be satisfied of both subsections 29(5)(a) and (5)(b).¹ In summary, it must be demonstrated (a) how the charge imposed would cause you financial hardship, and (b) that the documents within the scope of your access request contain matters in the public interest.

In relation to (a), for the purpose of subsection 29(5)(a), you have made no claim of financial hardship and therefore I have no information available to me to be satisfied payment of the charges would cause hardship.

In relation to (b), regarding subsection 29(5)(b), paragraph 4.107 of the *Office of the Australian Information Commissioner (OAIC) Freedom of Information Guidelines* explains—

An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that will benefit from this disclosure (s 29(1)(f)(ii)). This may require consideration of both the content of the documents requested and the context in which their public release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents'.

Considering paragraph 4.107, the three following pre-requisites must be satisfied for the grant of a fee waiver for subsection 29(5)(b):

- 1. the documents disclosed are not presently available to the public;*
- 2. the subject should be a matter of public interest or relate to decisions by government; and*
- 3. the release will facilitate access by the public generally, by a substantial section of the public, or by government and facilitate public debate or government decision-making.²*

I am satisfied of Item 1, that the information contained in the documents is not currently available through the public record. Regarding Item 2, although I maintain the subject is likely to be a matter of general public interest, it is undetermined whether this would be a substantial section of the public interest. To satisfy Item 3, I must be satisfied that disclosure to you would meet the

¹ *Tennant and Australian Broadcasting Corporation* (2014) AATA 452, 13

² *Ibid* 21

statutory standard under the Act to 'benefit the general public or a substantial section of the public',³ while fostering public debate and contributing to the government exercising its decision-making powers.⁴ It is important to note that the public interest test is connected to members of a democratic society being sufficiently informed to enable them to contribute with influence to administrative decisions that may affect their affairs.⁵ Disclosure to an individual in the absence of any context regarding the public release of the information is inconsistent with this purpose.

Firstly, the fees imposed have been estimated at the lowest reasonable cost considering the business sensitivity of the document sought and that the document may be subject to exemptions under the Act. In addition, you have not made any contentions that the payment of the charge, or part of it, would cause financial hardship.

However, you have contended that the documents sought are relevant to the public interest and you have explained your opinion as to why this would be the case, although you haven't provided context in which the documents would be made public, you have provided reasonable detail in the way in which a public benefit may flow from the release of the document in your explanation, which may contribute to public discussion and analysis of the issue.

Accordingly, I have decided to waive the payment of the charge. Whilst I have found that payment would not cause financial hardship, I do consider I have adequate information to form a view that giving access to the CIRRIIS reports is in the interest of a substantial section of the public given the nature of the documents sought and that Hobart International Airport is an international airport and the largest in the state. I have also taken into account the small amount of the charge. CASA will now continue to process your request for access.

Please do not hesitate to contact me if you have any questions in relation to your request.

Yours sincerely,



Keeley Phengrasmy
Freedom of Information Officer
Advisory and Drafting Branch
Legal, International and Regulatory Affairs Division
Civil Aviation Safety Authority

³ Ibid 32

⁴ Ibid 34

⁵ *Attorney-General v Times Newspapers* (1974) AC 273, 320