



**Australian Government**  
**Department of Education**

Your Ref  
Our Ref Lex 757

Me

By email: [foi+request-10581-3e83befc@righttoknow.org.au](mailto:foi+request-10581-3e83befc@righttoknow.org.au)

Dear Me

**Your Freedom of Information request - charge decision**

I refer to your request, received by the Department of Education (department) on 17 August 2023, for access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

- 1. Copies of any emails or written correspondence related to FOI request to Services Australia reference number LEX71589 that were sent or received by an SES or equivalent (regardless of which department the SES worked for, and regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field).*
- 2. Copies of any emails or written correspondence related to FOI request to Services Australia reference number LEX71589 that were sent or received by a minister, minister's office, or ministerial staff (regardless of which minister, and regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field).*
- 3. Correspondence internal to the Department of Education related to FOI request to Services Australia reference number LEX71589.*
- 4. Correspondence sent to/from the Department of Education/Services Australia and vice versa related to FOI request to Services Australia with reference number LEX71589.*

*Included in the request:*

- the domain of any and all email addresses that are in a document within the above scope*
- the personal details, including work contact details, of any SES staff, regardless of which department they are from*
- the non-personal information in email signature blocks of all staff (for example, name of team or section etc.)*

*Excluded from this request:*

- duplicate documents*
- the personal information of any sub-SES staff*

## **My decision**

I have decided to reduce the charge of \$117.50 to \$87.50 (the revised charge). The reasons for my decision, including relevant sections of the FOI Act, are set out at **Attachment A**.

## **Payment details**

If you would like the department to continue processing your request, you must respond to the department within 30 days after receiving this notice. If you do not respond within 30 days, your request will be taken to have been withdrawn and no further action will be taken by the department.

As the revised charge exceeds \$25.00 but is less than \$100.00, you are required to pay a deposit of \$20.00 within 30 days of receiving this notice. You may, of course, elect to pay the charge in full at this point. Payment can be made by credit card by completing the attached credit card authorisation (**Attachment B**) and sending a scanned copy to [foi@education.gov.au](mailto:foi@education.gov.au). If you are unable to pay by credit card, please contact us on the above email. In particular, please contact us if you wish to pay by telephone or BPay and we will arrange for an invoice to be provided to you.

## **Time limits for processing your request**

Under the FOI Act, the time limit for processing your request remains suspended from the day you received the department's preliminary assessment of the charge until the day following payment of the deposit or the day following the payment of the revised charge in full.

## **You can ask for a review of my decision**

If you disagree with any part of the decision, you can ask for a review. There are two ways you can do this. You can ask for an internal review by the department or an external review by the Australian Information Commissioner.

You can find information about your rights of review under the FOI Act, as well as information about how to make a complaint at **Attachment C**.

## **Further assistance**

If you have any questions, please email [foi@education.gov.au](mailto:foi@education.gov.au).

Yours sincerely



Vicki  
Authorised decision maker  
Freedom of Information Team  
Department of Education  
11 October 2023

## REASONS FOR DECISION

### What you requested

- 1. Copies of any emails or written correspondence related to FOI request to Services Australia reference number LEX71589 that were sent or received by an SES or equivalent (regardless of which department the SES worked for, and regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field).*
- 2. Copies of any emails or written correspondence related to FOI request to Services Australia reference number LEX71589 that were sent or received by a minister, minister's office, or ministerial staff (regardless of which minister, and regardless of whether they were in the 'to', 'from', 'cc', or 'bcc' field).*
- 3. Correspondence internal to the Department of Education related to FOI request to Services Australia reference number LEX71589.*
- 4. Correspondence sent to/from the Department of Education/Services Australia and vice versa related to FOI request to Services Australia with reference number LEX71589.*

#### *Included in the request:*

- the domain of any and all email addresses that are in a document within the above scope*
- the personal details, including work contact details, of any SES staff, regardless of which department they are from*
- the non-personal information in email signature blocks of all staff (for example, name of team or section etc.)*

#### *Excluded from this request:*

- duplicate documents*
- the personal information of any sub-SES staff*

On 4 September 2023, the department invited you to refine the scope of your request to exclude documents Services Australia processed in response to your FOI request Lex 71589. On 7 September 2023, you agreed to exclude these documents from the scope of your request.

On 6 October 2023, the department invited you to further refine the scope of your request to exclude documents Services Australia processed in response to your FOI request Lex 73069 and your request for internal review Lex 74480. On the same day, you agreed to exclude these documents from the scope of your request.

### What I took into account

In reaching my decision, I took into account:

- your original request dated 17 August 2023 as revised on 7 September 2023 and 6 October 2023

- other correspondence with you
- the documents falling within the scope of your request
- consultations with departmental officers about the nature of the documents and the operating environment and functions of the department
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines)
- the *Freedom of Information (Charges) Regulations 2019* (Charges Regulations)
- the FOI Act.

### Reasons for my decision

I am authorised to make decisions under section 23(1) of the FOI Act.

I have decided to reduce the charge of \$117.50 to \$87.50 (revised charge). My findings of fact and reasons for this decision are discussed below.

### Preliminary assessment of charge

On 8 September 2023, I wrote to you to advise you that I had decided to impose a charge of \$117.50 for processing your request.

My preliminary assessment of that charge was calculated as follows:

Search and retrieval time: 30 minutes, at \$15.00 per hour	\$ 7.50
Decision-making time after deduction of 5 hours*: 5.5 hours, at \$20.00 per hour	\$110.00
<b>TOTAL</b>	<b>\$117.50</b>

\*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

### Your contentions

On 11 September 2023, you contended that the charge for processing your request under the FOI Act should be reduced or not imposed. Specifically, your correspondence provided:

*I would like to contend the charge.*

*My understanding of the FOI Act is that DoE cannot bill retrospectively. That is, work undertaken on these documents before this request cannot be charged for.*

*Before this request, DoE had already substantially considered the same documents. DoE also has the benefit of the SA decisions mentioned that concern substantially similar content. I consider it unlikely it would take more than 5 hours for an experienced FOI officer to think about which redactions can or should apply.*

*My understanding of 'decision time' in the FOI Act is that decision time does not include marking up. I suspect DoE has incorrectly included marking up in its calculation of decision time.*

*DoE already has a collated version of the documents in its possession. Removing what is duplicate content with SA I suggest is not half an hour.*

*Also, 'search and retrieval' does not include 'edit'. The existing collated version would take perhaps a minute to find and retrieve. Cutting the duplicate SA content is not search or retrieval time, or decision time.*

*As a result I suggest the correct decision is under 5 hours decision-making time and no charge.*

### **Revised calculation of charge**

Consistent with schedule 1 of the Charges Regulations, the estimated decision-making time of 5.5 hours in the preliminary estimate of the charge (after the deduction of the first 5 hours of decision-making time) included examining documents, consulting other parties, making deletions and notifying any interim or final decision on the request. The preliminary estimate of the decision making time was calculated, in part, using an estimate of 2 minutes per page to examine the documents and 2 minutes per page to make a copy of the documents with deletions.

In response to your request for reduction or non-imposition of the charge, the department conducted a sampling exercise to verify the estimated times to examine and redact the documents. An experienced departmental officer examined, and where appropriate redacted, a sample of the documents falling within the scope of the request.

Based on the sampling exercise, I have reduced the decision making time using revised estimates of:

- 1 minute per page for examination of each document
- 1.5 minutes per page to make a copy with exempt or irrelevant material redacted.

I am satisfied that the estimate of 1 minute to examine each page and 1.5 minutes to redact relevant pages is a reasonable estimate in the circumstances of this case and is supported by the sampling exercise.

The preliminary estimate of the charge was also calculated upon an estimate of approximately 50 pages being relevant to your request. Following your revision to the scope of your request on 6 October 2023, for the purposes of calculating the revised charge I have estimated that approximately 45 pages are relevant to your revised request.

Using the revised estimates set out above, I have recalculated the charge as follows:

Search and retrieval time: 30 minutes, at \$15.00 per hour	\$ 7.50
Decision-making time after deduction of 5 hours*: 4 hours, at \$20.00 per hour	\$80.00

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**TOTAL** **\$87.50**

\*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

I am satisfied that the cost of processing the request is not insubstantial and exceeds the amount of the revised charge. In these circumstances, I am satisfied that it is appropriate to exercise my discretion to impose a charge.

### Charges Regulations Schedule 1

The charges that may be imposed by an agency or minister with respect to a request for access to a document are specified in schedule 1 of the Charges Regulations. These charges include:

Charge applicable in respect of a request for access to a document		
Item	Charge	Amount or rate of charge
1	If the request relates to a document of an agency, or an official document of a Minister, other than a document in relation to which a charge under item 2 of this table applies—a charge in respect of the time spent by the relevant agency or the relevant Minister in searching for, or retrieving, the document	\$15.00 per hour
4	A charge in respect of the time that is spent by the relevant agency or relevant Minister in deciding whether to grant, refuse or defer access to the document or to grant access to a copy of the document with deletions, including time spent: (a) in examining the document; or (b) in consultation with any person or body; or (c) in making a copy with deletions; or (d) in notifying any interim or final decision on the request	\$20 for each hour after the first 5 hours

### ***Search time***

You have submitted that the search and retrieval time should be approximately 1 minute, based on your assumption that the documents were already collated in response to your previous request to the department dated 17 April 2023. I do not accept your estimate of the search time.

Your request dated 17 August 2023 is a fresh request to the department. The department was required to undertake searches to identify any additional documents created in the period since searches were conducted in response to your previous request. I am advised by relevant departmental officers that these searches took several hours, however I discounted this search time to 30 minutes for the purpose of estimating the preliminary estimate of the charge and the revised charge.

### ***Redacting documents***

You have submitted that *“My understanding of ‘decision time’ in the FOI Act is that decision time does not include marking up. I suspect DoE has incorrectly included marking up in its calculation of decision time.”* The decision making time in the preliminary estimate of charge included 1.80 hours at \$20.00 per hour for redacting relevant pages (\$36.00), based on an estimate that it would take 2 minutes to redact each page. In light of the sampling exercise conducted in response to your request for reduction or non-imposition of the charge and a small reduction in the number of relevant pages following the revision of your request on 6 October 2023, I have decreased the estimated time for the redaction of documents to approximately 1.18 hours (\$23.60), based on an estimate of 1.5 minutes to redact each page. I am satisfied that this is in accordance with the Charges Regulations, noting that item 4 of the table in clause 1 of schedule 1 of the Charges Regulations provides that “decision making time” includes making a copy of documents with deletions.

You have also submitted that *“Before this request, DoE had already substantially considered the same documents.”* I do not accept your submission that the department had already substantially considered the documents. Your request dated 17 August 2023 is substantially the same as parts 12-15 of your request to the department dated 17 April 2023. You amended the scope of your request dated 17 April 2023 on 30 June 2023 and 5 July 2023 to exclude parts 12-15 of your request. As these parts of your request were excluded, the departmental decision maker was not required to consider the relevant documents in the decision dated 15 August 2023.

You have also submitted that *“DoE also has the benefit of the SA decisions mentioned that concern substantially similar content.”* Your request dated 17 August 2023 captures documents that did not fall within the scope of your requests to Services Australia. Furthermore, the department is required to make its own decision in respect of the documents.

## **Financial hardship and public interest**

In addition to your submissions in your email dated 11 September 2023, when considering your request for reduction or non-imposition of the charge I am also required to have regard to financial hardship and public interest factors, as set out in section 29(5) of the FOI Act.

### *Financial hardship*

Under section 29(5)(a) of the FOI Act, I am required to consider whether payment of the charge would cause financial hardship to you.

Paragraph 4.101 of the FOI Guidelines relevantly provides:

*Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself and your family, or other people for whom you are responsible.*

The FOI Guidelines further provide that an applicant relying on the grounds of financial hardship would ordinarily be expected to provide some evidence of financial hardship, such as receipt of an income support payment or evidence of income, debts or assets.

You have not contended that payment of the charge, in full or in part, would cause you financial hardship. Accordingly, there is no basis upon which I can make a decision to reduce or not impose the charge on financial hardship grounds.

### *Public interest*

Under section 29(5)(b) of the FOI Act, I am required to consider whether giving access to the documents would be in the general public interest or the interest of a substantial section of the public.

You have not submitted that giving access to the documents would be in the general public interest or the interest of a substantial section of the public.

Paragraph 4.107 of the FOI Guidelines relevantly provides:

*An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from this disclosure (s 29(1)(f)(ii)). This may require consideration both of 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 the public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.*

The Guidelines also note at paragraph 4.109 that the 'public interest' is a broad concept that cannot be exhaustively defined. The Guidelines provide examples that illustrate the



circumstances in which the giving of access may be in the general public interest or in the interest of a substantial section of the public. These include:

- the document relates to a matter of public debate, or a policy issue under discussion within an agency, and disclosure of the document would assist public comment on or participation in the debate or discussion, and
- the document will add to the public record on an important and recurring aspect of agency decision making.

It is important to note that the public interest test in paragraph 29(5)(b) of the FOI Act is different to the public interest test in subsection 11A(5) of the FOI Act that applies to conditionally exempt documents. This means that while the public interest test might be satisfied for the purposes of a decision to reduce a charge, a document might still be exempt from release because there is, on balance, countervailing harm which offsets the public interest in giving access.

I am not satisfied that it would be in the general public interest or the interest of a substantial section of the public to give access to the documents.

The documents relate to a courtesy consultation to the department by Services Australia, undertaken in the course of processing your FOI request to Services Australia (Lex 71589). I do not consider that the documents add, in any substantive way, to the public record or to the scrutiny of government expenditure, or will in any meaningful way inform the community about the Australian Government's operations or any recurring aspect of the department's decision making.

Given these considerations, I do not consider that it is in the general public interest or the interest of a substantial section of the public to give access to the documents.

#### **Other matters**

Paragraph 4.112 of the FOI Guidelines specifies that an agency should consider whether imposing the charge would be at odds with the 'lowest reasonable cost' objective in section 3 of the FOI Act. I am satisfied that the revised charge represents a reasonable cost, given the departmental resources required to process the request. The calculation of the revised charge is supported by the sampling exercise undertaken by the department.

Paragraph 4.99 of the FOI Guidelines provides that an agency may decide it is appropriate to impose an FOI charge in several circumstances, including where the documents are primarily of interest only to the applicant and are not of general public interest or of interest to a substantial section of the public.

The documents relate to the processing of your FOI request to Services Australia, and would therefore appear to be primarily of interest to you rather than of general public interest or of interest to a substantial section of the public.

Paragraph 4.97 of the FOI Guidelines provides that an agency or minister should always consider whether disclosure of a document will advance the objects of the FOI Act, even if the applicant has not expressly framed a submission on that basis. The objects of the FOI Act include promoting better informed decision making, and increasing scrutiny, discussion, comment and review of the Government's activities (section 3). While disclosure of the documents may advance the objects of the FOI Act to a small extent, I have also had regard to other factors weighing against the reduction or non-imposition of the charge as set out above.

**Conclusion**

I have decided to reduce the charge to \$87.50.

I have decided not to reduce or waive the revised charge of \$87.50 on financial hardship or public interest grounds.

# Credit Card Authorisation

Use this form to pay a Freedom of Information charge by credit card

<b>Applicant's details</b>			
<b>Name</b>		<b>Phone number</b>	
<b>Credit card details</b>			
<b>Credit card type</b>			
<b>Card holder's name</b>			
<b>Credit card number</b>			
<b>Expiry date</b>		<b>CCV number</b>	
<b>Amount</b>			
<b>Signature</b>			
<b>Date</b>			

## Privacy statement

Your personal information is collected by the Department of Education for the purposes of processing the payment of a charge imposed under the *Freedom of Information Act 1982* and related purposes. If you do not provide some or all of the information requested, the department may be unable to process your credit card payment. Your personal information may be disclosed to other parties where you have agreed, or where it is otherwise permitted by law. The department's Privacy Policy, including information about how to make a complaint and access to and correction of your personal information, can be found at <https://www.education.gov.au/privacy>.

## YOUR RIGHTS OF REVIEW

### Asking for a formal review of an FOI decision

If you believe the decision is incorrect, the FOI Act gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

- an internal review officer in the department and/or
- the Australian Information Commissioner.

There are no fees for applying for a formal review.

### Applying for an internal review by an internal review officer

If you apply for internal review, a different decision maker to the decision maker who made the original decision will review your request. The internal review decision maker will consider all aspects of the original decision afresh and decide whether the decision should change.

An application for internal review must be made in writing within 30 days of receiving this letter. You can lodge your application by email to [foi@education.gov.au](mailto:foi@education.gov.au).

### Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can lodge your application in one of the following ways:

Online:

[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR\\_10](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICR_10)

Email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

## **Complaints to the Australian Information Commissioner**

### *Australian Information Commissioner*

You may complain to the Australian Information Commissioner about action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Australian Information Commissioner must be made in writing and can be lodged in one of the following ways:

Online:

[https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA\\_1](https://forms.business.gov.au/smartforms/servlet/SmartForm.html?formCode=ICCA_1)

Email: [foidr@oaic.gov.au](mailto:foidr@oaic.gov.au)

Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001