



Ms Jenny Hare

By email: foi+request-1302-7cd34786@righttoknow.org.au

Dear Ms Hare

1. I refer to your request received by the Department of Education and Training (the department) on 10 October 2015, and revised on 8 December 2015, for access to a document under the *Freedom of Information Act 1982* (FOI Act). As stated in the department's email of 9 December 2015, we understand the revised scope of your request to be as follows:

"A copy of the request/application for Higher Education Participation and Partnerships Program (HEPPP) funding that was made by the consortium of universities that delivered the Bridges to Higher Education initiative.

You are confining this request to 'only anything in the application about appraisalment/assessment/evaluating/evaluation of the project and how they planned to do that'.

You are expressly excluding:

- *any names or other personal information; and*
- *'information of all the peoples' cv's and details of how the money would be spent'."*

Background

2. On 30 October 2015 the department advised you of the preliminary estimate of the charge for processing your request, being \$138.75 (the Charge).
3. On 29 November 2015 the department received your request for non-imposition of the Charge on public interest grounds pursuant to section 29 of the FOI Act.
4. On 2 December 2015 the department emailed you to acknowledge your submission that the Charge should not be imposed and to provide you with a link to *Evaluation of Bridges to Higher Education*, the final report prepared by KPMG for the Bridges to Higher Education Management Committee in April 2015.
5. On 8 December 2015 you made the following revisions to the scope of your request:

"Another thing. I was thinking if I could make the request shorter.

I said I don't want anyone's names and that kind of thing but theres more. The request/application for the money also maybe had information of all the peoples' cv's and details of how the money would be spent. I don't need any of that information now because there was alot in the report you sent about what they did with the money they got. I would like to make the request just for what the universities' said they would do to know if what they did was any good. So please can you shorten my request to only anything in the application about appraisalment/assessment/evaluating/evaluation of the project and how they planned to

do that. I know the report is all about what they say the program did but that is later. I would like to know what they said at the beginning. I hope that is OK."

6. On 9 December 2015 we responded to your email, confirming our understanding of the revised scope of your request (as set out in paragraph 1 above).
7. I am authorised to make decisions under the FOI Act and the following is my decision in relation to your request for non-imposition of the Charge and the reasons for my decision.

Decision

8. For the reasons set out below I have decided to reduce the Charge to **\$12.55**.

Reasons for decision

9. I have taken the following material into account in making my decision:
 - the department's letter dated 30 October 2015 notifying you of the Charge;
 - your email received on 29 November 2015 seeking non-imposition of the Charge;
 - your email received 8 December 2015 revising the scope of your request;
 - the document falling within the scope of your request;
 - the FOI Act;
 - the *Freedom of Information (Charges) Regulations 1982* (the Regulations); and
 - Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Calculation of the Charge

10. As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the Charge.
11. In its letter dated 30 October 2015, the department advised that it has in its possession 1 document consisting of 39 pages of material relevant to your request. The Charge, totalling \$138.75, was calculated as follows:

Search and retrieval time: 0.09 hours, at \$15.00 per hour:	1.35
Decision-making time: 11.87 hours minus the first 5 hours* at \$20.00 per hour:	137.40
TOTAL	\$138.75

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

12. In calculating a processing charge for a freedom of information application, the department applies relevant provisions of the FOI Act, the Regulations and the Guidelines in relation to the amount it is permitted to charge. The department calculates the amount it may charge based on:
 - the time taken to search for, and retrieve, files containing documents that fall within the scope of the request;
 - the number of third parties with whom it will be necessary to consult in the course of making a decision regarding release of the documents;
 - the number and size (volume) of the documents that have been identified as falling within the scope of the request and the time taken for decision-making in relation to each page of

each document (less the first five hours of decision-making time, which are free of charge); and

- the number of pages considered sensitive, requiring redaction (potentially requiring extra decision-making time).

13. The department enters the information regarding the number and nature of the documents into a calculator provided by the Australian Government Solicitor. While use of this calculator is not mandated, it is provided to agencies for use in the calculation of processing charges under the FOI Act and is in common usage. The decision-maker then applies his or her own experience to evaluate the reasonableness of the amount calculated.
14. In relation to your request, the Charge was calculated on the basis that the department will need to consult with a number of external third parties and, following this, the deletion of exempt material may be required, potentially increasing the decision-making time.

Revised estimate of processing time

15. Following your revisions to the scope of your request, there are now only 12 pages of material which are relevant to your request. This will reduce the amount of time that it will take to examine the relevant pages for decision making and prepare a notification of decision.
16. I also consider that the consultation process will be less complex and that it will likely only be necessary to consult with one third party.
17. I therefore estimate that instead of 11.87 hours, it will now only take 6.19 hours to consider the relevant material, conduct necessary consultation, and prepare a decision on access to the document.
18. A revised initial calculation of the Charge, totalling **\$25.15**, has therefore been calculated as follows:

Search and retrieval time: 0.09 hours at \$15.00 per hour:	1.35
Decision-making time: 6.19 hours minus the first 5 hours* at \$20.00 per hour:	23.84
TOTAL	\$25.15

Reduction or non-imposition of the Charge

19. Subsection 29(5) of the FOI Act provides that, without limiting the matters that an agency may take into account when making a decision about whether to reduce, or not impose, a processing charge, the decision-maker must consider:
 - whether payment of a charge, or part of it, would cause financial hardship to an applicant; and
 - 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.

Financial hardship

20. While you have submitted that \$138.00 would be a large amount of money for you to pay, 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 by reason that doing so would cause you financial hardship.

Public interest

21. Paragraph 29(5)(b) of the FOI Act provides that the department must consider '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'. This means that there must be a benefit flowing generally to the public or a substantial section of the public following disclosure of the documents in question.
22. The Guidelines further explain at paragraph 4.55 that the question to be considered by the decision maker is not whether it is in the public interest for the Charge not to be imposed or reduced, nor whether it is in the public interest for the particular applicant to be granted access to the document. Rather, the decision maker must identify the 'general public interest' or the 'substantial section of the public' that will benefit from the disclosure of the documents.
23. In support of your request for non-imposition of the Charge, you made the following submissions:

"So, Ive been thinking and also I talked to people. I don't think I should pay. Like I said first in the first email its' in the public interest.

I Googled your department and theirs nothing, like nothing at all about how such a big size of money got approval. Also nothing to say what it was really for exactly and how any one could know if the universities' idea was any good. Its easy to say it worked if its all over, even if it didn't. You can make anything look good at the end. I think people want to know from the start line what the plan is. Then they can see whether the universities that got all the money were honest on how they researched, not that Im saying they werent.

Like I said, theres not any information on Google, not even for one project like the smallest and you can see that the one Im asking about is the biggest. How can a department spend so big alot of money like that and not tell peple all about it. \$22millions of dollars is the biggest size of money for any project (you can see that on Google) and it didn't work. So you should really tell people what the plan was to start. Thats the publics interest!!

Anyhow I know you want me to pay \$138. I know the goverment wants to make people pay for FOI so they dont use it too much but its not really fair. Even if I have got a job thats' alot for me but the university can get \$22million dollars. Is that OK when your not transparent!?"

24. For the purposes of the FOI Act, the issue that the decision maker must consider is whether there is a benefit flowing to the public from disclosure of the particular documents subject to the request. Factors that may be considered include the information that is already publically available, the nature and currency of the topic of public interest and the way in which the public benefit may flow from the release of the document.
25. The material falling within the scope of your request consists of the application for HEPPP funding that was made by the consortium of universities that delivered the Bridges to Higher Education initiative, insofar as that application detailed information about how the applicants proposed to appraise/assess/evaluate the project.
26. I note that *Evaluation of Bridges to Higher Education*, the final report prepared by KPMG for the Bridges to Higher Education Management Committee in April 2015, provides a cost benefit analysis of Bridges initiative, which provides some insight into the success of the initiative.
27. However, having considered your submissions, I accept that there is some public interest in disclosing information about how the applicants for such a large amount of Commonwealth funding, at the time of their application, proposed to assess and evaluate the success of the proposed initiative.

28. In light of this public interest I have therefore decided to waive 50% of the revised Charge figure of \$25.15. This reduces the Charge to **\$12.55** (the Reduced Charge).

Options to proceed with your request

29. We will now continue to process your request in accordance with the FOI Act and will be providing you with a decision in respect of the release of the relevant document in due course. However, please note that should the decision maker decide to release the document to you, you will not be provided with that document until you have paid the Reduced Charge of **\$12.55**.
30. Alternatively, it is open to you to request a review of the decision to impose the Reduced Charge. I have enclosed information about your rights of review under the FOI Act at **Attachment A**.
31. Finally, if you wish to withdraw your request at this time, you may do so in writing.

Please contact me on (02) 6240 9305 or Lyndal Buik on 02 6240 7335 if you would like to discuss this matter.

Yours sincerely

A handwritten signature in black ink that reads "M Simpson". The signature is written in a cursive, slightly informal style.

Matthew Simpson
A/g Senior Government Lawyer
Schools, Childcare and Corporate Legal Branch
People, Communication and Legal Group

23 December 2015

Attachment A

Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Post: The FOI Coordinator
Schools, Skills and Corporate Legal Branch
People, Communication and Legal Group
Department of Education and Training
Location code: C50MA10
GPO BOX 9880
CANBERRA ACT 2601

Email: foi@education.gov.au

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at www.oaic.gov.au, within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218 Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.

The Commonwealth Ombudsman

You can complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted for the cost of a local call from anywhere in Australia on telephone 1300 362 072.