



**Australian Government**  
**Department of Defence**

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Our reference: FOI 173/15/16

Mr Alan Cole

By email: [foi+request-1418-66dc382x@xxxxxxxxxxxxx.xxx.xx](mailto:foi+request-1418-66dc382x@xxxxxxxxxxxxx.xxx.xx)

Dear Mr Cole

**NOTICE OF DECISION ON REQUEST FOR REVIEW OF CHARGES**

1. I refer to your request of 15 December 2015, received in our office on 16 December 2015, in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*“...flight manifests of all special purpose flights outside of Australia i.e international flights between November 1st 2015 and December 2nd 2015.”*

**Liability to pay charges**

2. By letter, dated 18 December 2015, you were advised of my decision, in accordance with section 29 of the FOI Act that you were liable to pay a charge for the processing of your request and for giving access to the requested documents.

3. By email, dated 21 December 2015, you sought a review of the charges associated with your request.

**Decision maker**

4. By arrangements made by Defence under section 23 of the FOI Act, I am authorised to decide on your request for waiver of the processing charges.

**Material taken into account**

5. In coming to my decision, I had regard to:

- a. your submission in support of remission of the charges;
- b. the relevant provisions of the FOI Act;
- c. the relevant provisions of the FOI (Charge) Regulations;
- d. the Guidelines published by the Office of the Australian Information Commissioner.

## Relevant legislation – subsection 29(5) of the FOI Act

6. Subsection 29(5) of the FOI Act provides as follows:

*Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charges, 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 applicant 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.*

## Consideration of financial hardship

7. As noted above, I am required to take into account whether access to the requested documents would cause you any financial hardship.

8. The Guidelines provide the following advice:

*Whether payment of a charge would cause financial hardship to an applicant is primarily concerned with the applicant's financial circumstances and the amount of the estimated charges. Financial hardship means more than an applicant having to meet a charge from his or her own resources.*

*An applicant relying on this ground could ordinarily be expected to provide some evidence of financial hardship. For example, the applicant may rely upon (and provide evidence of) receipt of a pension or income support payment; or provide evidence of income, debts or assets.*

9. When considering whether to waive a debt due to the Commonwealth, the Department of Finance and Deregulation provides the following definition of financial hardship (in the context of deciding whether to waive a debt):

*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 or your family, or other people for whom you are responsible.<sup>1</sup>*

10. In the absence of any such information in relation to your request I am not satisfied that the payment of the charge, or part of it, would cause you any financial hardship.

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<sup>1</sup> Department of Finance and Deregulation, 2013, *Waiver of Debt*, Department of Finance and Deregulation, Canberra, viewed 30 May 2013, <[www.finance.gov.au/financial-framework/discretionary-compensation/debt-waiver.html](http://www.finance.gov.au/financial-framework/discretionary-compensation/debt-waiver.html)>

### **Consideration of public interest**

11. In relation to 'public interest' considerations, Part 4 - Charges for providing access, paragraphs 4.51- 4.53 of the Guidelines state as follows:

*4.51 The Act requires an agency or minister to consider 'whether the giving of access to the document in question is in the general public interest or in the interest of substantial section of the public' (s29(5)(b)). The issue is not whether it is in the public interest to waive or reduce a charge, nor whether it is in the public interest for a particular applicant to be granted access to a document ...*

*4.52 ... The FOI applicant may benefit from disclosure, but for the purposes of s29(5)(b) there should also be benefit flowing more generally to the public or a substantial section of the public. This will ordinarily require consideration both of the content of the documents and the context of their release -for example, whether the documents relate to a matter of public debate or decision by government.*

12. Part 4 - Charges for providing access, paragraph 4.56 of the Guidelines also states as follows:

*4.56 ... an agency or minister may also consider whether the range or volume of documents requested by an applicant could be considered reasonably necessary for the purpose of contributing to public discussion ...*

13. I note that you did not put forward any arguments in support of waiver of charges on public interest grounds.

### **Consideration of 'other matters'**

14. As detailed above at paragraph, I am required to consider the two factors: financial hardship and public interest. However, section 29(5) does not limit my consideration to those factors.

15. In your email you sought an explanation of how the cost was calculated for your request, drawing a comparison to FOI 122/15/16 which is published on the Defence FOI Disclosure Log. My letter of 18 December 2015 provided a breakdown of the time it was estimated it would take to process your request.

16. We must consider each case on its merits. That is how many documents are captured by each request and what work will be required in order to finalise the request. You may note that your request captures 32 pages whereas FOI 122/15/16 captured 13 pages. This in itself establishes a requirement that extra work will need to be undertaken in the processing of your request.

17. Your request seeks access to documents which contain personal information, as such, formal consultation is likely to be required. Further, the documents captured by your request necessarily contain information relating to other agencies and its employees. The FOI Guidelines state that *prompt and effective consultation with relevant parties involved in dealing with an FOI access request is essential to good administration*. While the FOI Act does not allow extra time for informal consultation with other agencies, the FOI Guidelines state that, while each agency is responsible for their own decision, it is good practice to consult with other relevant agencies. In the case of your request, it is certain that informal consultation will be required with a number of agencies as well as any formal consultation as mentioned above.

### **Charges decision**

18. After taking all of the above into consideration, I have decided that the charges, as originally estimated at \$38.20, should stand. I consider that the estimate is a true reflection of the time it would take to process your request.

19. Finally, you may wish to note that you will not pay more than the original estimate unless all of the identified documents are released intact. Further, the preliminary assessment stage is just that, an estimate based on previous FOI processing knowledge and the consideration of the work that would be involved. Referring again to FOI 122/15/16, you will note that the charges for that request were not waived until it was determined that the calculation of the time it actually took to process the request was provided. If it is the case that the time it takes to process your request is less than that originally estimated the charges will be amended.

### **Way forward**

20. If you agree with my decision, and wish to proceed, a deposit of **\$20.00** is required. The deposit is not refundable except in some limited circumstances (for example, if Defence fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid.

21. Please complete the authorisation form at Enclosure 1 and return it to the FOI Directorate by 18 February 2016. Upon receipt of the form an invoice will be generated, which may take up to five business days. Details about payment of the invoice are on the form. Our office will not process your request until a receipt is received in our office notifying that the deposit amount has been paid. If you do not respond to this letter within 30 days of receiving it (or by a later deadline if we give you an extension), we will take it that you have withdrawn your request.

22. Alternatively, if you disagree with my decision, you are entitled to apply for internal review of my decision to impose the charges. Such an application should be made within 30 days of receipt of this letter or such further time as the Department may allow. The fact sheet "Freedom of Information – Your review Rights" is at Enclosure 2.

### **Further advice**

23. The FOI Act may be accessed online at <https://www.comlaw.gov.au/>

24. Please contact me if you have any questions in relation to this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'T. Stinson', with a stylized flourish at the end.

Theresa Stinson  
Assistant Director – Media Case Management  
Freedom of Information

20 January 2016

Enclosures:

1. Payment Authorisation form - Deposit
2. Fact Sheet: Freedom of Information – Your Review Rights