



Australian Government

Civil Aviation Safety Authority

Legal Services Division

TRIM Ref: F16/169

21 April 2016

Mr Rob Cumming

By email: foi+request-1450-56a391c3@righttoknow.org.au

Dear Mr Cumming,

FREEDOM OF INFORMATION REQUEST – INTERNAL REVIEW

I refer to your email dated 22 March 2016 in which you sought review of a decision made by Joe Rule on 2 March 2016 in relation to your request for waiver of charges imposed by Mrs Smith-Roberts in relation to your application for access to documents under the *Freedom of Information Act 1982* (Cth) (the Act) on 19 January 2016.

I note that there was an error in the decision of 2 March 2016, where the amount of charges should have read \$88.58 as detailed in the preliminary charges notice of 19 January 2016.

In your email of 17 March 2016, you stated:

Further to my request for specific information, I wish to inform you that I am an age-pensioner and unable to meet a request for the payment requested.

Please accede to my request to process this request without fee.

In an email to you dated 18 March 2016, Mrs Smith-Roberts asked:

To confirm, are you wishing to seek internal review of the charges decision of 2 March 2016?

If you are wishing to seek internal review of this decision, on the basis on financial hardship (which was not mentioned in your original request for waiver of charges), can you please provide documentation in support of this.

On 22 March 2016, you sent an email stating that you had attached a copy of your redacted centrelink card "as proof of situation." Nothing was attached to this email. On 27 March 2016 an email was received from an alternate email address with a redacted card with your name on it.

In an email dated 29 March 2016 you advised *There is already a FOI request in Right-To-Know, in which it was requested by you of proof [attached] to previous e-mail, for a waiver of fees, which is claimed on the basis as an aged pensioner.*

On 1 April 2016, Mrs Smith-Roberts emailed you and asked for clarification of what you had provided on 27 March 2016, as it was unclear what it was, and asked how it supported your claim of hardship.

Mrs Smith-Roberts did not receive a response from you in relation to her email dated 1 April 2016, and as such made contact with you on 11 April 2016. In Mrs Smith-Roberts' email dated 11 April 2016 to you, she sought further explanation of what you had provided on 27 March 2016. On 13 April 2016, you advised that you had not received Mrs Smith-Roberts' email of 1 April 2016. Mrs Smith-Roberts forwarded the email dated 1 April 2016 to you on 14 April 2016.

In your email reply to Mrs Smith-Roberts dated 14 April 2016, you stated:

This simply is a redacted copy of my pension card, showing that I am entitled to a no-charge FOI request. There is sufficient information for you to properly act and complete my request.

By an email to you dated 19 April 2016, Ms Smith-Roberts stated:

I refer to your recent emails stating that you are entitled to a fee waiver because you are the holder of a pensioner concession card (aged pension). The fact you are the holder of such a card does not automatically entitle you to a fee waiver. Unlike certain State or territory legislation, the Freedom of Information (Charges) Regulations 1982 makes no provision for a fee to be waived based solely on an applicant being the holder of the card.

A person is entitled to the pension if they meet assets and income tests. In this regard, an applicant for the aged pension must have less than \$348,500 in assets. Further, a person may apply for the aged pension only if their fortnightly income is less than \$1,909.80. Accordingly, on the basis that you may hold sufficient assets or earn sufficient income to pay the \$88 fee imposed by CASA, you are requested to provide details of your income, assets and liabilities by 20 April. If you do not provide such information, a decision will be made on your request to review the decision to refuse to waive charges on the information available to CASA.

CASA has not received a response to that email.

Decision

For the purposes of this decision, I accept that you are the holder of a pensioner concession card, entitling you to the aged pension (it appears you have provided a redacted copy of the reverse side of your card).

On several occasions Mrs Smith-Roberts had asked you for clarification on what you had provided and how it supported your claim of hardship.

I am not satisfied that only by virtue of being the holder of the card, that payment of the charge of \$88.58 would cause you hardship. This is because, as noted above, a person is entitled to the pension if they meet assets and income tests. Having regard to those tests, I consider someone meeting them would be able to pay the assessed charges without causing hardship to them.

You have not provided any further information in relation to income or assets and have not demonstrated how payment of the charge would affect you financially.

Having regard to all of the above I am not satisfied that payment of the charge of \$88.58 would cause you hardship. Accordingly, I have decided to affirm the charges decision made on 2 March 2016.

There are several options available to you in light of my decision, as follows:

1. If you wish CASA to proceed to process your request for access, then you are required to pay the assessed charges of \$88.58.
2. If you no longer wish to proceed with your application, then you can notify CASA that you wish to withdraw it.
3. Alternatively, if you are dissatisfied with my decision not to waive the charges imposed on your application, you are entitled to seek review of that decision with the Australian Information Commissioner, as set out below.

Review by the Australian Information Commissioner

Under section 54L of the Act, you may apply to the Australian Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

online: <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>
email: enquiries@oaic.gov.au
post: GPO Box 2999, Canberra ACT 2601
in person: Level 3, 175 Pitt Street, Sydney NSW
phone: 1300 363 992

Yours sincerely,



Adam Anastasi
Executive Manager and General Counsel
Legal Services Division