



26 February 2016

**Our reference:** LEX 16961

Mr Patrick Conheady

By email: [foi+request-1458-1a316b41@righttoknow.org.au](mailto:foi+request-1458-1a316b41@righttoknow.org.au)

Dear Mr Conheady,

### **Decision on request to reduce or waive charges**

I refer to your revised request received by the Department of Human Services (the **department**) on 27 December 2015 for access under the *Freedom of Information Act* 1982 (the **FOI Act**) to the following documents:

'Please provide the emails, SQL queries and other documents being the source of the data presented in table 2 'Total number of social security and welfare claims, granted and rejected, by major payment type' in your 2014-2015 Annual Report, including the communications in which that data was requested.'

I also refer to:

- the department's letter dated 15 January 2016, advising that you were liable to pay a charge in the amount of \$58.00 for processing your request; and
- your email dated 1 February 2016 in which you requested that the charge be reduced or waived.

### **My decision**

I have decided not to reduce the amount of charge.

The reasons for my decision and findings of fact are set out at **Attachment A**.

### **Required action**

If you would like the department to continue processing your request, you must either:

- agree to pay the charge within 30 days of receiving this decision; or
- ask for a review of this decision.

If you do not do one of these things, your request will be taken to have been withdrawn.

### **Option A – Pay the charge**

As the charge exceeds \$25, you are required to pay a deposit of \$14.50 within 30 days of receiving this decision. You may, of course, elect to pay the charge in full.

The amount due should be paid by cheque or money order made out to the Collector of Public Monies. Please quote the reference number FOI LEX 16961 with your payment.

Should you decide to pay the charge, please email [xxx.xxxxx.xxxx@xxxxxxxxxxxxxx.xxx.xx](mailto:xxx.xxxxx.xxxx@xxxxxxxxxxxxxx.xxx.xx) once you have posted your cheque or money order to advise us of your payment.

***Option 2 - You can ask for a review of our decision***

If you disagree with any part of the charges decision you can ask for a review. There are two ways you can do this. You can ask for an internal review from within the department, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how arrange a review.

**Further assistance**

If you have any questions please email [FOI.Legal.Team@humanservices.gov.au](mailto:FOI.Legal.Team@humanservices.gov.au).

Yours sincerely

FOI Authorised Decision Maker  
Freedom of Information Team  
FOI and Litigation Branch | Legal Services Division  
Department of Human Services



## REASONS FOR DECISION

### What you requested

In your original request dated 27 December 2015, you requested:

'Please provide the emails, SQL queries and other documents being the source of the data presented in table 2 'Total number of social security and welfare claims, granted and rejected, by major payment type' in your 2014-2015 Annual Report, including the communications in which that data was requested.

### Preliminary assessment of charge

On 15 January 2016 the department notified you under section 29(1) of the FOI Act that you were liable to pay a charge in relation to your FOI request. The preliminary assessment of the amount of charge was \$58.00.

On 1 February 2016, you responded to the department in accordance with section 29(2) of the FOI Act and contended that the charge should be reduced or waived on the basis that:

- publishing the requests documents and other similar documents without charge is consistent with the Government's open data policy;
- disclosing the documents in question are in the general public interest and the interest of a substantial section of the public; and
- the charge is excessive because the assessment of time spent should not include time spent by reason of an inadequate filing system.

### What I took into account

In reaching my decision I took into account:

- your original request dated 27 December 2015;
- your email dated 1 February 2016;
- the documents that fall within the scope of your request;
- whether the release of material is in the general public interest or in the interest of a substantial section of the public;
- consultations with departmental officers about:
  - the nature of the documents;
  - the department's operating environment and functions;
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**);
- the FOI Act; and
- the *Freedom of Information (Charges Regulations) 1982* (the **Charges Regulations**).

## Reasons for my decisions

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

I have decided not to reduce the amount of charge. My findings of fact and reasons for decision are discussed below.

### Assessment of the amount of charge

As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations that were used to determine the charge.

The charge notified to you on 15 January 2016, totalled \$58.00 and was calculated on the on the following basis:

Search and retrieval time: 3.87 hours, at \$15.00 per hour:	\$58.00
Decision-making time (*after deduction of 5 hours): 1.92 hours, at \$20.00 per hour.	\$0

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<b>TOTAL</b>	<b>\$58 00</b>
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\*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

### *Charges calculation*

Parts I and II of the Schedule to the Charges Regulations specify the amount that can be charged under the FOI Act for undertaking certain FOI processing tasks, including the following activities:

Activity item	Charge
<b>Search and retrieval:</b> time spent searching for or retrieving a document	\$15 per hour
<b>Decision-making:</b> time spent in deciding to grant or refuse a request, including examining documents, consulting with other parties, making deletions or notifying any interim or final decision on the request	First 5 hours: nil Subsequent hours: \$20 per hour

Based on the estimates and documents received from the department's Service Delivery, Performance and Analysis Branch, it was estimated that it had taken approximately 3.87 hours to locate and collate the relevant documents.

Having examined the documents within the scope of your request, the calculation of the charge and the reasoning behind it, I am of the view that the charge calculated fairly reflects the work involved in processing your request and is a fair contribution towards the cost of processing your request.

### Reduction or waiver of the charge

Section 29(4) of the FOI Act provides a discretion to reduce or not impose a charge.

Section 29(5) of the FOI Act provides:

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

...

- (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.

### *Public interest*

In your submissions you have argued that disclosing these documents without charge or for a reduced charge would be both in the general public interest and in the interest of a substantial section of the public.

In regard to the general public interest your submission stated:

"There are three kinds of lies: lies, damned lies, and statistics."

This quote reflects the reality that the selection and framing of statistical information allows a person or organisation to control the message to be conveyed. Sometimes the selection of one statistic or another, the definition of a measure, or a choice of presentation, will have a greater influence on the reader's perception than the underlying facts, which become emphasised or obscured at the whim of the one presenting them.

The public is reliant on statements by government agencies to find out about the operations of those agencies. When a government agency publishes statistics about itself, it alone selects and frames its own perception. The selective withholding of information is a form of secrecy.

Accordingly, in order that the transparency intended in the annual report process be meaningful, it is necessary that the public have access to information about how these statistics are compiled.

What other information does the government hold, next to the information which it chose to disclose?

What decisions have been made within the government about what to present, how to present it, and what not to present?

What other statistics could members of the public and non-government organisations seek, if they could share in the government's power to frame and select statistics?

If a government agency, or the Government of the day, sought different or additional statistics to explore and issue or bolster a point, they would be able to get them at will. If this power is treated as the exclusive privilege of the government, then it creates an unjustified information imbalance between the government and the public, contrary to the spirit of the Freedom of Information Act.

In order to alleviate some of the de facto secrecy embodied in the selective publication of statistics, and to avoid an unjustified information imbalance in favour of the government, it is in the public interest that information about the source and compilation of published statistics also be published.'

In addition, your submission states, in regard to the interest of a substantial section of the public, that:

'Spending on programs administered by the Department makes up 40% of Commonwealth expenditure. This expenditure is funded primarily by Commonwealth taxation, which is contributed to by nearly every Australian.

Millions of Australians are themselves recipients under one or more programs administered by the Department.

The spirit of helping others in our community, embodied in many of the programs administered by the Department, is central to the ethos of the Australian people.

Accordingly, detailed and reliable information about the programs administered by the Department is in the interest of a substantial section of the public.'

I accept that a substantial section of the public has an interest in spending on programmes administered by the department as these payments make up a significant portion of the Australian Government's total annual expenditure. However, I do not accept that disclosing deliberative and source material that was provided by officers of the department for the purposes of producing the department's 2014 – 2015 Annual Report is in the general public interest or in the interest of a substantial section of the public.

Oversight of the department's programmes is achieved by the publishing of an Annual Report which contains data, statistics and analysis about the programmes and services administered by the department. By making this report publicly available, the department provides information which contributes to public debate about government expenditure and allows for greater scrutiny of the government's policies and practices. Disclosure of deliberative and source material that was used to produce this report would do little to contribute to a robust public debate and be likely to cause unnecessary and inefficient duplication. On that basis, I am not satisfied that there would be benefit from the release of the requested documents flowing to the public in general or a substantial section of the public that would allow for the charge to be reduced or waived.

#### *Other considerations*

Your submission dated 1 February 2016 also argued the charge should be reduced or waived because this would be consistent with the Australian Government Public Data Policy Statement and that the charge should not include time taken due to an inadequate filing system.

In regard to the Australian Government Public Data Policy Statement, you have submitted:

The information held by government agencies such as the Department includes not only the explicit data held in its databases, but also the statistics which could be generated from that data. Indeed, in many cases these statistics are more valuable than the individual data.

However, the public's ability to select and frame -- or even conceive of -- the statistical measures which could be drawn from government data is limited by its ability to see the metadata -- tables and columns -- and how these are used in practice by the government itself.

The requested documents target one table from the Department's most recent public report -- one example of the government selectively releasing statistical information and withholding other possible statistics -- and would illustrate how the government goes about compiling and selecting the information it chooses to allow the public to see.

Accordingly, it is consistent with Government policy to release the requested documents. They are non-sensitive and should be open by default, to allow the public to start to have

meaningful access to the non-sensitive statistical information embedded in the Department's databases.

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Accordingly, it is consistent with Government policy to release the requested documents. They are non-sensitive and should be open by default, to allow the public to start to have meaningful access to the non-sensitive statistical information embedded in the Department's databases.

The department has acted in accordance with the Australian Government Public Data Policy Statement by disclosing the final statistical information to the public through the provision of the 2014 – 2015 Annual Report. There is nothing in that policy which requires the department to publish deliberative and source material used to create final statistical information. Accordingly, I do not accept that disclosing the documents within scope without charge is consistent with the Australian Government Public Data Policy Statement, nor that this provides grounds for reducing the charge.

In regard to the department's allegedly inadequate filing system, you have submitted:

The preliminary assessment of the charge for this request is based on 3.87 hours or 3 hours, 52 minutes and 12 seconds, for searching for and retrieving four documents. This assessment should be reduced pursuant to the definition of 'time spent' in FOI Regulations reg 2(2)(b).

The documents in question constitute the source data for a table in an important public report. These documents should have been indexed in the working papers associated with the report, and readily accessible for the purposes of verifying or answering questions about that part of the report.

The Department's filing system ought to have indicated the place where the documents were located. An appropriate series of events would have been:

1. Identify table being asked about. (1 minute)
2. Look up list of tables in working papers or conduct text search on share drive folder (or similar) in relation to the report. (10 minutes)
3. Scroll through list of files on computer to the relevant documents. (1 minute)

An appropriate charge would be for no more than fifteen minutes or \$3.75.

An assessment of nearly four hours suggests that officers of the Department had to 'dig' through email archives or similar and ask around a lot, trying to reconstruct how the table in the report was originally put together. Sub-regulation 2(2) is intended to discourage -- or at least not offer a reward for -- the poor filing which necessitates such unfocused search and retrieval.

The Department's preliminary assessment could only be supported by an explanation of how, exactly, an officer spent three hours, 52 minutes and 12 seconds on a focused search for a small number of known documents in a well-laid-out filing system.

I do not accept that the charge has been estimated on the basis of the time required to navigate an inadequate filing system. The FOI Act requires that the department undertake

reasonable searches in order to identify the documents within the scope of a request. In order to identify all of the documents within the scope of your request, the department was required to conduct searches of personal email inboxes, positional email inboxes, shared drives and a suite of business intelligence databases. I am satisfied that these actions constituted reasonable searches that were necessary to appropriately respond to your request.

I do not accept that the department should have been required to annexe deliberative and source material to the Annual Report working papers. Indeed, if this was required, the bulk of the material that would have been required to be annexed to the Annual Report would have reduced the department's ability to effectively and efficiently produce such a report. Accordingly, I am not satisfied that the estimated charge included time for navigating an inadequate filing system.

### *Conclusion*

In balancing the above factors, I do not consider it appropriate in the circumstances to reduce or waive the charge payable by you. Therefore, the amount of the charge payable to you is \$58.00.

Yours sincerely

FOI Authorised Decision Maker  
Freedom of Information Team  
FOI and Litigation Branch | Legal Services Division  
Department of Human Services





**Attachment A**

## **INFORMATION ON RIGHTS OF REVIEW**

### ***FREEDOM OF INFORMATION ACT 1982***

#### **Asking for a full explanation of a Freedom of Information decision**

Before you ask for a formal review of an FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

#### **Asking for a formal review of an Freedom of Information decision**

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (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:

1. an Internal Review Officer in the Department of Human Services (the department); and/or
2. the Australian Information Commissioner.

**Note 1:** There are no fees for these reviews.

#### **Applying for an internal review by an Internal Review Officer**

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

**Note 3:** You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

#### **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.

If you do not receive a decision from an Internal Review Officer in the department within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

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

You can **lodge your application**:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

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

**Note 3:** The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

**Important:**

- If you are applying online, the application form the 'Merits Review Form' is available at [www.oaic.gov.au](http://www.oaic.gov.au).
- If you have one, you should include with your application a copy of the Department of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the department's decision.

**Making complaints**

***Commonwealth Ombudsman***

You may also complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by phone or in writing. The Ombudsman's contact details are:

Address: Commonwealth Ombudsman  
GPO Box 442  
CANBERRA ACT 2601

Phone: 1300 362 072

Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

**Note 4:** You can phone the Commonwealth Ombudsman's office first. The Ombudsman prefers people to ask for a review before making a complaint about a decision.