



15 April 2016

Mr Ben Fairless

Our reference: LEX 17755

By email: [foi+request-1569-84da5d3d@righttoknow.org.au](mailto:foi+request-1569-84da5d3d@righttoknow.org.au)

Dear Mr Fairless

### Your Freedom of Information Request - Charges

1. I refer to your request dated 22 February 2016 and received by the Department of Human Services (the **department**) on the same date, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'Dear Department of Human Services,

Can you please provide a copy of any complaints received in relation to the decision to introduce "No Jab, No Pay" legislation?

I am happy to exclude duplicates of documents and personally identifiable information.

Can this request be processed administratively? If not, please proceed as a formal FOI request.'

2. I also refer to:
  - the department's letter dated 16 March 2016, advising that you were liable to pay a charge in the amount of \$178.00 for processing your request; and
  - your email dated 16 March 2016, in which you requested that the charge be reduced or waived.

### My decision

3. 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

4. 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.
5. If you do not do one of these things, your request will be taken to have been withdrawn.

### **Option A - pay the charge**

6. As the charge exceeds \$25, you are required to pay a deposit of \$44.50 within 30 days of receiving this decision. You may, of course, elect to pay the charge in full at this point.
7. 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 17755 with your payment.
8. Should you elect to pay the charge please email [FOI.Legal.Team@Humanservices.gov.au](mailto:FOI.Legal.Team@Humanservices.gov.au) once you have posted your cheque or money order to advise us of your payment.

### **Option B – You can ask for a review of our decision**

9. 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**

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

Yours sincerely

FOI Delegate  
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 22 February 2016, you requested:

'Dear Department of Human Services,

Can you please provide a copy of any complaints received in relation to the decision to introduce "No Jab, No Pay" legislation?

I am happy to exclude duplicates of documents and personally identifiable information.

Can this request be processed administratively? If not, please proceed as a formal FOI request.'

### Preliminary assessment of charge

On 16 March 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 \$178.00.

On the same day, 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:

"The information contained in these complaints contains community opinion in relation to a controversial piece of legislation. Release of this information would help to better inform the community of a varied degree of opinions and arguments against the legislation. It would help to drive public policy debate in other areas and would allow for individuals who have made complaints to the Department to have their voices heard more widely.

I also note that this is a widely reported piece of legislation, and the response of the Department in administering these complaints would contribute to public policy discussions in relation to the piece of legislation."

### What I took into account

In reaching my decision I took into account:

- your original request dated 22 February 2016;
- the department's preliminary assessment of charges dated 16 March 2016;
- your email and submissions dated 16 March 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 16 March 2016, totalled \$178.00 and was calculated on the on the following basis:

Search and retrieval time: 5.60 hours, at \$15.00 per hour:	\$84.00
Decision-making time (*after deduction of 5 hours): 4.7 hours, at \$20.00 per hour.	\$94.00

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<b>TOTAL</b>	<b>\$178. 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 Customer Satisfaction and Issues Analysis Branch, it was estimated that it had taken approximately 0.5 hours to locate and collate the relevant documents. Other time as estimated to prepare, review and redact the documents was provided to you in the department's charges notification dated 16 March 2016.

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 an accurate and 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 stated 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:

“The information contained in these complaints contains community opinion in relation to a controversial piece of legislation. Release of this information would help to better inform the community of a varied degree of opinions and arguments against the legislation. It would help to drive public policy debate in other areas...”

You go on to state:

“Release of this information ... would allow for individuals who have made complaints to the Department to have their voices heard more widely.”

I accept that the information contained in the complaints contains the opinions of third parties. Centrelink customers are not restricted from voicing complaints or opinions publicly (subject to relevant information publication laws). I note that there are both bodies of, and forums for, publicly sharing information and opinion relating to the legislation, community opinions relating to anti-vaccination sentiment, and the decision to implement the legislation in relation to FTB payments.

It is logical to consider that Centrelink customers who have made complaints directly to the department, would have considered making their views publicly known through other forums; and if they have not, there are likely considered personal reasons for this. The public interest in informing the general public on community opinion, as you submit, is therefore not considered to be a heavily weighted public interest consideration, when compared to the right of customers to make their complaints publicly available on their own impetus.

For these reasons, I am not persuaded that the public interest in release of this information, as described in this portion of your submission is substantial, to the extent that it forms justification for the reduction of charges.

Further, you go on to state:

“...the response of the Department in administering these complaints would contribute to public policy discussions in relation to the piece of legislation.”

In reference to this section of your submissions, I refer you back to the scope of your request. You have sought access to “...a copy of any complaints received in relation to the decision to introduce "No Jab, No Pay" legislation?”.

Your FOI request makes no reference to any response of the department to any complaints that fall within the scope of your request. This part of your submission appears to relate to documents which you have not sought access to. Accordingly, I am not persuaded by this part of your submissions in assessing your application for waiver of charges.

#### *Other Considerations*

The OAIC Guidelines, issued under s93A of the FOI Act, state, at section 4.49:

“... an agency may decide that it is appropriate to impose an FOI charge where [amongst other things] ... the applicant has requested access to a substantial volume of documents and significant work would be required to process the request”.

The volume of documents within the scope of your request is not insubstantial. However, and more relevantly, the work involved in processing the request is significant. The breakdown of estimated time was provided to you in the original charges notice on 16 March 2016, and the department maintains that the charges imposed on the request are fair and reasonable when considered against the estimated processing time.

#### *Conclusion*

In balancing the above factors, the department is satisfied that its decision to impose charges was both correct and appropriate. If you wish to proceed with your FOI request, the charge payable by you is \$178.00.



## Attachment B

# 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.