



2 June 2016

**In reply please quote:**

FOI Request FA 16/04/01465  
File Number ADF2016/16830

Mr James Smith

Sent via email: [foi+request-1815-c928505f@righttoknow.org.au](mailto:foi+request-1815-c928505f@righttoknow.org.au)

Dear Mr Smith

**Freedom of Information request – Notice of charge decision following applicant contention that charge be reduced or not imposed (s 29(8))**

This notice of decision refers to your request received by the Department of Immigration and Border Protection (the Department) on 13 April 2016, seeking access under the *Freedom of Information Act 1982* (the FOI Act) to documents as follows:

*I request any relevant document(s) which summarise misconduct by DIBP staff. In particular, matters concerning unauthorised access to Australian citizen's personal records and misuse of Commonwealth resources.*

*I would like to see the broad spectrum of offences committed, and what the resulting consequences were for staff generally, in addition to the types of offences, and the number of occurrences of each offence.*

*If such a document exists which covers any, or all, of these matters for a recent, full financial-year period (eg, 2014-15), that will be sufficient for my purposes.*

I refer to your email of 10 May 2016 in which you requested a waiver of charges pursuant to s.29(5)(b) of the FOI Act, on the grounds of public interest.

I am writing to advise you of my decision in respect of your request to waive the Department's initial assessment of the charges. I am an officer authorised under s.23(1) of the FOI Act to make decisions in relation to FOI requests.

I have decided not to vary the original assessment of the charge. The amount you are liable to pay is **\$15.00**. The reasons for my decision under s 29(4) are set out below.

## Reasons for my decision

Section 29(4) of the FOI Act provides:

*Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.*

In deciding whether to exercise the broad discretion in s.29(4), as the decision maker I may consider any relevant matter. However, s.29(5) provides that I must consider whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public; and whether the charge would cause financial hardship.

I have considered the following:

1. whether payment of the charge, or part of it, would cause financial hardship to you, the applicant;
2. whether giving access to the document in question is in the general public interest or in the interest of a substantial section of the public; and
3. the arguments raised by you in your email of 10 May 2016.

### **1. Would payment cause financial hardship?**

As you have not contended that payment of the charge would cause you financial hardship, I have not considered this issue further.

### **2. Is giving access to the document in the public interest?**

Section 29(5)(b) of the FOI Act requires me to consider *whether the giving of access to the document in question is in the general public interest or in the interests of a substantial section of the public.*

The Australian Information Commissioner has issued Guidelines under s.93A of the FOI Act to which regard must be had for the purposes of performing a function, or exercising a power, under the FOI Act. Part 4 of the Guidelines explains the factors I must take into account when considering the public interest in charges decisions.

As the Guidelines explain, the issue is not whether it is in the public interest to reduce or not impose a charge, nor whether it is in the public interest for a particular applicant to be granted access to a document. While you (the FOI applicant) may benefit from disclosure of the documents, the question is whether there is a benefit that will flow more generally to the public or to a substantial section of the public if the documents are released to you.

In deciding whether the giving of access to documents is in the general public interest or in the interest of a substantial section of the public I have considered both the content of the documents and the context of their release.

I have considered the following:

- whether giving access to the document in question is in the general public interest or in the interest of a substantial section of the public;
- your email of 10 May 2016 as to why the charge should be waived;
- whether disclosure of a document would advance the objects of the FOI Act;
- whether you can be expected to derive a commercial or personal benefit or advantage from being given access to the documents and if it is reasonable to expect you to meet all or part of the charge;

- whether the documents are primarily of interest only to you and are not of general public interest or of interest to a substantial section of the public; and
- whether the information in the documents has already been published by or commented on by the Department and the documents do not add to the public record.

### **3. Your arguments**

In your email of 10 May 2016 you state:

*The subject of my request has been the topic of several news articles of late. For example, in yesterday's Canberra Times article 'Department of Immigration and Border Protection public servants face random drug tests'.*

*Clearly, the information I have requested is in the public interest and for this reason I seek your indulgence to waive the proposed charges.*

I fail to see any link between Departmental staff being required to undergo random drug testing (which is a known fact and in the public domain) with your request for documents which summarise misconduct by DIBP staff (i.e. unauthorised access to Australian citizen's personal records and misuse of Commonwealth resources). In my view you have not raised an argument that the charge ought to be waived on public interest grounds.

I have determined that waiving charges for disclosure of the documents in question is not in the general public interest or in the interest of a substantial section of the public, for the purpose of a decision under s.29(5)(b) of the FOI Act.

#### **Next steps in processing your request**

You are liable to pay the amount of **\$15.00** for the processing of this request.

#### **How to pay the charge**

The amount can be paid by cheque, money order or credit card. Cheques and money orders should be made payable to "Collector of Public Monies DIBP" and sent to:

Freedom of Information Section  
Department of Immigration & Border Protection  
PO Box 25  
BELCONNEN ACT 2616

If you wish to pay by credit card, please fill out the attached credit card authorisation form and forward to Freedom of Information Section at the above address, or email to [foi@border.gov.au](mailto:foi@border.gov.au).

#### **Time in which to respond**

Under the Act you have 30 days from the date of this notice to provide the Department with a response to my decision and either agree to pay the charge or seek an internal review of my decision. This means that you have until Saturday 2 July 2016 to respond to this notice. However, as this date falls on a non-working day, s.36(2) of the *Acts Interpretation Act 1901* provides that the latest date you may respond is the next working day.

Therefore, you must provide the Department with a written response as to how you wish to proceed by close of business **Monday 4 July 2016**.

## Review rights

### Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department my decision. Any request for internal review must be provided to the Department by the date set out above. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

Freedom of Information  
Department of Immigration and Border Protection  
PO Box 25  
BELCONNEN ACT 2617

Or by email to: [foi@border.gov.au](mailto:foi@border.gov.au)

### Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at [www.oaic.gov.au](http://www.oaic.gov.au).

### **How to make a complaint about the handling of this FOI request**

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the Act. Information about how to submit a complaint is also available at [www.oaic.gov.au](http://www.oaic.gov.au).

### **Contacting the FOI Section**

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Marianne Nolte-Crimp  
Freedom of Information Section  
Department of Immigration and Border Protection  
Email [foi@border.gov.au](mailto:foi@border.gov.au)