



Australian Government

Department of Foreign Affairs and Trade

FOI Ref: 1604-R1452L

File No: 16/11973

Date: 23 August 2016

Mr James Smith

Email: foi+request-1857-dfe52d6e@righttoknow.org.au

Dear Mr Smith

I refer to your email dated 23 July 2016 seeking an internal review of a decision by Marie-Charlotte McKenna, Director FPL, in relation to the waiver of charges associated with the processing of your request under the *Freedom of Information Act 1982* (Cth)(FOI Act). Your request under the FOI Act sought access to:

"1. Current social media policy of the department, which covers departmental use and/or private use by employees in an individual capacity.

2. Any current guidance material which is available for employees to make informed decisions about their private social media use."

In addition, in your email of 21 May 2016, you limited the scope of part 2 of your request to:

"any 'case studies' or 'examples' given to staff which address the topic of private use of social media."

I am authorised under section 23 of the FOI Act to conduct a review of Ms McKenna's decision on your request for a fee waiver, and have been appointed to be the decision-maker on your request as required by departmental procedures. I had no part in the original decision making process. The FOI and Privacy Law Section of the Corporate Legal Branch provided me with the information relevant to your request.

I have also taken note of your advice that "...the requested information is, in my view, in the public interest."

Decision

In reaching my decision I have reviewed all the material considered in the original decision, the decision taken by Ms McKenna, and your email of 23 July 2016.

I have decided to uphold Ms McKenna's decision to charge \$57.22 for the processing of your FOI request.

It is my view that the FOI charges regime exists to ensure that some costs are recouped from the considerable resources employed by agencies on processing FOI requests at a significant cost to tax payers. The OAIC Guidelines state at 4.3 that "...charges should fairly reflect the work involved in providing access to documents on request." The charge imposed by the Department reflects only a small percentage of the actual cost of processing the FOI request.

Processing FOI requests diverts resources, including senior decision makers, from their work of progressing the policy objectives of the government of the day in order to review documents for release. Charges make the FOI framework sustainable and appropriately balanced in public policy terms.

In this instance, the Department's calculation of charges issued to you was less than the full amount able to be charged under the OAIC Guidelines. Once charges have been calculated in respect of an FOI request and notified to an applicant, the Department will not increase charges in the event it is subsequently determined additional documents fall within the scope of the request and which would ordinarily be liable to charges. In this instance, this lower charge was processed and issued to you in order to ensure the Department handled your request in accordance with applicable statutory timeframes.

This small charge is not intended to operate in any way as an impediment to transparency. In my view, it does not in fact operate as an impediment given the small amount. I have decided to uphold the processing fee for your request.

You have 30 days to pay the charges as per the directions provided in the Department's letter of 20 June 2016.

The reasons for my decision are as follows:

- a) I accept the original decision-maker's argument that:
 - i. the matter that is the subject of the request is not one concerning an administrative decision and therefore disclosure of the documents will not enhance administrative decision making.
 - ii. release of the documents would not make any material contribution to inform public discussion and commentary.
- b) Where the public interest is not engaged for a particular set of documents for which there is a significant cost in processing the FOI request to the Australian Community, it is not unreasonable that a proportion of those significant costs should be met by the applicant. This helps ensure that the Commonwealth recoups some part of such costs where appropriate, while better enabling the agency to reduce or waive costs in cases where there is a clear public interest character.

In making my decision I have had regard to the OAIC Guidelines which state at 4.49 that an agency may decide that it is appropriate to impose an FOI charge where "...the documents

are primarily of interest only to the applicant and are not of general public interest or of interest to a substantial section of the public."¹

Your review rights

Australian Information Commissioner

Under the provisions of section 54 of the FOI Act, you are entitled to request a review by the Australian Information Commissioner of my decision. You may also make a complaint to the Australian Information Commissioner under section 70 on the Minister's Office's performance of its functions or the exercise of power under the FOI Act.

Your request for review or complaint should be directed to:

GPO Box 2999, Canberra ACT 2601

Telephone: 1300 363 992

Fax: (02) 9284 9666

Email: enquiries@oaic.gov.au

Complaints to the Commonwealth Ombudsman

You may complain to the Ombudsman concerning actions taken by an agency in the exercise of its powers or, more specifically, the performance of its functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation of your complaint.

You may complain to the Ombudsman by calling or writing to:

Commonwealth Ombudsman

GPO Box 442

Canberra ACT 2601

Telephone: 1300 362 072

Fax: (02) 6249 7829

Should you have any queries regarding this matter please contact FOI case officer, Holly Kendall, on (02) 6261 1111.

Yours sincerely



Julie Heckscher

Corporate Counsel

Corporate Legal Branch

¹ *Re Tennant and Australian Broadcasting Corporation* [2014] AATA 452.