



Australian Government
**Department of Immigration
and Border Protection**

1 June 2016

In reply please quote:

FOI Request: FA 16/05/00333
File Number: ADF2016/19100

To Mr Keith Wolverton
By Email: foi+request-1911-330d42cc@righttoknow.org.au

Dear Mr Wolverton

Freedom of Information – notice that applicant is liable to pay a charge (section 29(1))

This letter refers to your request received by the Department of Immigration and Border Protection (Department) on 3 May 2016, seeking access under the *Freedom of Information Act 1982* (FOI Act) to the following documents:

'all emails/memos/newsletters sent to all staff in the agency in the last month'.

Background

On 5 May 2016, the Department wrote to you acknowledging receipt of your FOI request. We also advised that the Department had seen a significant increase in the number of FOI requests and, as such we sought your agreement to an extension of time by an additional 30 days. Further, the Department also sought to clarify the scope of your request, by asking that you clarify if you were seeking 'all emails sent to all staff within the Department'.

On 6 May 2016, you confirmed that you did not wish to seek access to 'all emails sent to all staff within the Department', but that you sought emails sent to the 'All Staff' email address, and would be happy to exclude the documents linked to the emails.

On 30 May 2016, the Department wrote to you advising that we had identified a number of documents as falling within the scope of your request and that we were currently reviewing the content to determine the applicable charge. We also noted that we had previously advised you on 5 May 2016 that the Department was experiencing a significant increase in the number of FOI requests and as such sought your agreement to an extension of processing time, in accordance section 15AA [Extension of time with agreement] of the FOI Act. I note that at this time, we do not appear to have received your response, and therefore I advise that the statutory due date for you to receive a decision is now 2 June 2016.

Charges

I am writing to advise you of my decision that you are liable to pay a charge for processing this request. I am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests, including the decision to impose a charge.

As provided under section 29 of the FOI Act and the *Freedom of Information (Charges) Regulations 1982* (the Regulations), I have undertaken a preliminary assessment of the amount of charges you are liable to pay and have assessed that to be \$211.20.

Basis for my preliminary assessment of the charge

I have assessed the work the Department would need to do to process your request and have calculated the following breakdown of charges.

Document estimate

Number of relevant documents: 23 documents

Number of relevant pages: 41 pages

Processing charges

Search and retrieval		
Task	Time (hours)	Cost @ \$15/hr
Search and retrieval of relevant electronic and registry files	0.83	\$12.50
Search and retrieval of relevant pages in file	2.00	\$30.00
Preparation of schedule of documents	1.15	\$17.25
Search and retrieval subtotal	3.98	\$59.75
Decision making		
Task	Time (hours)	Cost @ \$20/hr
Examination of documents	3.42	\$68.33
Preparation of documents for release	1.50	\$30.00
Consultation with third parties	4.00	\$80.00
Preparation of notice of access decision	3.66	\$73.12
Decision making subtotal (before deduction of 5 free hours)	12.57	\$251.45
Decision making subtotal (after deduction of 5 free hours)	7.57	\$151.45
Estimated totals and deposit		
Estimated total		\$211.20
Deposit required		\$52.80

The Public Interest Test and considerations of a reduction in the charge

Consideration of public interest

In relation to 'public interest' considerations, I refer to Part 4 - Charges for providing access, paragraphs 4.54 - 4.59 of the Office of the Guidelines issued by the Australian Information Commissioner under s 93A of the FOI Act (the Guidelines) which state:

4.54 The Act requires an agency or minister to consider 'whether the giving of access to the document in question is in the general public interest or in the interest of substantial section of the public' (s29(5)(b)). This test is different to and to be distinguished from public interest considerations that may arise under other provisions of the FOI Act. Specifically, the public interest test for waiver in s 29(5)(b) is different to the public interest test in s 11A(5) that applies to conditionally exempt documents.

Nor will s 29(5)(b) be satisfied by a contention that it is in the public interest for an individual with a special interest in a document to be granted access to it, or that an underlying premise of the FOI Act is that transparency in the public interest. The issue is not whether it is in the public interest to waive or reduce a charge, nor whether it is in the public interest for a particular applicant to be granted access to a document ...'

4.55 An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

Part 4 - Charges for providing access, paragraph 4.59 of the Guidelines also states:

4.59 In applying those and related examples, an agency or minister may also consider whether the range or volume of documents requested by an applicant could be considered reasonably necessary for the purpose of contributing to public discussion or analysis of an issue. If an FOI applicant has sought more documents than is considered reasonably necessary for the stated purpose, the agency or minister may consider a partial reduction of the charge, or decline to reduce or waive

Having reviewed the documents it should be noted that the documents were created for the intent of informing and managing internal communications with Departmental staff. The communications cover a wide range of topics, such as personnel management, organisational change, and general staff training.

As such, and based on the Information Commissioner's Guidelines, as mentioned above, I do not consider that there is a wider community interest relating to the topic contained in the documents. I consider that the documents are not publicly available, and it is unlikely that a public benefit would flow from the subsequent release of the documents.

As such I believe that the above charges estimate is a fair and reasonable estimate of the costs associated with managing your request and for preparing the documents in a form for release.

Based on my assessment of the documents, I have estimated that there will be a requirement to consult informally with Departmental personnel. However, as this is not considered a formal consultation process, there is no additional charge for this component of the request.

The time you have to respond and what you need to do

The FOI Act provides you with 30 days to respond, in writing, to this notice, which is 1 July 2016.

Therefore, by **1 July 2016**, you must do one of the following things:

- agree to pay the charge;
- contend that the charge has been wrongly assessed, or should be reduced or not imposed and explain your reasons; or
- withdraw your request.

In deciding whether a charge should be reduced or not imposed, section 29(5) of the FOI Act requires me to take into account:

- whether payment of the charge, or part of it, would cause you financial hardship
- whether giving access to the document is in the general public interest or in the interest of a substantial section of the public
- any other relevant matter.

Please note that if you do not provide a written response by **1 July 2016**, your request will be taken to have been withdrawn (by you) under section 29(2) of the FOI Act.

Payment

As the charge exceeds \$100, you will be required to pay a deposit equal to 25% of the full charge imposed = \$52.80.

The deposit will be refunded if the Department fails to make a decision on your request within the statutory time limit. The deposit can be paid by cheque, money order, credit card or Electronic Funds Transfer (EFT).

Cheques and money orders should be made payable to "Collector of Public Monies Department" 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

If you wish to pay by Electronic Funds Transfer (EFT) DIPB's bank account details are as follows:

Bank: CBA
BSB: 062987
Account Number: 10016044
Account Name: Department Official Administered Direct Credit Receipts Account

When making the transfer you will need to quote the reference number of your request – **FOI - FA 16/05/00333**. This will ensure that your payment can be identified by our Finance area. Failure to do so may result in payments not being identified as FOI related and could result in processing delays.

Please advise FOI if you have made the payment by direct credit, so that we can contact the Finance area and ensure they issue a receipt. You should also be aware that payments by direct credit are not processed in real time. There is at least a one day delay when payment is paid into the Department's account and notification of the payment is received via our bank account statement.

Processing period suspended

The period for processing your request is suspended from the day that you are deemed to have been 'notified' of the charge and resumes on:

- the day you indicate that you 'agree' to pay the charge or
- the day on which this agency makes a decision not to impose a charge.

You may indicate your agreement to pay the charge by either paying the deposit or paying the charge in full.

Contacting the FOI Section

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

Yours sincerely

Signed electronically

Karen Tulloch
Freedom of Information Section
Department of Immigration and Border Protection
Email foi@border.gov.au

Attachment

- ✓ Attachment A - Extract of relevant legislation

Attachment A

29 Charges

- (1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:
 - (a) that the applicant is liable to pay a charge; and
 - (b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and
 - (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
 - (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and
 - (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
 - (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
 - (i) of the applicant's agreement to pay the charge; or
 - (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both—that the applicant so contends, giving the applicant's reasons for so contending; or
 - (iii) that the applicant withdraws the request for access to the document concerned; and
 - (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.
- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
 - (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
 - (b) the end of the period or further period mentioned in that paragraph.
- (4) 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.
- (5) 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:
 - (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and
 - (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.

- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
- (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
 - (b) the applicant has not received notice of a decision on the amount of charge payable;
- the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
- (a) the applicant makes a contention about a charge as mentioned in subsection (4); and
 - (b) the agency or Minister makes a decision to reject the contention, in whole or in part;
- the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.
- Note: Section 25D of the *Acts Interpretation Act 1901* sets out rules about the contents of a statement of reasons.
- (9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:
- (a) his or her rights with respect to review of the decision; and
 - (b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (c) the procedure for the exercise of those rights;
- including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (10) Section 13 of the *Administrative Decisions (Judicial Review) Act 1977* does not apply to a decision referred to in subsection (8).
- (11) A notice under subsection (8) is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.