



4 July 2016

Our reference: LEX 19000

Mr James Smith

By email: foi+request-1935-3dfd2247@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request - Charges

I refer to your revised request dated 23 May 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:

'I confirm a revision of scope to the following:

1. Documents relating to code of conduct investigations that have resulted from the forwarding of the DHS all staff email dated 10 March 2016.
2. The email referred to in (1).'

My decision on charges

I have decided not to waive or reduce the charge of \$54.15 notified to our on 27 May 2016.

Please see the schedule at **Attachment A** to this letter for the reasons for my decision, including the relevant sections of the FOI Act.

You can ask for a review of our decision

If you disagree with any part of the 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 Karen.Hamilton2@humanservices.gov.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'K Hamilton', with a stylized flourish at the end.

Karen Hamilton
a/g General Counsel
FOI and Litigation Branch, Legal Services Division
Department of Human Services

REASONS FOR DECISION

What you requested

- 'Sixty departmental public servants were investigated after they forwarded an email, sent in March by Mr Hudson to all staff about DHS's troubled enterprise bargaining process, to "external" recipients.

I request the following information:

1. A copy of Mr Hudson's email referred to in the above text.
2. Copies of any emails or other documents which address the matter of the email referred to in (1) being sent to external recipients. This includes any instructions issued to commence investigations, and any decisions made with regard to staff who were identified by the department as having sent the email referred to in (1) to any recipients external to the department.
3. The Canberra Times article states: 'No action was taken against 40 of the workers for flicking the message on, 13 were issued with "reminders" of the department's rules about emails and five were hit with official warnings.' I seek any document which details the reasons for the different treatment of staff.'

On 23 May 2016, the department wrote to you providing a notice of intention to refuse your request under section 24AB(2) of the FOI Act as your request was too big to process. You were given an opportunity to consult with the department to revise your request so as to remove the practical refusal reason.

On 23 May 2016, you revised your request to be:

'I confirm a revision of scope to the following:

1. Documents relating to code of conduct investigations that have resulted from the forwarding of the DHS all staff email dated 10 March 2016.
2. The email referred to in (1).'

What I took into account

In reaching my decision I took into account:

- your original request dated 10 May 2016 and your revised request on 23 May 2016;
- other correspondence from you, including the charge notification dated 27 May 2016 and your request for review dated 10 June 2016;
- the documents that fall within the scope of your request;
- the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**);
- guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**); and
- the FOI Act.

Relevant legislation

Section 29(4) of the FOI Act provides that, where an applicant has notified an agency that the applicant contends that a charge should be reduced or not imposed in relation to a request under the FOI Act, then the agency may decide that the charge is to be reduced or not imposed.

Section 29(5) of the FOI Act provides that, without limiting the matters that the agency may take into account when making a decisions about whether to reduce or not impose a processing charge, the decision maker must consider:

- whether payment of a charge, or part of it, would cause financial hardship to an applicant; and
- 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.

Section 29(8) of the FOI Act provides that, if an application makes a contention about a charge as mentioned in section 29(4) of the FOI Act and then agency makes a decision to reject the contention in whole or in part, then the agency must give the applicant written notice of the decision and the reasons for the decision.

Reason for my decision

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

Calculation of the charge

On 27 May 2016, in accordance with section 29 of the FOI Act, the department notified you of the charge for processing your FOI request, calculated as follows:

Search and retrieval time: 1.37 hours, at \$15.00 per hour:	\$20.55
Decision-making time (*after deduction of 5 hours): 1.68 hours, at \$20.00 per hour	\$33.60
TOTAL	\$54.15

*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

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

The charge notified to you on 27 May 2016 totalled \$54.15 and was calculated as set out above.

In calculating processing charges for FOI requests, the department applies relevant provisions of the Regulations, the FOI Act and the Guidelines in relation to the amounts it is permitted to charge.

In matters where an application requests documents the departments holds, the department calculates the amount it may charge based on:

- the time taken to search for, and retrieve, files containing documents within scope;
- the number of business areas and third parties with whom it will be necessary to consult in the course of making a decision regarding the release of the documents;

- the number and size (number of pages) of the documents that have been identified as falling within the scope of the request, and the resultant time taken for decision making in relation to each of those pages (less the first five hours of decision-making which are free of charge); and
- the number of pages considered sensitive, requiring redaction (and therefore potentially extra decision-making time).

Based on estimates and documents received from the business areas within the department, it was estimated that it had taken approximately 1.37 hours to locate and collate the relevant documents, and would take a further 5.68 hours to examine the documents, apply any redactions, undertake any necessary consultation and preparation a decision on access.

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.

Your submissions

You have not made any submissions to the department in relation to any of the prescribed matters that must be taken into account under section 29(5) of the FOI Act.

Section 29(4) of the FOI Act provides a general discretion to reduce or not impose a charge which goes beyond the matters relating to financial hardship and the public interest. In considering this general discretion, I have had regard to whether the charge imposed appropriately reflect the cost of processing your request.

With regard to whether the charge imposed appropriately reflects the cost of processing your request, I note that processing charges are designed to be a contribution to the cost of processing FOI requests and do not compensate the full costs associated with the processing of a request. I further note that, in recognition of the general public interest in allowance access to government information, the FOI Act provides for the first five hours of decision making time to be free of charge for all applications. This discount was applied to the calculation of the charge notified to you on 27 May 2016.

On this basis, I am satisfied that the charge, as notified to you on 27 May 2016, is both a fair and an accurate reflection of the work involved in processing your request. Further, I am satisfied that the notice is consistent with both the functions and intentions of the FOI Act, and that you have provided no substantive or compelling submission seeking waiver of the charge.

Options to proceed with your request

If you would like the department to continue processing your request, you must notify the department in writing within 30 days of receiving this notice that you:

- a) agree to pay the charge;
- b) wish to contend that the charge:
 - i. has been wrongly assessed; or
 - ii. should be reduced or not imposed; or
 - iii. both
- c) withdraw the request for access.

Further information on options A, B and C is set out below.

Option A - pay the charge

As the charge exceeds \$25, you are required to pay a deposit of \$13.54 within 30 days of receiving this notice. You may, of course, elect to pay the charge in full at this point.

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 19000 with your payment.

Should you elect to pay the charge please email Alice.Linacre@humanservices.gov.au once you have posted your cheque or money order to advise us of your payment.

Option B - seek reduction or non-imposition of the charge

Please find attached a document setting out your rights of review at **Attachment B**.

Option C - withdraw your request

If you wish to withdraw your request you may do so in writing.

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 2: 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
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: 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.
- 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

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.