



Australian Government
Department of Defence

Freedom of Information
CP1-6-001
PO Box 7910
CANBERRA BC ACT 2610
Tel: 02 626 62200
Fax: 02 626 62112
FOI@defence.gov.au

Our reference: FOI 389/15/16

Mr Stuart McCarthy

By email: foi+request-2004-f8d31fxx@xxxxxxxxxxxxx.xxx.xx

Dear Mr McCarthy

NOTICE OF DECISION ON REQUEST FOR REVIEW OF CHARGES

1. I refer to your email, dated 17 June 2016 in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

“...documents held by the Australian Department of Defence (Aus DoD) relating to U.S. Department of Defense (U.S. DoD) research into the neurotoxicity and/or neuropsychiatric adverse effects of mefloquine, dating from 1 January 2013 to the present, including:

a. Emails, minutes, letters, memos, briefings, presentations, or summaries relating to proposals, conduct, findings, outcomes or recommendations of the above research, including correspondence between U.S. DoD and Aus DoD officials, or internal Aus DoD correspondence.

b. Documents relating to the involvement of Aus DoD officials in the above research, as sponsors, researchers, reviewers or subjects.

c. Documents relating to the attendance of Aus DoD officials at meetings, visits or conferences on the subject of mefloquine use in the military, including notes, briefings or similar correspondence on the observations, findings or outcomes of those activities.

d. Documents relating to the implications of the above research for the use of mefloquine in the ADF, or possible adverse health effects on ADF personnel.”.

Liability to pay charges

2. By letter, dated 1 July 2016, you were advised of the decision, in accordance with section 29 of the FOI Act, that you were liable to pay a charge for the processing of your request and for giving access to the requested documents.

3. The abovementioned letter also outlined that Defence excludes personal email addresses, signatures, PMKeys numbers and mobile telephone numbers, contained in documents that fall within the scope of a FOI request unless you specifically request such details and that Defence also excludes duplicates of documents.

4. By email, dated 2 July 2016, you sought a review of the charges associated with your request on public interest grounds.

Decision maker

5. By arrangements made by Defence under section 23 of the FOI Act, I am authorised to decide on your request for waiver of the processing charges.

Material taken into account

6. In coming to my decision, I had regard to:
- a. your submission in support of remission of the charges;
 - b. the relevant provisions of the FOI Act;
 - c. the relevant provisions of the FOI (Charge) Regulations; and
 - d. the Guidelines published by the Office of the Australian Information Commissioner.

Relevant legislation – subsection 29(5) of the FOI Act

7. Subsection 29(5) of the FOI Act provides as follows:

Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charges, 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 applicant 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.*

Consideration of financial hardship

8. As noted above, I am required to take into account whether access to the requested documents would cause you any financial hardship.

9. The Guidelines provide the following advice:

Whether payment of a charge would cause financial hardship to an applicant is primarily concerned with the applicant's financial circumstances and the amount of the estimated charges. Financial hardship means more than an applicant having to meet a charge from his or her own resources.

An applicant relying on this ground could ordinarily be expected to provide some evidence of financial hardship. For example, the applicant may rely upon (and provide evidence of) receipt of a pension or income support payment; or provide evidence of income, debts or assets.

10. When considering whether to waive a debt due to the Commonwealth, the Department of Finance and Deregulation provides the following definition of financial hardship (in the context of deciding whether to waive a debt):

Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible.¹

11. You did not provide any arguments or evidence relevant to a claim of financial hardship, accordingly, I am satisfied that payment of processing charges would not cause you any financial hardship.

Consideration of public interest

12. In relation to 'public interest' considerations, Part 4 - Charges for providing access, paragraphs 4.51- 4.53 of the Guidelines state as follows:

4.51 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)). 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...

4.52 ... The FOI applicant may benefit from disclosure, but for the purposes of s29(5)(b) there should also be benefit flowing more generally to the public or a substantial section of the public. This will ordinarily require consideration both of the content of the documents and the context of their release -for example, whether the documents relate to a matter of public debate or decision by government.

13. Part 4 - Charges for providing access, paragraph 4.56 of the Guidelines also states as follows:

4.56 ... 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...

14. Your email seeking waiver of the charges provided five points for my consideration; however you did not address how you consider that the release of the requested documents would be of benefit to the greater public. I note that points a. – c. merely provide statements about Mefloquine, to which I am unable to respond.

15. In your point d. you state that access to the requested documents would assist affected individuals to seek medical assistance. Again, I do not consider that you have addressed how the release of the requested documents would be in the public interest of a substantial section of the public.

16. In regards to your point e. I note your comment that Defence has not yet contacted affected individuals, contrary to a recent Senate Inquiry. I sought advice from Joint Health Command with regard to this point, and was advised that Defence had considered this recommendation, however on balance decided that it was likely to cause more harm as it is likely to cause anxiety to those that are well.

17. I also note that Defence has made a lot of information publicly available on the Defence website. Further, individuals who do have any queries and or concerns can contact Defence via a dedicated email address. In my opinion, Defence has addressed the public interest by making information and a contact address readily available for individuals to seek advice as they require.

18. The Guidelines, at paragraph 4.58, provide a non-exhaustive list of circumstances where it may be appropriate to reduce or waive a charge on public interest grounds. I do not consider that you have adequately addressed any of those points, nor provided any other arguments that would convince me of your public interest claims.

Charges decision

19. Notwithstanding the above, I am of the view that the estimated charges amount can be adjusted. I have now had an opportunity to review the documents and, as an experienced FOI practitioner, to consider the time and effort required to process your request. Accordingly, I have decided to reduce the charges estimate by 50% to \$83.50.

Way forward

20. If you agree with my decision, and wish to proceed, a deposit of **\$20.00** is required. The deposit is not refundable except in some limited circumstances (for example, if Defence fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid.

21. Please complete the authorisation form at Enclosure 1 and return it to the FOI Directorate by 31 August 2016. Upon receipt of the form an invoice will be generated, which may take up to five business days. Details about payment of the invoice are on the form. Our office will not process your request until a receipt is received in our office notifying that the deposit amount has been paid. If you do not respond to this letter within 30 days of receiving it (or by a later deadline if we give you an extension), we will take it that you have withdrawn your request.

22. Alternatively, if you disagree with my decision, you are entitled to apply for internal review of my decision to impose the charges. Such an application should be made within 30 days of receipt of this letter or such further time as the Department may allow. The fact sheet "Freedom of Information – Your review Rights" is at Enclosure 2.

Your Review Rights

Internal Review

14. Under the provisions of section 54 of the FOI Act, you are entitled to request a review of this decision. You must request a review, in writing, within 30 days of the date of this letter, or the date you receive the documents. Requests can be sent to:

Email: xxxxxxxx@xxxxxxxx.xxx.xx
 Fax: 02 626 62112
 Post: Freedom of Information Directorate - Reviews
 Department of Defence
 CP1-6-029
 PO Box 7910
 CANBERRA BC ACT 2610

Australian Information Commissioner

15. Under the provisions of section 54 of the FOI Act, you are also entitled to request an external review of this decision by the Australian Information Commissioner. You have 60 days to lodge such a request, using one of the contact methods below:

Email: enquiries@oaic.gov.au
 Phone: 1300 363 992
 Fax: 02 9284 9666
 Post: GPO Box 2999
 Canberra ACT 2601

Complaints

16. You may complain to Defence, the Information Commissioner or the Commonwealth Ombudsman about an action taken by Defence in the exercise of its power or the performance of its functions under the FOI Act. There is no fee for making a complaint. Should you wish to complain to the Department of Defence, your complaint can be addressed to Mr Tony Corcoran using the contact details below:

Email: tony.corcoxxx@xxxxxxxx.xxx.xx
 Post: Tony Corcoran
 Assistant Secretary Information Management and Access Branch
 CP1-6-14
 PO Box 7911
 CANBERRA BC ACT 2610

17. Contact details for the Commonwealth Ombudsman are below:

Phone: 1300 362 072)
 Fax: 02 6276 0123
 Post: Commonwealth Ombudsman
 GPO Box 442
 CANBERRA ACT 2601

18. Contact details for the Information Commissioner are above.

Further advice

23. Please contact me if you have any queries about your request.

Yours sincerely

Theresa Stinson
 Assistant Director
 Freedom of Information

1 August 2016

Enclosure:

1. Payment Authorisation form - Deposit



FREEDOM OF INFORMATION REQUEST - DEPOSIT AUTHORISATION

FULL NAME or ORGANISATION Service or PMKEYS ID (if applicable)			
POSTAL ADDRESS:			
CONTACT PHONE NUMBERS:	H	M	B
EMAIL:			
FOI REFERENCE :	FOI 389/15/16		
AMOUNT \$	\$20.00		

By signing this form you are agreeing to pay the charges notified to you by the Freedom of Information Directorate. The deposit is not refundable except in some limited circumstances (for example, if Defence fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid:

PLEASE DO NOT SEND CHEQUES OR MONEY ORDERS TO FOI

Once our office receives this form, the Department of Defence will generate an invoice in order for you to make payment of the agreed charges via one of the payment options made available.

Our office will not proceed to process your request until a receipt has been received in our office notifying that the deposit amount has been paid.

Please sign below and return this form by one of the following:

- via email to xxx@xxxxxxxx.xxx.xx
- via fax 02 6266 2112
- by post to the address noted above.

Signature: _____