



21 September 2016

Mr Dan Monceaux

Our Ref: 2016/4528

BY EMAIL ONLY: foi+request-2149-d0f39bc4@righttoknow.org.au

Dear Mr Monceaux

RE: FREEDOM OF INFORMATION ACT 1982 APPLICATION - PORT BONYTHON OIL SPILL

I refer to your email of 13 September 2016 in which you reduced the scope of your request and amended it as follows:

"All photographs, video/film recordings and reports in AMSA's possession related to the Port Bonython oil spill and response, which occurred in South Australia in August/September of 1992."

You also requested a waiver of charges on the grounds of public interest and financial hardship.

I, Matt Johnston, Manager, Marine Environment Standards, being an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests, have decided to vary the original assessment of the charge.

The scope of the application was significantly reduced whereby the assessed charge came to a total of \$98.75. I have decided to exercise my discretion to waive a substantial amount in the current circumstance and the amount you are liable to pay is \$50.00.

The reasons for my decision are set out below.

Reasons for my decision

Where an applicant contends that a charge should be reduced or waived, the agency or minister has a general discretion to decide the case. Two matters stipulated in the FOI Act (s.29(5)) must be considered:

- whether payment of the charge, or part of it, would cause financial hardship to the applicant or a person on whose behalf the application was made, 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.

These are the two matters that you have put forward as the basis upon which the charges in this instance should be waived, and as such I will consider each in turn.



Public Interest

The FOI 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 a substantial section of the public' (s 29(5)(b)).

As the Information Commissioner's FOI Guidelines point out, 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. There is no presumption that the public interest test is satisfied by reason only that the applicant is a member of Parliament, a journalist or a community or non-profit organisation.¹

In requesting that the charges be waived, the applicant in this instance has stated that:

"I would also like to claim a case for the public interest value of this request, given that two corporate entities involved in this 1992 incident are currently seeking to explore for oil and gas in the Great Australian Bight."

I agree that the documents may relate to a matter of public interest regarding oil and gas exploration in the Great Australian Bight.

Despite that, while accepting the proposition that the documents relating to the request may be of public interest, it remains open to an agency to impose a charge in circumstances where a public interest purpose for disclosure has been established².

Whilst I appreciate the efforts you have made to reduce the scope of your request, a substantial volume of documents will need to be reviewed and significant work will be required to process the request. The aspect of your request capturing reports, in particular, requires third party consultation and consideration of responses to such consultations. In the current circumstance I view the imposition of such a charge at a reduced rate as appropriate whilst balancing the matter of public interest.

For these reasons, I have decided to exercise my general discretion to reduce the charges on the basis that giving of access to the documents in question is in the general public interest or in the interest of a substantial section of the public.

A revised charges notification incorporating this decision is enclosed accordingly.

Financial Hardship

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 charge. Financial hardship means more than an applicant having to meet a charge from his or her own resources. The decision in *'AY' and Australian Broadcasting Corporation* referred to the definition of financial hardship in guidelines issued by the Department of Finance for the purpose of debt waiver decisions:

"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."³

In this instance, the claim of financial hardship is stated by the applicant in the following terms:

"I am a public interest researcher of very modest means."

No further information supporting this claim of financial hardship has been provided for me to consider. I note that the Information Commissioner's Guidelines state that:

"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. However, an agency should be cautious about conducting an intrusive inquiry into an applicant's personal financial circumstances."

I note that there is no onus on the applicant to justify his case in this instance, and I am unable to conduct an intrusive inquiry into the applicant's financial circumstances.

Without having any true insight into the financial affairs of the applicant, it is difficult for me to determine that paying a charge of the amount stated above will cause the applicant financial hardship. This absence of evidence supporting the claim of financial hardship must be weighed against the policy of the FOI Act, namely that charges can be imposed for search and retrieval, decision making, inspection, electronic production, copying and delivery.

I therefore find that the claim of financial hardship is not adequately supported by the applicant in this instance and I cannot conclusively determine on the basis of information currently before me that payment of the charge, or part of it, would cause financial hardship to the applicant. When weighing that conclusion against matters relied upon by the applicant in seeking to have the charges waived, I have decided not to exercise my general discretion in this instance to depart from the general policy of the FOI Act that charges may be imposed for processing an FOI request.

Your review rights

If you are dissatisfied with my decision in relation to the charge, you may apply for internal review or Information Commissioner review of the decision as spelt out at **Attachment B**.

Next steps in processing your request

The revised charges notification at **Attachment A** sets out the next steps in your FOI application.

¹ See Part 4 of the Australian Information Commissioner FOI Guidelines.

² See *Baljurda Comprehensive Consulting Pty Ltd and the Australian Agency for International Development* [2011] AICmr8.

³ [2014] AICmr 7 [20], as cited by Australian Information Commissioner FOI Guidelines, Part 4.

Questions about this decision

If you have any questions or wish to discuss this decision with us, please contact AMSA's Freedom of Information Officer on (02) 6279 5649.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Matt Johnston', with a long horizontal line extending to the right.

Matt Johnston
MANAGER
MARINE ENVIRONMENT STANDARDS
MARINE ENVIRONMENT

ATTACHMENT A – REVISED CHARGES NOTIFICATION

In accordance with Section 29 of the FOI Act, I have decided that you are liable to pay a charge in respect of the processing of your request. My revised assessment of the charge is as follows.

Search and retrieval time @ \$15.00 per hour	(1.32hrs)	\$19.75
Examining documents, preparation, and decision making time, including third party consultations, redacting documents @ \$20.00 per hour	(minus 5 hours free) (3.95hrs)	\$79.00
Preliminary Total		\$98.75
Less reduction on public interest grounds		-\$48.75
Total		\$50.00

The above processing charge represents an initial estimate of charges payable in relation to the processing of your request. Please note that no documents will be released until the full amount is paid.

Next Steps

You are entitled to seek review of this decision. **Attachment B** sets out your rights to apply for review if you are dissatisfied with my decision.

Within 30 days of receipt of this notice you are required to either:

- agree to pay the charges as specified; or
- seek review of the charges decision; or
- amend/reduce the scope of your request; or
- withdraw your request.

If you fail to notify AMSA in a manner mentioned above within 30 days of receipt of this notice, it will be taken that you have withdrawn your request.

In accordance with Section 31, the 30-day limit for processing your request remains suspended from the day that you receive this notice and resumes on either the day you pay the charge; the day on which a review body makes a decision not to impose a charge (following your contention of the charges); or the day you pay a revised charge amount following a reduction in the scope of your request.

ATTACHMENT B - REVIEW RIGHTS

Under section 54 of the FOI Act, you may apply in writing to AMSA for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter.

Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.

Review by the Australian Information Commissioner

Under section 54L of the FOI Act, you may apply directly to the Information Commissioner to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

- online: <https://forms.business.gov.au/aba/oaic/foi-review-/>
- post: GPO Box 2999, Canberra ACT 2601
- fax: 02 9284 9666
- in person: Level 3, 175 Pitt Street, Sydney NSW