



Our ref: DIISR16/5187

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Mr Dan Monceaux  
Right to Know

By email: [foi+request-2185-70b72c6c@righttoknow.org.au](mailto:foi+request-2185-70b72c6c@righttoknow.org.au)

Dear Mr Monceaux

**Freedom of Information Act 1982 – Decision on Charge**

I refer to your correspondence received by the Department of Industry, Innovation and Science (the department) on 30 August 2016 in which you sought access under the *Freedom of Information Act 1982* (the FOI Act) to “...minutes and agendas of all meetings of the Uranium Council, from its establishment in 2009 to the present’.

I am an authorised decision maker under section 23 of the FOI Act. The following is my decision in relation to your contention that the preliminary estimate of charge for the processing of your request, being \$408.80 (the Charge), should be reduced or waived on financial hardship and public interest grounds.

**Background**

On 1 September 2016, the department sought your clarification in relation to the scope of your request. In response you clarified the scope to “...all minutes and agendas of meetings of the Uranium Industry Framework (2005-2009) and its successor, the Uranium Council (2009-present).”

On 15 September 2016, the department issued a notice of intention to refuse on the ground that the work involved in processing your request would substantially and unreasonably divert the resources of the department from its other operations. You were invited to revise the scope of your request within 14 days so the practical refusal reason no longer exists.

On 15 September 2016, in response to the notice of intention to refuse, you revised your scope of request to “Minutes of all meetings of the Uranium Council from its establishment in 2009 until present. To exclude agendas and minutes of meetings of the UIF which dated back to 2005”.

On 27 September 2016, the department advised that your revised request of 15 September 2016 remained too broad to be processed and invited you to further revise the scope of your request.

On 29 September 2016, you further revised the scope of your request to “Minutes of all meetings of the Uranium Council from 2011 until present (inclusive).”

On 5 October 2016, the department issued a notice of charge and advised the need of third party consultation. As such, the standard statutory 30 days limit for processing request extends by another 30 days.

## Decision

I am an authorised decision maker under section 23 of the FOI Act.

After considering your submission, I have decided to waive the photocopying and postage and reduce the Charge by \$16.40 and impose a charge of **\$392.40**. A full waiver of all changes cannot be reasonably granted, nor can a reduction in the fee be provided for the reasons outlined below.

## Reasons for my Decision

I have taken the following material into account in making my decision:

- your revised request received by the department on 29 September 2016;
- the department's letter notifying you of the Charge, dated 5 October 2016;
- the documents falling within the scope of your revised request;
- your contention of charge received on 7 October 2016;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the FOI Regulations); and
- Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act.

## **Calculation of the Charge**

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.

In my letter sent to you on 5 October 2016, I advised that the department has in its possession approximately 64 folios falling within the scope of your request and over 20 third parties to be consulted. The Charge, totalling \$408.80 was calculated on the following basis:

Search and retrieval time: 10.08 hours at \$15.00 per hour	\$151.25
Decision making time: 17.06 hours at \$20.00 per hour	\$ 341.15
Less first 5 hours	-\$ 100.00
Photocopying & postage:	\$ 16.40
<b>Total amount</b>	<b>\$ 408.80</b>
<b>Deposit 25% of charge</b>	<b>\$ 102.20</b>

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

In calculating processing charges for freedom of information applications, the department applies relevant provisions of the FOI Act, the Regulations and the Guidelines in relation to the amounts it is permitted to charge. The department calculates the amount it may charge based on:

- the time taken to search for, and retrieve, files containing documents that fall within the scope of the revised request;
- the number of third parties with whom it will be necessary to consult in the course of making a decision regarding release of the documents;
- the number of pages considered sensitive, requiring redaction (potentially requiring extra decision making time).

The department enters the information regarding the number and nature of the documents into a calculator provided by the Australian Government Solicitor. While use of this calculator is not mandated, it is provided to agencies for use in the calculation of processing charges under the FOI Act and is in common usage. The decision maker then applies his or her own experience to evaluate the reasonableness of the amount calculated.

Having examined the calculation of the Charge and the reasoning behind it, I consider that the calculation has been assessed in accordance with the Regulations, fairly reflects the work involved in processing the request and is a fair contribution towards the cost of processing the request.

### **Reduction or Waiver of the Charge**

Sub-section 29(5) of the FOI Act provides that, without limiting the matters that an agency may take into account when making a decision 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 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.

I would note that, in accordance with paragraph 4.50 of the FOI Guidelines, it is open to an agency to impose a charge even though a public interest purpose for disclosure has been established, or if a charge would cause financial hardship to an applicant.

#### Financial hardship

In your correspondence of 7 October 2016, you have indicated that you have limited financial means as a self-funded researcher. You have also stated that you have undertaken unwaged work as a freelance documentary filmmaker and public interest researcher, and have personally borne the costs of the voluminous research you have undertaken.

Paragraph 4.52 of the FOI Guidelines states that financial hardship means more than an applicant having to meet a charge from his or her own resources. In the absence of evidence regarding your financial circumstances, I am not satisfied that payment of the charge would cause you financial hardship.

#### Public interest

In support of your request for reduction or waiver of the Charge, you have made the following submission in your correspondence of 7 October 2016:

*“...the work of the Uranium Council has immediate relevance to decision-making processes which are underway in South Australia and federally, in the wake of the Nuclear Fuel Cycle Royal Commission (2015- 2016). The Commission concluded in May 2016, and since that time the South Australian Department of Premier and Cabinet has been considering advancing the recommendations made by the Commission, many of which are likely to benefit the uranium mining sector”.*

The decision to reduce or not impose a processing charge requires the department 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’. 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 the document.

In applying the public interest test, it is important to identify the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure. While the FOI applicant may benefit from disclosure, for the purposes of paragraph 29(5)(b) there should also be a benefit flowing more generally to the public or a substantial section of the public. This will ordinarily require consideration of both the content of the documents and the context of their release. For example, it may be appropriate to consider whether the documents relate to a matter of current public debate or a significant decision of government.

I have considered the following factors in relation to your request for a reduction or non-imposition of the charge on public interest grounds

- the connection of the documents to matters that have been a topic of public interest or discussion, and the extent to which disclosure of the documents would better inform the public on those matters; and
- the objects of the FOI Act to increase scrutiny, discussion, comment and review of government activities and promote openness of administration by allowing access to information (including information about public policy) under the FOI Act.

However, I have also considered the following factors that weigh against reduction or non-imposition of the charge on public interest grounds:

- significant work will be required by the department in retrieving and compiling the information relevant to your request and the time required to make a decision, including consultation with approximately 20 third parties.

Taking into account the above factors weighing against disclosure and paragraph 4.49 of the Guidelines which states that the policy of the FOI Act is that charges may be imposed for search and retrieval of information, decision making, electronic production, copying and delivery, I do not consider that a total waiver or reduction of the fees would be appropriate.

However, I have decided on balance, to reduce the preliminary estimate and remove the photocopying and postage charge as requested.

#### **Other grounds for reduction**

Under Regulation 3 of the *Freedom of Information (Charges) Regulations 1982*, the department has a broad discretion whether to impose a charge for resources expended in processing a freedom of information request.

Subsection 29(4) of the FOI Act also gives the department a general discretion to reduce or not impose a charge which goes beyond matters relating to financial hardship or the public interest.

I note that processing charges are designed to be a contribution to the cost of processing freedom of information requests and do not compensate for the full costs associated with the processing of a request. Relevantly in this case, there are approximately 64 folios that fall within the scope of your request and over 20 third parties to be consulted.

I also note that in recognition of the general public interest in allowing access to government information, the FOI Act provides for the first five hours of decision making time to be free of charge for all applicants. I note that this discount has been applied to the Charge.

Taking into account the above considerations, I have decided that a Charge of \$392.40 is an appropriate charge towards the processing of your FOI request.

#### **Options to proceed with your request**

In order for your request to continue to be processed, you are required to respond in writing within 30 days of receipt of this notice in accordance with one of the following options:

- A. Pay the Charge;
- B. Request a review of the decision to impose the Charge; or
- C. Withdraw your request.

Further information on each of these options is set out below.

Option A – Pay the Charge

As the Charge exceeds \$100 you are required to pay a deposit of 25%, being \$98.10 within 30 days of receiving this notice. You may, of course, elect to pay the Charge in full at this point.

If you wish to make a payment by credit card please provide the following information by email to [foi@industry.gov.au](mailto:foi@industry.gov.au)

- Name of financial institution:
- Name on credit card:
- Credit card number:
- Amount to be paid:
- Expiry date on credit card:

Or by cheque please send cheque payment to:

FOI Coordinator  
Department of Industry, Innovation and Science  
GPO Box 9839  
CANBERRA ACT 2601

Option B – Request a review of the decision to impose the Charge

If you are dissatisfied with my decision, your review rights are set out in Attachment A.

Option C – Withdraw your request

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

If you do not notify the department in a manner mentioned above within 30 days of receipt of this notice it will be taken that the request has been withdrawn.

Should you have any queries in relation to this matter please contact the FOI Coordinator by e-mail: [FOI@industry.gov.au](mailto:FOI@industry.gov.au).

Yours sincerely



Michael Sheldrick  
General Manager  
Uranium & R&E International

4 November 2016

**Application for Internal Review**

Section 54 of the FOI Act gives you the option to apply for a departmental internal review of my decision. If you make an application for internal review it will be conducted by an officer of the department (other than me) appointed by the Secretary of the department to conduct a review and make a completely fresh decision on the merits of the case.

Application for a review of the decision must be made within 30 days after the day of receipt of this letter, or within 15 days of receipt of the documents to which this decision relates (whichever is the longer period). You do not have to pay any fees or processing charges for an internal review, except for charges relating to the provision of any additional relevant material located as a result of the review (for example photocopying). While a specific form is not required, it would assist the decision maker if your application specifies the grounds on which you consider the decision should be reviewed.

Application for a review of a decision should be addressed to:

FOI Coordinator  
Department of Industry, Innovation and Science  
GPO Box 9839  
CANBERRA ACT 2601

or by e-mail to: [FOI@industry.gov.au](mailto:FOI@industry.gov.au).

**Review by the Australian Information Commissioner**

If any decision on internal review were not satisfactory to you, section 54L of the FOI Act gives you the right to apply for review of my decision by the Information Commissioner.

An application for review by the Information Commissioner may be made regardless of whether the decision was the subject of a departmental internal review. An application for review by the Information Commissioner must be made within 60 days of receipt of this notice. There is no fee for review by the Information Commissioner.

You must apply in writing and you can lodge your application in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Fax: +61 2 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of this notice and your contact details. You should also set out why you are objecting to the decision.

**Complaints to the Australian Information Commissioner**

You may complain to the Australian Information Commissioner 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. The Australian Information Commissioner will make a completely independent investigation of your complaint. A complaint to the Australian Information Commissioner must be made in writing and can be lodged online using the Information Commissioner Complaint Application form on the Australian Information Commissioner's website at [www.oaic.gov.au](http://www.oaic.gov.au).