



**Australian Government**  
**Department of Defence**

Freedom of Information  
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Our reference: FOI 078/16/17

Mr Dan Monceaux

By email: [foi+request-2242-30713ff1@righttoknow.org.au](mailto:foi+request-2242-30713ff1@righttoknow.org.au)

Dear Mr Monceaux

**NOTICE OF DECISION ON REQUEST FOR REVIEW OF CHARGES**

1. I refer to your revised request seeking access, under the *Freedom of Information Act 1982* (FOI Act), to:

*The minutes of all meetings of the Australian Maritime Defence Council, from the year 2010 to present.*

**Liability to pay charges**

2. You were advised of my 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. By email, dated 17 October 2016, you sought a review of the charges associated with your request on public interest grounds.

**Decision maker**

4. 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**

5. 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;
- d. the Guidelines published by the Office of the Australian Information Commissioner.

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

6. 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**

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

8. 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.*

9. In the absence of any such information in relation to your request I am not satisfied that the payment of the charge, or part of it, would cause you any financial hardship.

### **Consideration of public interest**

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

*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 s29(5)(b) is different to the public interest test in s11A(5) that applied to conditionally exempt documents. Nor will s29(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 is in the public interest.*

*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.*

11. Your email provided valuable information with regard to your motivations for your request. While this is not usually something that would be taken into account when processing a request, I consider the information to be helpful in my consideration of the charges aspect of your request.

12. Your email states *I am seeking to understand the rationale/need for these submarines, and consider it likely that this project will be discussed in the minutes of the Council's meetings in the broader context of Australia's maritime trade. I also have a long term interest in the strategic value of new port developments in Australia...* On quick review of the identified documents, there is little discussion of the Future Submarine Project and I do not consider that the identified documents provide any further detail than what is already in the public domain. Conversely, there is significant mention of ports (in general) in a number of the minutes.

13. Your email also mentions that you are *interested in the history of the Council itself*. I have found that there is some information publicly available with regard to the establishment of the Council and its predecessor, the membership of the council and its scope. It is unclear from your statement whether this is the type of information you would be interested in. Accordingly, I have not given much weight to that issue in my considerations.

14. The above mentioned Part 4 also states as follows:

*4.3 A charge must not be used to discourage an applicant from exercising the right of access conferred by the FOI Act. Rather, charges should fairly reflect the work involved in providing access to documents on request.*

15. Taking into account paragraph 4.3, I am mindful of the scope of work that was required in processing the request. It is noted that you were willing to revise the scope of your request to a more manageable timeframe, which limited the number of identified documents to 12 Serials. However, this totalled over 210 pages. While 200+ pages of documents is not considered to be too voluminous to process, there was extensive consultation required with over 10 party's.

### **Charges decision**

16. After taking all of the above into consideration, I have decided to reduce the charges payable by 50%. Accordingly, the charges will be imposed in the amount of \$135.00.

### **Way forward**

17. Because you have already paid a deposit, processing on your request has been happening concurrently to this charges consideration. Accordingly, if you agree with my decision you will only be required to pay the difference between the deposit you have already paid and the reduced charges amount (\$67.50). An invoice for the remaining amount will be sent when the decision is relayed to you.

18. 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 1.

**Further advice**

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

Yours sincerely

Theresa Stinson  
Assistant Director  
Freedom of Information

16 November 2016

Enclosure:

1. Rights of Review Fact Sheet



**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 :			
AMOUNT \$			

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](mailto:xxx@xxxxxxxx.xxx.xx)
- via fax 02 6266 2112
- by post to the address noted above.

Signature: \_\_\_\_\_