



**Australian Government**  
**Department of Foreign Affairs and Trade**

FOI Ref: 1212-F474  
File No: 12/17836

18 January 2013

Mr David Reid  
c/o Right To Know

Transmitted by e mail to [foi+request-23-f813bf81@righttoknow.org.au](mailto:foi+request-23-f813bf81@righttoknow.org.au)

Dear Mr Reid

**Re: Freedom of Information Request**

I refer to your email seeking the waiver of processing charges in full on the grounds of public interest and financial hardship for your request under the provisions of the Freedom of Information (FOI) Act 1982 to:

*"documents, (cables, ministerial and internal briefings, memos and emails) pertaining to the detention and trial of former president Chen Shui-bian and the detention and trial of DPP officials on corruption related charges.*

*I also seek documents which illustrate the range of human rights issues monitored by DFAT and the Australian Office Taipei over the period May 2008 to the present. These would most likely be in the form of annual reports or regular briefings."*

I am the decision-maker authorised in accordance with the provisions of Section 23(1) of the FOI Act. I have considered the information provided in your email to show that payment of the charges should be waived on grounds of public interest and financial hardship.

**Reasons for my decision – Public Interest grounds**

Section 29 of the FOI Act establishes the prima facie position that charges should be imposed so that applicants contribute to the cost of processing their requests.

In considering your application to waive charges on public interest grounds I have taken into account whether the giving of access to the documents is *in* the public interest as opposed to being *of* public interest.

I acknowledge that matters of the general public interest are affected by the government's general policy making in relation to human rights. I find that the giving of access to the

documents you seek would be in the general public interest, or in the interest of a substantial section of the public. However, I assess that the releasable content would add little to material that is already available or being discussed in the public domain.

On the other hand I consider that fees and charges in the FOI Act are a vital component of the FOI regime which makes it sustainable and appropriately balanced from a public policy perspective. Significant time and cost to the Australian community is attributable to processing FOI requests. The processing charges are designed to ensure that the Australian community recoups a fair proportion of the costs of processing (non-personal) FOI requests.

All things considered, I assess that no waiver or reduction of the relatively small charge of \$127.66 assessed to process your request is warranted.

#### **Reasons for my decision – Financial hardship grounds**

While the Department considers each request on a case-by-case basis, in general a waiver or reduction in costs is granted where applicants have demonstrated genuine hardship by production of a welfare or pensioner card, a financial statement, lack of income, etc. I note that you have not submitted any documentation to support your claim that payment of the charges of \$127.66 would cause you financial hardship.

Waivers or reductions in cost on the grounds of financial hardship are also usually granted in circumstances where the request is connected with private interests of the individual making the request.

I also note that the financial hardship category in section 29 5(a) of the Act is intended to apply in cases of financial hardship to the applicant – ie an individual – rather than to an organisation.

Therefore, in accordance with Section 29 of the Act, a charge is payable in respect of processing this request. As stated in my letter of 11 January 2013 a preliminary estimate is that those charges payable in respect of this request amounts to \$127.66 and that a deposit of 25% of the total amount of the charges or \$31.90 is required to continue processing your request.

#### **Your review rights**

##### *Internal review*

Under the provisions of section 54 of the FOI Act, you are entitled to request a review of my decision. Your request should be directed to:

Director  
Freedom of Information and Privacy Law Section  
Department of Foreign Affairs and Trade  
R G Casey Building  
John McEwen Crescent  
BARTON ACT 0221

##### *Australian Information Commissioner*

Under the provisions of section 54 of the FOI Act, you are entitled to request a review by the Australian Information Commissioner of my decision. You may also make a complaint to

their office concerning actions taken by an agency in the exercise of its powers or, more specifically, the performance of its functions under the FOI Act. There is no fee for making a complaint. The Australian Information Commissioner will conduct an independent investigation of your complaint.

You may contact the Australian Information Commissioner by:

GPO Box 2999,  
Canberra ACT 2601  
Telephone: 1300 363 992  
Fax: (02) 9284 9666  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

*Complaints to the Commonwealth Ombudsman*

You may complain to the Ombudsman concerning actions taken by an agency in the exercise of its powers or, more specifically, the performance of its functions under the FOI Act. There is no fee for making a complaint. The Ombudsman will conduct an independent investigation of your complaint.

You may complain to the Ombudsman by calling or writing to:

Commonwealth Ombudsman  
GPO Box 442  
Canberra ACT 2601

Telephone: 1300 362 072  
Fax: (02) 6249 7829

If you fail to notify this Department in a manner mentioned above, or your response is not received within 30 days of receipt of this letter, your application will be deemed to have lapsed. Should you withdraw your request, there is no charge.

In accordance with section 31 of the FOI Act, the 30 day limit for processing your application is suspended until such time as we receive your charges deposit or notification of your intentions.

Please note that at this stage the FOI process, no decision has yet been made as to whether the information you seek will be released or exempted under the provisions of the FOI Act. My decision relates only to your request that the charges be waived or reduced.

Yours sincerely



Stephanie Allan  
Acting Director  
Freedom of Information and Privacy Law Section