



Australian Government

Department of Immigration and Border Protection

9 September 2014

FOI Request FA 14/08/00211
File Number ADF2014/27702

To: Mr Robert Tedge

Email: foi+request-249-a01b2257@righttoknow.org.au

Dear Mr Tedge

Freedom of Information request – Notice of charge decision following applicant contention that charge be reduced or not imposed (s 29(8))

This notice of decision refers to your request received by the Department of Immigration and Border Protection (the Department) on 25 June 2013 seeking access under the *Freedom of Information Act 1982* (the Act) to the following documents:

Incident Detail Report 1-5XB7XL from the Department's Compliance, Case Management, Detention and Settlement Portal. I also request any documents attached to the detailed report.

On 23 July 2013 I had advised you that, following a consultation period, your request was 'deemed withdrawn' under the operation of the FOI Act.

Subsequently, in a notice on Wednesday, 13 August 2014 I advised you that, on 31 July 2014, the Freedom of Information Commissioner, Dr James Popple, had made a decision known as 'Farrell and Department of Immigration and Border Protection [2014] AICmr 74 (31 July 2014)'. In this decision Dr Popple determined that the department must process those requests where the applicant, during the s.24AB consultation period, advised the department that they did not wish to withdraw or revise the scope of their request. I advised that your request was considered to be affected by this decision and that, as a result, the department had 30 days to process your request.

In my notice of 13 August I also advised that, under s 29 of the FOI Act, you were liable to pay a charge of \$14.50 in respect of your request. I refer to your email of Thursday, 14 August 2014 in which you requested a waiver of charges pursuant to s 29(5), on the grounds of public interest.

I am an officer authorised under s 23(1) of the Act to make decisions in relation to FOI requests.

people our business

6 Chan Street Belconnen ACT 2617

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I have decided not to vary the original assessment of the charge. The amount you are liable to pay is \$14.50. The reasons for my decision under s 29(4) are set out below.

Reasons for my decision

In making my decision the FOI Act requires I consider the following:

- 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.

I have also considered:

- the arguments you have put forward in your email of Thursday, 14 August 2014;
- whether disclosure of a document would advance the objects of the Act;
- whether the documents are primarily of interest only to the applicant and are not of general public interest or of interest to a substantial section of the public;
- whether the information in the documents has already been published by an agency and the documents do not add to the public record.

As you did not raise the issue of financial hardship in your correspondence of 14 August 2014, I have not considered this issue any further. I note however that you have argued that the release of the report would be in the public interest or in the interests of a substantial section of the public.

With regard to your public interest contentions I have restated your arguments below:

- There is substantial concern among the Australian community, including members of Parliament, interest groups, the media and the general public about the condition of asylum seekers held in our detention centres.
- I contend that it is also in the public interest to secure evidence that the conditions of people seeking our care are taken seriously and taken in an accountable and transparent manner. This requires consideration of documents involved in this request

The department recognises that there is a significant public interest in the welfare of clients in immigration detention. This, however, needs to be balanced against other public interests including, but not limited to, the expectation of all clients (and their families), including those individuals in immigration detention, that their personal information will be protected. There is also the need to protect the secure operation of immigration detention facilities and the proper and efficient conduct of the agency.

The incident to which you have sought access occurred in February 2011. Given the material already in the public domain, including the incident 'spreadsheets' (from which the scope of this request was originally extracted), published transcripts of parliamentary hearings, reports on immigration detention by the Commonwealth Ombudsman and the Australian Human Rights Commission, information accessible on www.immi.gov.au, information available through media releases and media reports, as well as court proceedings, the public interest in disclosure of information regarding the welfare of clients in immigration detention is already largely filled without further disclosure.

I am also of the view that Parliament, in making arrangements for a charges regime under the FOI Act and regulations intended agencies to balance the scarce FOI resources available to agencies. This factor does not weigh heavily in the public interest.

I have therefore determined that waiving charges for disclosure of the document in question is not in the general public interest nor in the interest of a substantial section of the public and have decided not to vary the original assessment of the charge.

Next steps in processing your request

As the charge is less than \$25, you must pay the full amount of \$14.50 before access can be granted.

The payment will be refunded if the Department fails to make a decision on your request within the statutory time limit.

How to pay the charge

The amount can be paid by cheque, money order, credit card or Electronic Funds Transfer (EFT).

Cheques and money orders should be made payable to "Collector of Public Monies DIBP" and sent to:

FOI & Privacy Policy Section
Department of Immigration & Border Protection
PO Box 25
BELCONNEN ACT 2616

If you wish to pay by credit card, please fill out the attached credit card authorisation form and forward to FOI & Privacy Policy Section at the above address, or email to foi@immi.gov.au.

If you wish to pay by Electronic Funds Transfer (EFT) the department's bank account details are as follows:

Bank:	CBA
BSB:	062987
Account Number:	10016044
Account Name:	DIBP Official Administered Direct Credit Receipts Account

When making the transfer you will need to quote the number of your request - **FA14 08 00211**- so that your payment can be identified by our Finance area. Failure to do so may result in payments not being identified as FOI related and could result in processing delays.

Please advise FOI when you have made the payment made by direct credit so that we can contact the Finance area and they can issue a receipt. You should also be aware that payments by direct credit are not processed in real time. There is at least a one day delay between somebody paying money into the department's account and notification of the payment via our bank account statement.

Time in which to respond

Under the Act you have 30 days from the date of this notice to provide the Department with a response to my decision and either agree to pay the charges or seek an internal review of my decision. Your full review rights are set out in the next section, headed 'Review Rights'.

Therefore, you must provide the Department with a written response as to how you wish to proceed by close of business Thursday, 9 October 2014.

Review rights

Internal review

If you disagree with my decision, you have the right to apply for an internal review by the Department my decision. Any request for internal review must be provided to the Department by the date set out above. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by an officer other than the original decision-maker and the Department must make a review decision within 30 days.

Applications for review should be sent to:

Freedom of Information
Department of Immigration and Border Protection
PO Box 25
BELCONNEN ACT 2617

Or by email to: foi@immi.gov.au

Review by the Office of the Australian Information Commissioner

You may apply directly to the Office of the Australian Information Commissioner (OAIC) for a review of my decision. You must apply in writing within 60 days of this notice. For further information about review rights and how to submit a review request to the OAIC, please see FOI fact sheet 12 '*Freedom of information – Your review rights*', available online at www.oaic.gov.au .

How to make a complaint about the handling of this FOI request

You may complain to the Australian Information Commissioner if you have concerns about how the Department has handled your request under the Act. Information about how to submit a complaint is also available at www.oaic.gov.au .

Contacting the FOI Section

If you wish to discuss this matter, I can be contacted using the details provided below.

Yours sincerely



Linda Rossiter
FOI & Privacy Policy Section
Parliamentary and Executive Coordination Branch
Department of Immigration and Border Protection
Email foi@immi.gov.au