

FREEDOM OF INFORMATION ACT 1982

FOI/2012/100

Ms Caitlin Huntington
c/o
Email:foi+request-27-c47788e1@righttoknow.org.au

Dear Ms Huntington

I refer to your email of 29 November 2012 to the Department of the Prime Minister and Cabinet (the Department) in which you made a request under the *Freedom of Information Act 1982* (the FOI Act) in the following terms:

I wish to obtain copies of all documents on the following file, which is listed in the Department's Indexed List of Files for the period 1 January 2012 to 1 July 2012:
2012/1766 SECTION 44 OF THE CONSTITUTION - BRIEFING - 2012 TO 2014
- (GOVPG)

In your email of 10 December 2012 you agreed to revise the terms of your FOI request as follows:

All documents created by or for a Commonwealth entity (including ministers and members of parliament, the parliamentary departments, the Australian Government Solicitor (AGS) and the Commonwealth Solicitor-General) on the file 2012/1766 SECTION 44 OF THE CONSTITUTION - BRIEFING - 2012 TO 2014 - (GOVPG)

The authorised decision-maker for your request is Gerard Martin, Acting Assistant Secretary Parliamentary and Government Branch.

Processing charges

The FOI Act provides that charges can be imposed for processing requests. Unless a decision is made to waive a processing charge in whole or in part, the combined effect of paragraph 11A(1)(b) of the FOI Act and regulation 11(1) of the *Freedom of Information (Charges) Regulations 1982* (the Charges Regulations) is that an applicant is required to pay any charge before any access is given.

The Charges Regulations specify different rates for the various activities involved in processing a request. Following reforms to the FOI Act and the Charges Regulations from 1 November 2010, the first five hours of decision making time is free for all FOI applicants.

The decision-maker has decided that you are liable to pay a charge should you wish to proceed with your request being processed by the Department. The preliminary assessment of the charge for processing your request is set out below:

Search & Retrieval	\$15 per hour	1.22 hours	\$ 18.25
Decision-making	\$20 per hour	5.41 hours	\$ 108.20
Less first 5 hours free			\$ -100.00
Photocopies	0.10 per page	5 pages	\$ 0.50
TOTAL			\$ 26.95

Section 29 of the FOI Act requires you to exercise one of the following options in writing within 30 days of receipt of this letter:

- (1) You can agree to pay the charge. If you agree, processing of your request will resume as soon as the Department receives a payment, either in full or a deposit.
 - Payment in full is \$26.95. Payment in full entitles you to receive a decision in relation to your request, a schedule which lists the documents relevant to your request, and any documents released.
 - Regulation 12 of the Charges Regulations provides that the Department can require a deposit. The required deposit for this request is \$20.00.
 - Payment of a deposit entitles you to receive a decision in relation to your request and a schedule which lists the documents relevant to your request. Relevant documents would only be released on payment of the balance of the charge. Regulation 14 provides that a deposit paid by an applicant is not refundable unless the Department decides to waive the charge or fails to make a decision on the applicant's FOI request within the statutory time limit, including any extension.

Payment should be made by cheque or postal order and made out to the Collector of Public Monies. If you wish to pay by credit card, you should forward a letter which sets out the credit card details and authorises the Department to charge that amount to the card.

- (2) You can contend that the charge has been wrongly assessed, or that it should be reduced or not imposed, or both. In determining whether or not to reduce or not impose the charge, the FOI Act requires the Department to take into account whether payment of the charge, or part of it, would cause financial hardship and whether the giving of access would be in the public interest. The Department may also consider any other relevant matters.
- (3) You can withdraw your request.

In accordance with section 31 of the FOI Act, the time limit for processing your request is suspended from the day that you receive this letter and will resume on either:

- the day you pay the charge (in full or the required deposit); or
- if you contend under (2) above that the charge should be reduced or not imposed and the Department decides not to impose a charge, the day of that decision.

If you contend under (2) above that the charge should be reduced or not imposed and the Department confirms that a charge is payable (either the original amount or a reduced amount), the time limit for processing your request would resume on the day you pay that charge (in full or the required deposit).

Subsection 29(2) of the FOI Act provides if you do not respond within 30 days of receiving this letter, you will be taken to have withdrawn your request.

Should you wish to discuss any aspect of your request, I can be contacted by telephone on (02) 6271 5849.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D. Seab', followed by a horizontal line.

FOI Action Officer
Legal Policy Branch
Department of the Prime Minister and Cabinet

17 December 2012