



Australian Government
Department of Communications and the Arts

Dear Mr Gothe-Snape

Re: Freedom of Information (FOI) Request 11-1617

I refer to your email dated Tuesday, 15 November 2016 seeking access under the Freedom of Information Act 1982 (FOI Act) to:

“... the topics list for briefs created in preparation for hearings of Senate 2016-2017 Supplementary Budget Estimates.”

Decision on liability to pay charges

On 10 December, you confirmed that the document you are seeking access to is:

“... the Index of Topics provided to the Secretary as stated above”.

On 12 December we contacted you again to seek your consent to the withdrawal of your FOI request. As the Department has not received a response, we have taken it that you do not consent to the withdrawal of your FOI request. We have therefore continued to process your request under the FOI Act. Accordingly, I am writing to advise you of my decision that you are liable to pay a charge in respect of the processing of your request. I am authorised under section 23 of the FOI Act to make decisions on the charge for processing your request.

In accordance with section 29 of the FOI Act and the *Freedom of Information (Fees & Charges) Regulations* (Charges Regulations) and the Office of the Australian Information Commissioner's *FOI Guidelines Part 4 – Charges for Providing Access* (<http://www.oaic.gov.au/publicaitons/guidelines.html>) (OAIC Guidance), my preliminary assessment of the charge you are liable to pay is \$28.95.

Basis for my preliminary assessment of the charge

Based on the number of relevant pages, processing time and time taken by the Decision Maker to assess your request (*noting that the first five hours are free of charge), I have calculated the charges as follows:

Search and Retrieval Time	1.93 hours @ \$15.00 per hour	\$ 28.95
Decision Making Time (*)	4.11 hours @ \$20.00 per hour	(\$ 82.21)
TOTAL CHARGES		\$ 28.95

Please note that at this stage in the FOI process, no decision has been made as to whether the information you seek will be released or exempt under the provisions of the FOI Act. My decision relates only to the processing charges.

Reasons for my decision

In exercising my discretion to impose a charge, I have taken into account your submission that:

"The documents help to identify the most important policy areas within the department's responsibilities".

I have also had regard to other relevant matters:

- Department policy that applicants are generally expected to contribute to the cost of the processing of FOI requests;
- whether payment of the charge, or part of it, would cause financial hardship to you or a person on whose behalf the application was made;
- whether disclosure of the documents would be in the general public interest or in the interest of a substantial section of the public; and
- whether disclosure of the documents within the scope of your request would advance the objects of the FOI Act.

– Public Interest Grounds

In considering your application to waive charges on public interest grounds in accordance with Section 29(5)(b) of the FOI Act, 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 have considered the general question as to whether the benefit from the release of the information contained in the particular documents will flow to the public at large, or is in the interest of a substantial section of the public.

I acknowledge that the topics of briefs prepared for the Secretary in anticipation of the October 2016 Supplementary Senate Estimates Hearings are matters of general public interest. However, I consider that the documents which are able to be released in response to your FOI request will add little to public understanding and debate. The documents relevant to your request provide little in the way of context or content about policy matters that are not already in the public domain and accordingly I find that the giving of access to the documents you seek would not be in the general public interest, or in the interest of a substantial section of the public.

In considering whether waiver of charges would further the objects of the Act, I have had regard to paragraph 4.54 of the OAIC Guidance which provides that section 29(5)(b) will not be satisfied merely because an underlying premise of the FOI Act is that transparency is in the public interest.

For these reasons, the charges are not to be reduced or waived on this ground.

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, given that processing such requests diverts significant community resources away from other key community priorities.

- Financial Hardship

Paragraph 4.53 of the OAIC Guidance provides that an applicant relying on this ground would ordinarily be expected to provide some evidence of financial hardship. I note that you have not made any submissions in this regard and therefore, having regard also to the likelihood that the amount of the FOI charges payable in this instance, i.e. \$28.95 would not be expected to leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities

for yourself or other persons for whom you are responsible, I have therefore determined that the charges are not be reduced or waived on this ground.

Your right to contend the charge

Under section 29 of the FOI Act, you have 30 days within which to:

- agree to pay the charge;
- contend that the charge has been wrongly assessed, or should be otherwise reduced or not imposed, giving your reasons for so contending; or
- withdraw your request.

The time you have to respond and what you need to do

You have 30 days to respond in writing to this notice. We therefore expect a response from you by 12 January, 2017. If you do not provide us with a written response, I will consider that you no longer wish to continue with your request, and I will deem it withdrawn.

The period for processing your request is suspended from the date that you receive this notice and resumes on either the day you pay the charge or the day on which the Decision Maker makes a decision not to impose a charge.

Please note that the Department will be shut-down from close of business Friday 23 December 2016, reopening Tuesday 3 January 2017. If your response is received during the shut-down period, the processing of your request will resume on the first day of business following the shut-down period. In these circumstances we will take it that you consent to an extension of time in accordance with section 15AA of the FOI Act.

Questions about this notice

If you have any questions or wish to discuss this notice with us, please contact the Department's FOI Coordinator, Ms Felicia Nevins by telephone (02) 6271 1277, or by email to foi@communications.gov.au

The FOI Act provides for rights of review of decisions. A copy of the Office of the *Australian Information Commissioner's FOI fact sheet 12 – Your review rights* is attached.

Yours sincerely



Shireen Sekhon
Legal Director
Office of the General Counsel
14 December 2016