



## Charges notice made under the *Freedom of Information Act 1982*

### Decision to impose a charge of Mark Thomann, Executive Director, Infrastructure Investment Division

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**Applicant:** Dan Monceaux  
**Decision date:** February 2017  
**FOI reference number:** 17-62  
**Documents:** Lucky Bay Harbour Extension Project

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## Summary

1. I have made a decision not to waive charges associated with the processing of your request and that you are liable to pay charges in the amount of \$483.83.

## Authority to make this decision

2. I, Mark Thomann, Executive Director, Infrastructure Investment Division, am an officer authorised by the Secretary of the Department of Infrastructure and Regional Development (the Department) to make decisions about charges applying to requests for access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

## Background

3. On 16 December 2016, you made a request for access to documents in the possession of the Department. Your request sought access to:

*"Copies of documentation related to the Lucky Bay Harbour Extension project in South Australia, which received Commonwealth funding via the Regional Development Australia Fund circa 2012. The documentation I am requesting is as follows:*

- *The Expression of Interest received by RDA*
- *The grant application as received by RDA*
- *The grant approval documentation issued by RDA*
- *Any revisions to the terms and conditions associated with the receipt of Commonwealth funding and the acquittal of the grant*
- *Final project report and grant acquittal documentation received by RDA"*

4. On 23 January 2017 the Department provided you with a preliminary estimate of charges of \$483.83 for the processing of your request.

## Your request for waiver of charges

5. On 25 January 2017 you requested a review of the decision to impose a charge as you considered the charge to have been wrongly assessed and should not be imposed on the basis of general public interest and financial hardship.

## Decision

6. I have made a decision not to waive charges associated with the processing of your request and that you are liable to pay a charge in the amount of \$483.83.

## Reasons for decision

7. In your contention, you submitted that the Department should consider reducing or not imposing a charge, on the basis that the giving of access to the documents is in the public interest, and that payment of the charges would cause you financial hardship. However, you did not identify how the general public interest or a substantial section of the public would benefit from disclosure or provide evidence of how payment of the charges would cause you financial hardship.

8. In your response you provided links to seven articles relating to the Lucky Bay Harbour Extension project. I note that five of these articles are from the local Whyalla newspaper, and that five of the articles were published within a two-month period. I find that this constitutes local media coverage over a limited time frame, and not “extensive media coverage” as you described in your contention.
9. I do see a public interest, where an applicant is pursuing their own interest in a particular matter, in imposing a charge as provided by the FOI Charges regulations. The public interest is in the applicant contributing to the substantial cost of the resources required to process their request, which would otherwise be borne by the taxpayer.
10. The FOI Guidelines published by the Office of the Australian Information Commissioner (OAIC) provide the following guidance in considering claims of financial hardship:  
  
*“Financial hardship means more than an applicant having to meet a charge from his or her own resources. [...] Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible. [...] An applicant relying on this ground could ordinarily be expected to provide some evidence of financial hardship.”*
11. In your contention, you provided that “I am an independent documentary filmmaker, and have been working on a feature-length documentary film, self-funded, since 2011. During this time, I have been unable to undertake any significant paid work and as such my income has been nominal.” While I see no reason to dispute this statement, you have provided evidence neither that you are experiencing particular financial hardship, nor that your situation is involuntary. You have also not provided any evidence that, should you be unable to afford to pay the estimated charge, that the absence of the documents would cause you any particular difficulty. As such, I do not consider your claims of financial hardship substantial enough to waive the estimated charges.
12. Taking the above into consideration I am satisfied that the charges have been calculated appropriately and are reasonable in all of the circumstances. As such, I have made the decision not to waive the charges.

### **Your liability to pay a charge**

13. In accordance with section 29(1) of the FOI Act, I have decided that you are liable to pay a charge in relation to your request.
14. As the charge is more than \$100.00, you will need to pay a deposit of \$120.96 (which is 25% of the total charges applying to your request) before further action can be taken on your request. This amount is set in Regulation 12(2)(b) of the Freedom of Information (Charges) Regulations 1982.
15. The deposit is not refundable except in some limited circumstances (for example, if the Department 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.

### **If you disagree with the Department’s decision to impose a charge**

16. You may contend that the charge has been wrongly assessed, or should be reduced or not imposed. Please refer to the below paragraphs for the process on how to do this.

## **Your rights of review**

17. If you disagree with the Department's decision to impose charges in relation to your FOI request, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the OAIC.

### ***Internal review***

18. You can ask the Department to review its decision in relation to the imposition of charges. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension.
19. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level.
20. You must apply in writing and you can lodge your application in one of the following ways:

**Post:** FOI Coordinator  
Department of Infrastructure and Regional Development  
GPO Box 594, Canberra ACT 2601  
**Fax:** (02) 6275 1347  
**Email:** <FOI@infrastructure.gov.au>

### ***Information Commissioner Review***

21. The OAIC is an independent office that can review the decisions of agencies and ministers under the FOI Act and investigates complaints about agency actions.
22. You can ask the OAIC to review the Department's decision to impose a charge. You do not need to seek an internal review from the Department before seeking a review from the OAIC. However, going through the Department's internal review process gives us the opportunity to reconsider the initial decision and your needs may be met more quickly without undergoing an external review process.
23. The OAIC's review is free. You must apply to the OAIC within 60 days of being given notice of the decision. You can ask the OAIC for an extension of time to apply, and this may be granted if it considers it is reasonable in the circumstances.
24. You must apply in writing and you can lodge your application in one of the following ways:

**Online:** <[www.oaic.gov.au](http://www.oaic.gov.au)>  
**Post:** Office of the Australian Information Commissioner  
GPO Box 5218, Sydney NSW 2001  
**Facsimile:** (02) 9284 9666  
**Email:** <[enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)>  
**In person:** Level 3, 175 Pitt Street, Sydney, NSW 2000

More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <[www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights](http://www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights)>.

## Contacts

25. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6274 6495 or via email at <FOI@infrastructure.gov.au>.

A handwritten signature in black ink, appearing to read 'M. Thomann', with a long horizontal stroke extending to the right.

Mark Thomann  
Executive Director  
Infrastructure Investment Division  
22 February 2017