



Internal review decision made under the *Freedom of Information Act 1982*

Internal review decision and reasons for decision of Judith Zielke, Deputy Secretary,
Department of Infrastructure and Regional Development

FOI reference number: 17-62
Date of original decision: 22 February 2017
Internal review decision date: March 2017
Documents: Lucky Bay Harbour Extension Project
Applicant: Dan Monceaux

Summary

1. I have made a decision to vary the original decision made by Mark Thomann, Executive Director, Infrastructure Investment division, to impose charges associated with your request.
2. I am an officer authorised by the Secretary of the Department of Infrastructure and Regional Development (the Department) to make decisions about 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 the following documents in the possession of the Department:

“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 an estimate of a charge in the amount of \$483.83.

5. On 25 January 2017, you requested a reduction or waiver of charges associated with your request on the basis that the release of the documents is in the public interest, and on grounds of financial hardship.
6. On 23 February 2017, the Department denied your request for a reduction or waiver of charges and affirmed the decision to impose a charge.
7. On 24 February 2017, you requested an internal review of the decision to impose a charge.

Decision

8. I have made a decision to vary the original decision made by Mark Thomann, Executive Director, Infrastructure Investment division, to impose charges of \$483.83.
9. In your email of 24 February 2017, you raised concerns about an individual involved with the Lucky Bay Harbour Project, and provided several media articles to support your concerns. I have reviewed the documents, and they do not appear to contain any information directly related to your concerns. Therefore, I do not consider that the documents would contribute to public discourse on the subject of any alleged misconduct by this individual.
10. I am not satisfied that the documents are of general public interest or of interest to a substantial section of the public, and have decided not to reduce or waive the charges on these grounds.
11. You have requested access to a substantial volume of documents and significant work would be required to process your request. I therefore consider that it is appropriate to impose a charge in accordance with the Freedom of Information (Charges) Regulations 1982.
12. While reviewing your request, I have taken the opportunity to reassess the calculations used to determine your initial liability to pay charges. This calculation was based on an initial assessment of the documents, which has since been revised. As such, I have decided to reduce the amount of charges that you are liable to pay to \$452.64.

Your rights of review

13. 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 by the Office of the Australian Information Commissioner (OAIC).
14. 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. You can ask the OAIC to review the Department's decision to impose a charge.
15. 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.

16. You must apply in writing and you can lodge your application in one of the following ways:

Online: <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>

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>.

Contacts

17. If you wish to discuss this decision, please contact the Department's FOI coordinator on (02) 6274 7507 or via email at FOI@infrastructure.gov.au.



Judith Zielke

Deputy Secretary

Department of Infrastructure and Regional Development

27 March 2017



Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);

- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

11B Public interest exemptions—factors

Scope

- (1) This section applies for the purposes of working out whether access to a conditionally exempt document would, on balance, be contrary to the public interest under subsection 11A(5).
- (2) This section does not limit subsection 11A(5).

Factors favouring access

- (3) Factors favouring access to the document in the public interest include whether access to the document would do any of the following:
 - (a) promote the objects of this Act (including all the matters set out in sections 3 and 3A);
 - (b) inform debate on a matter of public importance;
 - (c) promote effective oversight of public expenditure;
 - (d) allow a person to access his or her own personal information.

Irrelevant factors

- (4) The following factors must not be taken into account in deciding whether access to the document would, on balance, be contrary to the public interest:
 - (a) access to the document could result in embarrassment to the Commonwealth Government, or cause a loss of confidence in the Commonwealth Government;
 - (aa) access to the document could result in embarrassment to the Government of Norfolk Island or cause a loss of confidence in the Government of Norfolk Island;

- (b) access to the document could result in any person misinterpreting or misunderstanding the document;
- (c) the author of the document was (or is) of high seniority in the agency to which the request for access to the document was made;
- (d) access to the document could result in confusion or unnecessary debate.

Guidelines

- (5) In working out whether access to the document would, on balance, be contrary to the public interest, an agency or Minister must have regard to any guidelines issued by the Information Commissioner for the purposes of this subsection under section 93A.

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.