



30 March 2017

Our reference: LEX 24847

Mr Ben Fairless

By email: foi+request-2890-2d90c734@righttoknow.org.au

Dear Mr Fairless

Freedom of Information Request – Reconsideration of Charges

I refer to your revised request dated 7 February 2017 and confirmed via email to the Department of Human Services (the **department**) on 8 February 2017, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'A copy of the aggregate data referred to in the Department's letter of Feb 7 2017 in relation to call centre queues each month, for all months in 2016'.

On the 14 February 2017 you were notified that you are liable to pay a charge for the processing of your request and advised that the preliminary assessment of that charge was \$345.00. This charge was calculated as follows:

Time taken to retrieve and compile data: 23 hours, at \$15.00 per hour:	\$345.00
---	----------

TOTAL	\$345.00
--------------	-----------------

*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

On 28 February 2017 you responded to the preliminary charge, requesting that the department waive the charges. You submitted that:

- The release of the documents is in the public interest; and
- The department should be able to identify and retrieve the documents easily and at a marginal cost, and therefore the charge was excessive.

Reconsideration of the Charge

Relevant FOI legislation

Subsection 29(4) of the FOI Act provides that, where an applicant has notified an agency that the applicant contends that a charge should be reduced or not imposed in relation to a request under the FOI Act, then the agency may decide that the charge is to be reduced or not imposed. Subsection 29(5) of the FOI Act provides that, without limiting the matters that the agency may take into account when making a decision about whether to reduce or not impose a processing charge, the decision maker must consider:



- whether payment of a charge, or part of it, would cause financial hardship to an applicant; and
- whether the giving of access to the document in question is in the general public interest or in the interest of a substantial section of the public.

➤ Financial hardship

The decision to reduce, or not impose, a processing charge on the grounds of financial hardship, requires consideration of the applicant's specific financial circumstances and the amount of the estimated charge. Financial hardship must be more than an applicant having to meet a charge from his or her own resources, and be more than an applicant discussing the burden of charges to applicants generally, to result in a reduction or non-imposition of a processing charge.

Applicants are generally required to provide some evidence of the financial hardship, which they personally will experience, such as receipt of a pension or income support payment, or provide evidence of income, debts or assets. You have not provided this evidence. Consequently, I am satisfied that payment of the charge in the amount of \$345.00 would not cause you financial hardship.

➤ Public interest

In making my decision, I am also required under subsection 29(5) of the Act to take into account whether the provision of access to the documents the subject of the request is in the general public interest, or in the interest of a substantial section of the public. In other words, there must be a benefit flowing generally to the public or a substantial section of the public from disclosure of the documents in question. This requires me to consider the nature of the documents and the context of their release.

Public interest factors in favour of reducing or waiving a charge are:

- the level of public interest in the documents;
- the general public interest in allowing access to information (including government policy) under the FOI Act;
- the general public interest in openness of administration; and
- promoting the objects of the FOI Act, including:
 - increasing scrutiny, discussion, comment and review of Government activities;
 - facilitating and promoting public access to information, promptly and at the lowest reasonable cost; and
 - informing the public on matters of public importance or interest, and assisting participation in debate or discussion.

Having considered these factors and your submission, I am not satisfied that you provided compelling reasons in favour of reducing the charge in the public interest. While you clearly established that call wait times are of interest to a large section of the public and media, consideration of the public interest is not primarily concerned with curiosity or commentary. The primary question is whether a benefit will flow to the public generally or a substantial section of the public from disclosure of the information in the document. I note that the department regularly reports call wait time figures (for example, in Annual Reports available [here](#)). Call wait times were also discussed at length before the Community Affairs Senate Estimates Committee (a transcript is available [here](#)). Given the information publically available on this topic, I am not confident that the document you are seeking access to will give special insight into the department's average speed of answer. For this reason, I have decided not to reduce the imposed charge on public interest grounds.

Other considerations

In deciding whether charges should be reduced or waived, I have also taken into consideration:

- your submission contending that 'the charge for collecting and processing the data is excessive', having regard to the manner in which data is stored;
- the cost to the department, including staff and other resources, in processing the FOI request; and
- the impact of diverting staff resources to process the FOI request on the department's other operations at a time when the department is under significant pressure to deliver the Government's priorities and programmes.

Your submission refers specifically to part 4.23 of the Guidelines, which states that, in calculating search and retrieval time, there is an underlying assumption that the agency maintains a high quality record system. I do not consider that the time taken to compile and process the data in this case was excessive or speaks to the quality of the department's record keeping. Data in the form you have requested requires retrieval and analysis. It also requires cross referencing and quality assurance at an appropriate level. Furthermore, your request had to be considered and scoped to ensure that the correct data was retrieved. For these reasons, I am confident that the charge accurately accounts for the efforts of the business area responsible for compiling the relevant data.

I note that processing charges are designed to be a contribution to the cost of processing FOI requests and do not compensate the full costs associated with the processing of a request.

Required Action

If you would like the department to continue processing your request, you must notify the department in writing within 30 days of receiving this notice that you:

- a) agree to pay the charge;
- b) wish to contend that the charge:
 - i. should be reduced or not imposed; or
 - ii. both; or
- c) withdraw the request for access.

If you do not provide a written response in accordance with one of Options A, B or C above within 30 days of receiving this notice, your request will be taken to have been withdrawn under section 29(2) of the FOI Act.

Further information on Options A, B and C is set out below.

Option A - pay the charge

As the charge exceeds \$100.00, you are required to pay a deposit of \$86.25, being 25% of the assessed charge, within 30 days of receiving this notice. You may, of course, elect to pay the charge in full at this point.

The amount due should be paid by cheque or money order made out to the Collector of Public Monies. Please quote the reference number **FOI LEX 24847** with your payment.

Should you elect to pay the charge please email FOI.LEGAL.TEAM@humanservices.gov.au once you have posted your cheque or money order to advise us of your payment.

Option B - seek reduction or non-imposition of the charge

You may seek internal review and contend that the charge should be reduced or not imposed. Section 29(5) of the FOI Act provides that, in deciding whether to reduce or not to impose a charge, the decision-maker must take into account any relevant reasons, including whether payment of the charge, or part of it, would cause you financial hardship, and whether the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public.

If you wish to contend that the charge should be reduced or not imposed, please set out your reasons and the evidence in support of your reasons as clearly as possible. If you believe that payment of the charge would cause you financial hardship, please provide sufficient details of your financial circumstances to enable the decision-maker to make a well-informed decision in this regard.

Option C - withdraw your request

If you wish to withdraw your request you may do so in writing.

Time limits for processing your request

Section 31 of the FOI Act provides that where a notice is sent to an applicant regarding the payment of a charge in respect of a request, the time limit for processing the request is suspended from the date the notice is received until either:

- (a) the day following payment of the charge (in full or the required deposit); or
- (b) if applicable, the day following the notification to the applicant of a decision not to impose the charge.

Address for correspondence

Please send all correspondence regarding your FOI request to me at the following address:

Freedom of Information team
Department of Human Services
PO Box 7820
CANBERRA ACT 2610

Or by email to FOI.LEGAL.TEAM@humanservices.gov.au

Publication of information in the FOI disclosure log

Information released under the FOI Act may be published in a disclosure log on the department's website. Section 11C of the FOI Act requires this publication, subject to certain exceptions, including where publication of personal, business, professional or commercial information would be unreasonable.

You can ask for a review of this decision

I have reconsidered the assessment of charge and reject your contention that this charge has been wrongly assessed. If you disagree with the decision to impose a charge, or the amount of the charge, you can ask for a review. There are two ways you can do this. You can ask for an internal review from within the department, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how arrange a review.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Thomas
Authorised FOI Decision Maker
FOI Legal Team
FOI and Litigation Branch Legal Services Division
Department of Human Services

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information decision

Before you ask for a formal review of an FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of an Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in the Department of Human Services (the department); and/or
2. the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for an internal review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

Note 2: You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in the department within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.