



10 April 2017

Our reference: LEX 28321

Mr Ben Fairless

By email: foi+request-2891-8bbe2e7e@righttoknow.org.au

Dear Mr Fairless

Freedom of Information Request – Internal Review Decision

I refer to your correspondence, dated 10 March 2017 and received by the Department of Human Services (the **department**) on that same date. You requested an internal review of the decision made by a delegate of the department under the *Freedom of Information Act 1982* (the **FOI Act**) dated 10 March 2017 (LEX 24848) (the **charges decision**).

I am authorised under subsection 23(1) of the FOI Act to make internal review decisions under section 54C of the FOI Act. Furthermore, I am a separate decision-maker to the FOI Delegate involved with LEX 24848. My decision is set out below.

Background

The department received your original request on 29 December 2016 for access under the FOI Act to the following documents:

'the current induction training materials for contact centre staff hired to assist clients with: Medicare and Centrelink Services'.

On 25 January 2017, you revised the scope of your request to the following:

'facilitated powerpoints and participant resources'.

On 30 January 2017, the department issued you with a preliminary assessment of charges involved in processing your request. The department also advised you in this correspondence that 23 documents (totalling 214 pages) had been identified as falling within the scope of your FOI request. In accordance with section 29 of the FOI Act, it was determined that you were liable to pay an estimated charge of \$353.92, calculated as follows:

Search and retrieval time: 1.15 hours, at \$15.00 per hour:	\$17.25
Decision-making time (*after deduction of 5 hours): 16.83 hours, at \$20.00 per hour	\$336.67
TOTAL	\$353.92

On 7 February 2017 you wrote to the department by email, contending that the charge of \$353.92 was incorrectly calculated. In your view, you stated that the decision making time of 16.83 hours was excessive as the majority of pages would be PowerPoint presentations which would take limited time to review.

You also contended that the charges should be waived in full because the information sought is in the public interest. In particular, you stated that providing the requested information would assist in the public debate of the adequacy of training provided to the department.

On 10 March 2017, the department notified you of a charges decision after considering your submission. The department decided not to reduce the amount of the charge that was notified to you on the following basis:

- The department determined that the documentation included 'participant resources' containing a significant amount of information that would take a considerable amount of time to examine; and
- The department was satisfied that the assessment of charges appropriately reflected the work involved in processing your request.

On 10 March 2017, you requested an internal review of the department's decision to impose charges for FOI request LEX 24848 on the following terms:

'I am writing to request an internal review of Department of Human Service's handling of my FOI request.

The department has contended that there is no public interest in providing information on the training of Public Servants in the most funded agency in Government. This claim is preposterous!

Furthermore, the Department says that it would need to carefully review the participant resources to determine if exemptions were to apply. I contend that it is unlikely that any information contained in participant documents given to a frontline employee who may not have even acquired a Baseline clearance would contain any exemptions.

Please ensure this review is conducted by an officer senior to that of the current officer.

Internal Review Decision on charges

The following is my decision in relation to your request for reduction or non-imposition of the charge imposed under the FOI Act (the **charge**). I have decided, under section 54C and subsection 29(8) to affirm the decision to impose the charge.

You are therefore liable to pay the processing charge of \$353.92.

The reasons for my decision, including the relevant sections of the FOI Act, are set out below.

Information Considered

In reaching my decision, I took into account the following:

- the department's correspondence of 30 January 2017, notifying you of the charge;
- your correspondence of 7 February 2017 contending that the charge should not be imposed;
- your correspondence seeking internal review of the department's decision to waive the preliminary assessment of the charge dated 10 March 2017;
- the contents of the documents falling within the scope of your request;
- the relevant provisions of the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**); and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**).

Relevant legislation

Section 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.

Section 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.

Section 29(8) of the FOI Act provides that, if an applicant makes a contention about a charge as mentioned in subsection 29(4) and the agency makes a decision to reject the contention in whole or in part, then the agency must give the applicant written notice of the decision and the reasons for the decision.

Calculation of the charge

On review of the documents falling with the scope of your request, I confirm that the department identified 23 documents (totalling 214 pages) as falling within the scope of your request.

I note that the assessment of charges was based on the time taken in processing these documents and I am satisfied that the time required to review the documents, mark appropriate redactions, make a decision and schedule the documents in scope of your request is accurately reflected in the charge notified to you.

Waiver or reduction of the charge

I am not satisfied that the department should reduce, or waive the charges imposed under the charges decision, on the following basis:

- you have not provided sufficient evidence of financial hardship;
- the documents would not be in the general interest to release as the scope of the documents does not affect or assist members of the public; and
- you have not put forward other relevant considerations that sufficiently weigh in favour of reducing, or waiving the charges.

Financial Hardship

Paragraph 29(5)(a) of the FOI Act provides that, without limiting the matters an agency may take into account in determining whether or not to reduce or not to impose the charge, the agency must take into account whether the payment of the charge, or part of it, would cause financial hardship to the applicant.

I note that you have not provided any evidence to indicate that payment of the charge would cause financial hardship. On that basis, I have not considered this matter further.

Public interest

In making my decision, I am also required under paragraph 29(5)(b) of the FOI 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.

When weighing up the public interest for and against disclosure under section 11A(5) of the FOI Act, I have taken into account relevant factors in favour of disclosure. In particular, I have considered the extent to which disclosure would:

- promote the objectives of the FOI Act;
- increase scrutiny, discussion, comment and review of Government activities;
- promote effective oversight of public expenditure;
- inform the public importance or interest; and
- assist participation in debate or discussion.

I am not satisfied that you have provided me with compelling reasons in favour of reducing the charges. As detailed in the previous decision, clearly the public has an interest in the adequacy of training provided to contact centre staff of the department. However, I uphold the previous decision in that the scope of the documents would not assist the public in debate or discussion. In your correspondence of 10 March 2017, you contended that this decision is 'preposterous'. I am not, however, persuaded by these submissions and I uphold the previous decision. In particular, I am not satisfied that you have identified the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure of the documents.

In light of these factors, I have decided that there is no public interest in reducing or waiving the charge.

Other grounds for reduction of the charge

In deciding whether charges should be reduced or waived, I have taken into consideration section 29(4) of the FOI Act which provides a general discretion to reduce or not to impose a charge which goes beyond matters relating to financial hardship and the public interest. This has included the following:

- 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.

In your email of 10 March 2017, you state the following:

‘Furthermore, the Department says that it would need to carefully review the participant resources to determine if exemptions were to apply. I contend that it is unlikely that any information contained in participant documents given to a frontline employee who may not have even acquired a Baseline clearance would contain any exemptions.’

I am not persuaded by your argument. Regardless of whether the employees have a Baseline clearance or not, it still takes some time for the department to properly review the documentation to ensure that all sensitive material has been removed prior to release. As previously stated in the charges decision, I consider the charge imposed appropriately reflects the cost of processing your request. Accordingly, the calculation is a fair reflection of the work required in processing your request.

Conclusion

In conclusion, I consider the department have been correct in their assessment of the charges required in processing your FOI Request 24848. On this basis, I have decided to not to reduce the amount of the charge that was notified to you. Accordingly, the charges imposed for the FOI Request 24848 should remain at is \$353.92 and no reduction or waiver apply.

No further action on the request will be undertaken until the charges imposed for FOI Request 24848 have been received by the department. After this has occurred, the department will be in a position to continue processing your FOI request.

You can ask for a review of our decision

If you disagree with any part of the decision you can ask for an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment A** 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

Lisa

Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division
Department of Human Services

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Application for review of decision

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by the Information Commissioner.

Information Commissioner review

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au Post: GPO Box 5218, Sydney NSW 2001 Email: enquiries@oaic.gov.au
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An application form is available on the website at www.oaic.gov.au. Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

Complaints to the Commonwealth Ombudsman

You may complain to the Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.