



16 March 2017

Our reference: LEX 25125

Mr Derek Adams

By email: foi+request-2936-2480a920@righttoknow.org.au

Dear Mr Adams

Freedom of Information Request – Charges - Reconsideration

I refer to your request received by the Department of Human Services (the **department**) on 9 January 2017, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'All documents contained within the file "Perpetual Centrelink Calendar 107-03040000" as listed on this page:

<http://operational.humanservices.gov.au/public/Pages/debts/107-03040000-01.html>

Preliminary Assessment of the Charge

On 31 January 2017 the department notified you that you are liable to pay a charge for the processing of your request and advised that the preliminary assessment of that charge was \$15.00. This charge was calculated as follows:

Search and retrieval time: 1 hour, at \$15.00 per hour:	\$15.00
Decision-making time (*after deduction of 5 hours): 0 hours, at \$20.00 per hour	\$0.00
TOTAL	\$15.00

*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 10 February 2017 you wrote to the department contending the charge should not be imposed, in particular, you submitted that:

- the department is acting in bad faith and in breach of guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**), and
- the release of the documents is in the public interest.

In my preliminary assessment of charges, I advised you there was one document of three pages that fell within the scope of your request. The charge has been calculated on the processing of those three pages. However, upon further inspection for the purposes of assessing the charge it has become clear that the document is actually 108 pages long.



Under section 29(6) of the FOI Act, a decision regarding contention of charges was due to be notified to you on 13 March 2017. Under section 29(7) of the FOI Act, because notification did not occur, the decision is taken to be a deemed affirmation of the preliminary assessment of charges. Despite this, I have continued to review your contention and my decision is below.

Reconsideration of the Charge

Section 29(4) of the FOI Act provides a discretion to reduce or not impose a charge. In making a decision in relation to this discretion, section 29(5) requires me to consider:

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

The guidelines state, at paragraph 4.71:

'In addition to considering those two matters, an agency or minister may consider any other relevant matter, and in particular should give genuine consideration to any contention or submission made by an applicant as to why a charge should be reduced or waived'.

Bad Faith

You submit that the department is acting in bad faith in choosing to impose a charge for this request. I do not accept your submission. The charge has been calculated with reference to a true estimation of the work it would take for the department to respond to your request. It was made in line with the procedure outlined in section 29 of the FOI Act. Accordingly, I am not satisfied the charge should be reduced or waived on this ground.

Financial Hardship

You did not request reconsideration on the basis that the charge would cause you financial hardship. I have no evidence available to me to indicate the charge would cause you financial hardship. Accordingly, I am not satisfied the charge should be reduced or waived on this ground.

Public Interest

You submit that the release of documents in the scope of your request is in the public interest.

In considering whether something is of the public interest for the consideration of charges, the Guidelines relevantly provide, at paragraph 4.83:

'The 'public interest' is a concept of wide import that cannot be exhaustively defined... The following examples nevertheless illustrate circumstances in which the giving of access may be in the general public interest or in the interest of a substantial section of the public:

- The document relates to a matter of public debate, or a policy issue under discussion within an agency, and disclosure of the document would assist public comment on or participation in the debate or discussion'.

You submit that the documents in the scope of your request are listed in the department's Operational Blueprint under the 'Debts section'. As such, you submit that they are of interest to the public as they are related to the department's Online Compliance intervention activities, about which there has been recent media attention.

The department has a broad range of practises in relation to the collection of money where required. The majority of these practices are not related to Online Compliance Intervention, and are not related to the current matter of public debate to which you refer. Having reviewed the document in the scope of your request, I am satisfied that it is not related to the subject matter of recent public debate. I am satisfied that its release would not assist public comment or participation in that debate. I am not satisfied there is any general or specific section of the public that would have an interest in the material being released. Accordingly, I am not satisfied the charge should be reduced or waived on this ground.

In weighing up these matters, I am satisfied it is not in the public interest for the information to be released, and accordingly I am not satisfied the charge should be waived or reduced on this ground. With this in mind, I am satisfied the department has calculated the charge correctly.

Options

If you would like the department to continue processing your request, you must:

- a) pay the charge;
- b) seek external review of the reconsideration of the decision to impose a charge; or
- c) withdraw the request for access.

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

Option A - pay the charge

As the charge is less than \$25, you are required to pay the full amount of \$15 within 30 days of receiving this notice.

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 25125 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 external review

If you still believe a decision is incorrect, section 54L of the FOI Act allows you to apply for a review of an FOI decision by the Australian Information Commissioner. Further information regarding this option can be found at **Attachment B**.

Option C - withdraw your request

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

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

Further assistance

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

Yours sincerely

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

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 a 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 section 54L of the FOI Act, you can apply for a review of an FOI decision by the Australian Information Commissioner.

Note: There are no fees for these reviews.

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.

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

You can **lodge your application:**

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001
Email: enquiries@oaic.gov.au

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of the Department of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the department's decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the Information Commissioner 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 Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also 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.