



19 April 2017

Our reference: LEX 27449

Mr James Smith

By email: [foi+request-3098-651ac16e@righttoknow.org.au](mailto:foi+request-3098-651ac16e@righttoknow.org.au)

Dear Mr Smith

### Freedom of Information Request – Charges Reconsideration

I refer to your request dated 16 February 2017 and received by the Department of Human Services (the **department**) on the same date for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'I request the document(s) which describe the data provided to the external organisation(s) responsible for conducting the ballot(s) for all Enterprise Agreements put to staff for a vote.

The scope of this request is limited only to those ballots undertaken for enterprise agreements which were proposed to take effect after 30 June 2014.

The document shall describe the data given to the ballot agent. For example, employee name, employee identification number, employee email address, etc. I exclude the data for specific employees here; I am only after the 'meta-data'.

If it assists you to treat this as an administrative request for information I encourage you to do so. Otherwise, please consider this a formal FOI request.'

### Decision on charge

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 to not to reduce the amount of the charge that was notified to you.

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

### Background

On 10 March 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 is \$30.00, calculated as follows:

Search and retrieval time: 2 hours, at \$15.00 per hour:	\$30.00
Decision-making time (*after deduction of 5 hours): 0.58 hours, at \$20.00 per hour	\$0.00

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<b>TOTAL</b>	<b>\$30.00</b>
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\*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 18 March 2017 you responded to the preliminary charge, contending 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 regarding the 'integrity of your employees' private data and of the integrity of the EA ballot process is in the public interest.'

### **What I took into account**

In reaching my decision I took into account:

- the department's correspondence of 10 March 2017, notifying you of the charge;
- your correspondence of 18 March 2017, contending that the charge should not be imposed;
- documents falling within the scope of your request;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**);
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**); and
- the OAIC's *FOI fact sheet 7: Freedom of information – charges*.

### **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**

As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the charge.

On 10 March 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 is \$30.00. The calculation for this assessment is set out above.

In calculating processing charges for FOI requests, the department applies relevant provisions of the Regulations, the FOI Act and the Guidelines in relation to the amounts it is permitted to charge.

In matters where an applicant requests documents the department holds, the department calculates the amount it may charge based on:

- the time taken to search for, and retrieve, files containing documents within scope;
- the number of third parties with whom it will be necessary to consult in the course of making a decision regarding the release of the documents;
- the number and size (number of pages) of the documents that have been identified as falling within the scope of the requests and the resultant time taken for decision-making in relation to each of those pages (less the first five hours of decision-making, which are free of charge; and
- the number of pages considered sensitive, requiring redaction (and therefore potentially extra decision-making time).

Based on estimates and documents received from the department's Workplace Relations Branch, it was estimated that it had taken approximately 2 hours to locate and collate the relevant documents.

In your email of 18 March 2017 you did not make submissions regarding the calculation of the charge.

Having examined the documents within the scope of your request, the calculation of the charge and the reasoning behind it, I am of the view that the charge calculated fairly reflects the work involved in processing your request and is a fair contribution towards the cost of processing your request.

### **Reasons for decision**

I note that subsection 29(5) of the FOI Act prescribes matters that I must take into account. My consideration of those matters is set out below.

#### 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

Paragraph 29(5)(b) of the FOI Act provides that, without limiting the matters the 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 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.

Relevantly, paragraph 4.81 of the Guidelines states:

“an applicant relying on s 29(5)(b) should identify or specify the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur”.

In addition, paragraph 4.80 of the Guidelines state that:

“...the public interest test for waiver in s 29(5)(b) is different to the public interest test in s 11A(5) that applies to conditionally exempt documents.”

In your email of 18 March 2017, you state the following:

'I contend the charges should not be applied on public interest grounds. The department of human services has been mentioned in the media on this topic and the integrity of your employees' private data and of the integrity of the EA ballot process is in the public interest.

Here is a link to the media article. <http://www.canberratimes.com.au/national/public-service/fears-for-the-data-of-53000-more-public-servants-20170316-guzhnb.html>'

I am not persuaded by these submissions. In particular, while you have demonstrated that this topic is of some interest to a section of the public and media, I am not persuaded that 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 article attached to your submissions includes a statement from departmental spokesperson Hank Jongen. I am not confident that the document you are seeking will provide further insight into this topic, to the extent that it will provide a benefit to a substantial section of the public.

I also refer to the OAIC's *FOI fact sheet 7: Freedom of information - charges*<sup>1</sup>, which states that a claim for waiver or reduction of the charge on the basis of public interest "*might explain how the documents will be used in public research, in preparing a submission to a parliamentary inquiry, or in advancing public debate on a topic of current importance*". I do not consider that your request for waiving the charge has met any of these categories.

I also note that, in recognition of the general public interest in allowing access to government information, the FOI Act provides for the first five hours of decision-making time to be free of charge for all applicants. This discount was applied to the calculation of the charge notified to you on 10 March 2017. The remaining charge amounts to \$30.00.

For this reason, I have decided not to reduce the imposed charge on public interest grounds.

#### Other grounds for reduction of the charge

Subsection 29(4) of the FOI Act provides a general discretion to reduce or not to impose a charge which goes beyond matters relating to financial hardship and the public interest. In considering this general discretion, I have had regard to whether the charge imposed appropriately reflects the cost of processing your request and whether the documents within the scope of your request are similar to documents that have been published on the department's website under section 11C of the Act.

With regard to whether the charge imposed appropriately reflects the cost of processing your request, as outlined above, I consider that the calculation of the charge fairly reflects the work in processing your request. 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.

#### Conclusion

On balance, after weighing the arguments that you have submitted, I have decided to not to reduce the amount of the charge that was notified to you.

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<sup>1</sup> This fact sheet can be accessed at <https://www.oaic.gov.au/freedom-of-information/foi-resources/foi-fact-sheets/foi-fact-sheet-7-freedom-of-information-charges>.

## Options to proceed with your request

In order for your request to continue to be processed, you are required to respond in writing within 30 days of receipt of this notice in accordance with one of the following options:

- A. Pay the Charge;
- B. Request a review of the decision to impose the charge; or
- C. Withdraw your request.

Further information on each of these options is set out below.

### Option A – Pay the Charge

The amount due should be paid by cheque or money order and made out to the Collector of Public Monies. Please quote reference number LEX 27449 with your payment.

Please send this cheque or money order to:

FOI and Information Release Branch  
Legal Services Division  
Department of Human Services  
18 Canberra Ave, Forrest ACT 2603

If you elect to pay the reduced charge amount, please email [FOI.Legal.Team@humanservices.gov.au](mailto:FOI.Legal.Team@humanservices.gov.au) once you have posted your cheque or money order to advise us of your payment.

### Option B – Request a review of the decision to impose the Charge

Please find attached a document setting out your rights of review at **Attachment A**.

### Option C – Withdraw your request

If you wish to withdraw your request, you may do so in writing. Alternatively, you may wish to consider narrowing the terms of your request. If the scope of your request can be reduced, the charge may be recalculated accordingly.

## Further Information

Should you have any enquiries concerning this matter, please contact me at [FOI.Legal.Team@humanservices.gov.au](mailto:FOI.Legal.Team@humanservices.gov.au).

Yours sincerely

Jonathon  
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.