



Mr James Smith

via email: [foi+request-3152-3d9c4171@righttoknow.org.au](mailto:foi+request-3152-3d9c4171@righttoknow.org.au)

Dear Mr Smith

I refer to your email, received by the department on 18 March 2017, in which you requested a waiver or reduction of the charges for your request under the under the *Freedom of Information Act 1982* (FOI Act), on the ground of financial hardship and public interest reasons.

The department responded to your email on 23 March 2017 asking that you provide evidence to support your claim for financial hardship, and providing further information to you on information that you could submit in support of a public interest waiver. The email noted that if the department did not hear from you within one week of this email a decision would be made on the information you had already provided. As at the date of this letter, no response has been received.

The purpose of this letter is to address the comments you made in your contention and to notify you of my decision and reasons for it.

#### **Decision on charges contention**

I am authorised under the FOI Act to make decisions in relation to FOI requests submitted to the department, including requests relating to charges.

On 14 March 2017, the department decided to impose a charge of \$111.00 for processing your request.

I have carefully considered how the charges were calculated and the matters you have raised. I have also had regard to the objects of the FOI Act, the FOI guidelines, and the *Freedom of Information (Charges) Regulations 1982*.

#### **Would payment cause financial hardship to the applicant?**

Section 29(5)(a) of the FOI Act requires me to consider '*whether the payment of the charge, or part of it, would cause financial hardship to the applicant*'. Given the information you have provided, I do not consider there to be satisfactory grounds for a reduction or waiver of the charges imposed due to financial hardship. This is because you have claimed to have no ability to pay, but have not provided evidence to support your claim.

#### **Would giving access to the documents be in the public interest?**

Section 29(5)(b) of the FOI Act requires me to consider '*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*'. You have requested the charge be either waived or reduced in the public interest and made the following contention:

*"the information is in the broader public interest, given recent media attention to the issue of how government has handled data relating to significant numbers of public servants."*

## *Context of release*

Part 4.56 of the FOI guidelines set out some examples of when it might be appropriate by an agency to reduce or waive a charge. This includes whether the documents relate 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*
- *an agency decision that has been a topic of public interest or discussion, and disclosure of the document would better inform the public as to why or how the decision was made, including highlighting any problems or flaws that occurred in the decision making process'.*

## *Is giving access in the public interest?*

I have taken into account the media you refer to in your contention, which I take to refer to recent discussions about government departments providing data relating to public servants for the purposes of enterprise agreement ballots. I note the department has already provided you with material directly relevant to this topic in a previous decision. In terms of discussion on data handling, I consider that the documents at issue in this request are not about data handling, and would not contribute further to the material already provided.

You have not provided any other reasons why disclosing the documents would be of real, significant and identifiable benefit to a substantial section of the public or be of general public interest.

I have decided not to waive or reduce the preliminary assessment of charges. The amount you are liable to pay in respect of your request for access is **\$111.00**. I consider that this is a reasonable and not excessive amount to process your request.

Once a decision on access is made, the department is required to calculate the final charge. An agency can only increase a charge where it gives access to documents requested.

## **Payment details**

Please refer to the charges letter dated 14 March 2017 for information regarding options on how to pay the charge.

## **Next steps in processing your request**

If you would like the department to continue processing your request, you must respond to the department within **30 calendar days** after receiving this notice.

If you do not respond within 30 calendar days, your request will be taken to have been withdrawn and no further action will be taken by the department.

## **Time periods 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 applicant was notified of the charge until:

- the day after the charge (or deposit) is paid; or
- if applicable, where a subsequent review decision has been provided, the day after:
  - a charge or deposit has been paid; or
  - the applicant is notified of a decision to not impose the charge.

## Review Rights

If you are dissatisfied with my decision in relation to the charge, under the FOI Act you may seek a review of my decision through:

- an internal review conducted by the department
- a review by the Information Commissioner.

### *Internal review*

If you wish to seek an internal review, you must apply to the department within 30 days after the day you are notified of this decision. Your application for an internal review should be sent via email to [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au), or to:

FOI Officer  
Department of Agriculture  
GPO Box 858  
CANBERRA CITY ACT 2601.

### *Information Commissioner review*

Alternatively, you may apply directly to the Office of the Australian Information Commissioner (OAIC) to review my decision. An application for review by the Information Commissioner must be made in writing within 60 days after the day you are notified of this decision.

You can find information about requesting a review and other information about FOI on the OAIC website [www.oaic.gov.au](http://www.oaic.gov.au). If you lodge a request for review with the Office of the Australian Information Commissioner, please advise the department via [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au) that you have done so. This will ensure our administrative compliance with the FOI Act.

### *Complaints*

Under the FOI Act, you can also make a complaint to the Commonwealth Ombudsman if you have concerns about how the Department handled a request for documents under the FOI Act, or took any other action under the FOI Act. There is no fee for making a complaint to the Commonwealth Ombudsman.

Information about making a complaint to the Commonwealth Ombudsman is available in its website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au). You can also phone the Ombudsman on 1300 362 072 or write to GPO Box 442, CANBERRA ACT 2601.

## Contact details

Should you wish to discuss any issues arising from this letter, please contact FOI Officer Melissa Nickols by telephone on 02 6272 3537 or email [foi@agriculture.gov.au](mailto:foi@agriculture.gov.au).

Yours sincerely



Lionel Riley  
Assistant Secretary  
People Services Division

5 April 2017