



12 April 2017

Our reference: LEX 27827

Mr James Smith
By email: foi+request-3160-72efbb08@righttoknow.org.au

Dear Mr Smith

Freedom of Information Request – Charge decision

I refer to your request dated and received by the Department of Human Services (the **department**) on 26 February 2017, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'I request all documents wherein the outcome of any enterprise bargaining ballots were communicated to the department by the entity who undertook the ballots.

This shall include the YES/NO vote amounts or percentages as well as any additional information related to the vote. For example, a breakdown of the vote by employee location, or APS level.

The scope of this request covers any such documents that were received as a result of EBA offers made to staff under:

Workplace Bargaining Policy 2015
or
Australian Government Public Sector Workplace Bargaining Policy 2014.'

Decision on charge

The following is my decision in relation to your request for 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 14 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 \$505.00, calculated as follows:

Search and retrieval time: 3.8 hours, at \$15.00 per hour:	\$57.00
Decision-making time (*after deduction of 5 hours): 22.4 hours, at \$20.00 per hour	\$448.00

TOTAL **\$505.00**

*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 18 March 2017, you provided the following response to the preliminary charge:

'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 note that the link you provided refers to an article published by *The Canberra Times* on 17 March 2017.

What I took into account

In reaching my decision I took into account:

- the department's correspondence of 14 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**); 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.

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 expressed or 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 that:

“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 states 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.”

I also note that paragraph 4.82 of the Guidelines provides:

“There is no presumption that the public interest test is satisfied by reason only that the applicant is a member of Parliament, a journalist or a community or non-profit organisation. It is necessary to go beyond the status of the applicant and to look at other circumstances.”

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-guzhhb.html>’.

I am not persuaded by these submissions. I note that you have not identified the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure of the documents. While you note that the department's enterprise agreement ballot process and the use of employees' data have been subject to media attention, you have not provided further details of how release of the information you have requested would be in the general public interest, nor have you identified that a substantial section of the public would benefit from the documents' disclosure.

Further, even if the above specification had been made, I am not persuaded that there is significant public debate and interest in the topics to which your request relates. There has been little further media reporting on these issues since the article to which you referred us. While I accept that the matter is potentially of interest to employees of the department, and perhaps to employees of other departments with similar histories regarding enterprise agreements, I am not convinced that this would be sufficient to establish a general public interest. Similarly, I do not consider it has been established that a 'substantial section of the public' would benefit from the 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

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.

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.

I note also 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 14 March 2017.

I have also considered paragraph 4.88 of the Guidelines in relation to other grounds for reduction or waiver. After reviewing the type of circumstances that may give rise to a reduction or waiver under section 29(4), I do not find that the particular circumstances of your request are of a similar nature.

Conclusion

After considering your submission, along with the FOI Act and the Guidelines, I have decided to neither reduce nor waive the charge that was notified to you.

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 (or deposit of \$88.48);
- 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 27827 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 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.

Yours sincerely

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.