



**Australian Government**  
**Australian Pesticides and  
Veterinary Medicines Authority**

Our reference: LEX 5043

19 April 2017

Adam Presnell

Via email: Adam Presnell at [foi+request-3218-e1629b9e@righttoknow.org.au](mailto:foi+request-3218-e1629b9e@righttoknow.org.au)

Dear Mr Presnell

**Freedom of Information Request  
Notice of Decision on contention of charges  
Queensland Health's Forensic and Scientific Services Laboratory Reports on 'GLORICIDE'**

I refer to your request under the *Freedom of Information Act 1982 (FOI Act)* received by the APVMA on **10 March 2017**. Your request sought access to the following documents:

*'In October 2012, the CEO of the APVMA was asked to provide a 'Statement of Reasons' in relation to her decisions in relation to the regulation and use of 'GLORICIDE' by the Sunshine Coast Regional Council. The CEO refused to provide a Statement of Reasons as requested under the Administrative Decisions Act 1977.*

*I am requesting all correspondence by the APVMA and to the APVMA in relation to this request for a Statement of Reasons including: emails, letters, meeting minutes, phone call records, etc.'*

2. I am an officer of the Australian Pesticides and Veterinary Medicines Authority (APVMA) authorised under section 23 of the FOI Act to make decisions in respect of access requests.
3. On 23 March 2017, the APVMA gave you notice of its preliminary assessment of charges in relation to your request, amounting to a total of \$110.53.
4. On 30 March 2017, you wrote to the APVMA seeking a waiver of the \$110.53 on the grounds of financial hardship, the public interest and that the charge has been wrongly assessed. This request is commonly referred to as a contention of charges.

**Decision and reasons**

*Contention 1 – the charge has been wrongly assessed*

5. In your contention, you claim that the estimated time it would take to process your request is '...absurd and an abuse of process.'
6. We have interpreted this to mean that you contend the charge has been wrongly assessed as provided for by subparagraph 29(1)(f)(ii) of the FOI Act.

7. In relation to your contention that the charge is an 'abuse of process', we understand you to mean that the act of giving notice of the preliminary estimate of charge is intended to deter you from proceeding with your request.
8. The APVMA strongly rejects the suggestion that its motivations in relation to the charge are improper. Firstly, it is the APVMA's general policy to charge where appropriate. This is especially relevant given that the APVMA is a fully cost recovered agency funded by industry levies.
9. Furthermore, the Australian Information Commissioner has issued written Guidelines in accordance with section 93 of the FOI Act and agencies must have regard to those Guidelines. The Guidelines provide at paragraphs 4.2-4.3 that an agency or minister has a discretion to impose or not impose a charge, but that the discretion should fairly reflect the work involved in providing access to documents on request. It is on the issue of the charges fairly reflecting the work involved that we now turn in response to the first limb of your claim which suggests that the charge is absurd.
10. The estimated time it would take to process your request is approximately 11 hours, comprising approximately two hours of search and retrieval time and nine hours of decision making time (where the nine hours consists of six hours to examine and prepare the documents and three hours to draft a decision), in relation to 23 documents in scope totalling 67 pages. As noted, the first five hours of decision making time are free.
11. The context of the documents involves a request for a statement of reasons from a person (you) who was not the applicant for the decision made by the APVMA. Where a third party to the decision seeks a statement of reasons, it raises issues relating to the disclosure of information that may be protected under legislation. In these circumstances, the APVMA may seek external legal advice. Your request therefore raises issues whether any documents you have requested are privileged from disclosure due to legal professional privilege. As a consequence, the time necessary to process your request will be longer than requests that do not raise issues relating to the protection of information and legal professional privilege.
12. The FOI Guidelines provide at paragraph 4.70 that if an applicant contends that a charge has been wrongly assessed, the central issues to be considered is whether the relevant provisions of the FOI Act and the *Freedom of Information (Charges) Regulations 1982* (Charges Regulations) have been correctly understood and applied.
13. In *Tager and Department of the Environment* [2014] AICmr 59, the Information Commissioner noted that it is important that an estimate of charge is realistic and as accurate as possible (see paragraph 9). In the *Tager* matter, the Information Commissioner decided to revise the search and retrieval time down to one hour on the basis that '...at least 64 of the 70 documents are emails...'. In that case the agency claimed 9.75 hours to search and retrieve 90 documents. For your request, the APVMA spent approximately 2 hours to search and retrieve 23 documents. As with the *Tager* matter, most of the 23 documents are emails and accordingly I am persuaded by the Information Commissioner's argument that this should lend itself to a more efficient search and retrieval than the two hours spent in your matter. Accordingly, I have decided to revise the search and retrieval time down by 1.5 hours.

*Contention 2 – the charge should be reduced or not imposed*

14. The FOI Guidelines provide at paragraph 4.70 that if an applicant contends that a charge should be reduced or waived, the agency must consider whether the payment of the charge, or part of

it, would cause financial hardship to the 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.

15. In terms of the financial hardship matter, you stated in your contention that the imposition of the charge would '...cause further financial hardship'. An applicant in these circumstances could ordinarily be expected to provide some evidence of financial hardship. The FOI Guidelines at paragraph 4.77 suggest that the evidence might consist of information about pensions, income support, income, debts and/or assets. You have not provided any evidence to support your claim that the preliminary estimate of \$110.13 would, if paid, leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for you or your family or other people for whom you are responsible (see paragraph 4.75 of FOI Guidelines).
16. On this basis, I am not satisfied that the charge should be reduced or not imposed because of financial hardship concerns.
17. In terms of whether the access to the documents in question is in the general public interest or in the interest of a substantial section of the public, the FOI Guidelines provide substantial material on the circumstances in which it may be appropriate to reduce or waive a charge (see paragraph 4.58).
18. You contend that the information contained in the documents sought '...was in relation to the use of an Unregistered Chemical Product that is/was being used on Public Land and is highly mobile as the banned 2,4-D Methyl Esters and potentially 2,4,5-T were being manufactured. There is a cancer Cluster on the Sunshine Coast as a result of the APVMA's decisions that were the nature of this original Statement of Reasons request to the APVMA.'
19. The documents are broadly concerned with the issue of whether you had standing to seek a statement of reasons in relation to the decision of the APVMA to issue a permit (number 11463) to Biosecurity Queensland. In respect of the documents, which relate mostly to your standing to obtain statements of reasons relating to third parties, I find that none of the circumstances referred to in paragraphs 4.58 or 4.61 of the FOI Guidelines apply. I find that these documents are primarily of interest only to you and that the general public or a substantial section of the public have little or no interest in the circumstances surrounding the validity of your request to obtain a statement of reasons in relation to a decision to which you are not a party. Accordingly, I find that the public interest exemption does not apply in relation to these documents to reduce the associated charge.
20. However, there are some documents which shed light on the permit holder's decision to 'tank mix' two of the products named in the permit, as permitted by section 13B of the *Queensland Chemical Usage (Agricultural and Veterinary) Control Act 1988*.
21. In my view, the inclusion of information relating to the mixing of two products listed in the permit is in the general public interest.
22. Relevantly, I find that some of the documents in question would 'add to the public record on an important and recurring aspect of agency decision making' (see paragraph 4.58 of the FOI Guidelines) as they clarify the APMVA's role in relation to the mixing of chemicals.

23. In summary, I have decided to reduce the preliminary estimate of charges by 1.5 hours and then by a further 25% on 'public interest' grounds. I have decided you are liable to pay a charge of \$65.72.
24. We require the charges to be paid in full, or alternatively a deposit of **\$20.00** to be paid to APVMA before we can continue to process this request with the balance payable prior to the making of the decision on the release of the documents subject to your FOI request.

**What can you do now?**

25. You can now do one of the following:

- a. agree to pay the charge, and pay the deposit (if any) described above or the full amount by cheque, money order or credit card. Cheques should be made payable to 'APVMA' and sent to:

FOI Officer  
PO Box 6182  
Kingston ACT 2604  
Australia

Credit card payment forms are available from our website at <http://apvma.gov.au/node/47>.

- b. withdraw your FOI request in writing.

**Review rights**

26. You may seek review of this decision if you are not satisfied with it. If you wish to seek internal review of this decision, you need to expressly request in writing that the APVMA do this by email to [foi@apvma.gov.au](mailto:foi@apvma.gov.au) or by letter to:

Freedom of Information team  
Australian Pesticides and Veterinary Medicines Authority  
PO Box 6182  
KINGSTON ACT 2604

27. If you wish to seek external review from the Office of the Australian Information Commissioner (OAIC) you need to follow the steps at <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>. Please contact the OAIC at [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au) or on 1300 363 992 for further information about how to apply for an external review.
28. Please be aware that if you wish to seek review of this decision you have 30 days from receiving this letter to seek internal review from the APVMA, or 60 days to seek external review from the OAIC.
29. If you are concerned about the way your FOI request was handled you may formally lodge a complaint with the Commonwealth Ombudsman (<http://www.ombudsman.gov.au/making-a-complaint>).

30. If you have any questions about this decision or wish to seek internal review of it, please contact the FOI team at [foi@apvma.gov.au](mailto:foi@apvma.gov.au) or on (02) 6210 4833.

Yours sincerely

A handwritten signature in black ink that reads "Margaret Horne". The signature is written in a cursive style with a large, looped initial 'M'.

Margaret Horne  
Principal Legal Officer (PN 0097)  
Legal and Compliance Program

