



Our reference: LEX 5100

22 May 2017

Mr Adam Presnell

Via email: Adam Presnell foi+request-3220-f3dec002@righttoknow.org.au

Dear Mr Presnell

Freedom of Information Request

Notice of Decision on Access – Internal Review of LEX 5043

Correspondence in relation to a request for a statement of reasons about Gloricide - Decision on charges contention

I refer to your request of 21 April 2017 seeking an internal review of the Australian Pesticides and Veterinary Medicines Authority's (APVMA) Freedom of Information decision on contention of charges (our ref: LEX 5043) dated 19 April 2017 under the *Freedom of Information Act 1982 (FOI Act)*.

2. I am an officer of the APVMA authorised under section 23 of the FOI Act to make decisions in respect of access requests and internal reviews under the FOI Act.

Decision

3. I have decided to reduce the charges by a further 30% to \$50.00.
4. A statement of reasons in support of my decision is at **Attachment 1**.

What you should do

5. Within 30 days of receipt of this letter you should do one of the following:
 - a. agree to pay the charge, and pay the deposit of \$20.00 or the full amount of \$50.00 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; or
 - c. seek an Information Commissioner review of the charge.
6. If you have not done one of these things within the 30 day period as specified above, your request of 10 April 2017 will be taken to be withdrawn.

Review and complaint rights

- 7. You may seek review of this decision from the Office of the Australian Information Commissioner (**OAIC**) if you are not satisfied with it. If this is a path you wish to take, please follow the steps at <http://www.oaic.gov.au/freedom-of-information/requesting-a-review>.
- 8. If you are concerned about the handling of your FOI request and internal review you may lodge a complaint with the Commonwealth Ombudsman.
- 9. If you have any questions about this decision, please contact the FOI team at foi@apvma.gov.au or on (02) 6210 4794.

Yours sincerely



Dwayne Currie
Principal Legal Officer
Legal and Compliance Program

STATEMENT OF REASONS FOR

Mr Adam Presnell

Request for internal review

1. On 19 April 2017, Ms Margaret Horne made an FOI decision (LEX 5043) on behalf of the APVMA to impose a charge of \$65.72 in accordance with section 29 of the FOI Act in respect of a request for access to a document. This decision is defined by section 53A of the FOI Act as an 'access refusal' decision. You have requested an internal review of this decision.

Background

2. On 10 March 2017, you sought access to all correspondence to and from the APVMA in relation to your request for a statement of reasons regarding the regulation and use of 'Gloricide' by the Sunshine Coast Regional Council.
3. On 23 March 2017, the APVMA gave you notice of its preliminary assessment of charges in relation to your request.
4. On 30 March 2017, you asked the APVMA to waive the charges (\$110.53) on the grounds of financial hardship, public interest and that the charge had been wrongly assessed.
5. The decision of Ms Horne was in response to your request for waiver, and she decided to reduce the charge to \$65.72. Your request for an internal review relates to this decision.
6. In your request for internal review, you also stated that the APVMA had deliberately 'mis-framed' the request. You then went on to outline concerns which relate to the original request to obtain the statement of reasons.
7. As you have not had the opportunity to examine all the documents that the APVMA is considering releasing to you under your request for information of 10 April 2017, I believe it is premature to examine the issues you raised in the context of your request for internal review of the decision on the contention of charges. I note that you will have that opportunity to revisit these issues at a later date, should the decision on access and/or the release of these documents not address your concerns.

Material relied on

8. I have had regard to the following:
 - a. the terms of the original FOI request received by the APVMA on 10 March 2017;
 - b. the Objective and LEX files which record the management and processing of the FOI request;
 - c. correspondence with you in relation to the FOI request;
 - d. your subsequent request for an internal review of the FOI decision;
 - e. the documents subject to the request;
-

- f. the Guidelines issued under section 93A of the FOI Act by the Office of the Australian Information Commissioner (**Guidelines**);
- g. advice from APVMA officers within the Legal Team with responsibility for matters relating to the documents to which you seek access; and
- h. the FOI Act, including the objects provision.

Reasons for decision

- 9. The Guidelines state at paragraph 9.34 that the role of the internal review is, *inter alia*, to bring a fresh mind to the review and that the internal reviewer may consider additional material not considered by the original decision maker, particularly where there has been a change in circumstances since the original decision.
- 10. I have carefully considered the matters raised in your request for internal review as they relate to the decision to impose a charge for access to the documents relevant to your request.

Financial hardship

- 11. One element a decision maker must consider in relation to a contention of charges decision is whether imposing a charge would cause the applicant financial hardship.
- 12. Ms Horne stated in her decision to impose the charge that an applicant would ordinarily be expected to provide some evidence of financial hardship and you have not provided any specific information to support such a claim. In your request for internal review, you stated that:

You claim that I am not under financial duress as a result of your institutional corruption and cover-up of the use of GLORICIDE as per the MSDS for the Unregistered Chemical Product and its widespread use. I lost all my work and my home and family because of your deliberate cover-up and protection of the Queensland Government and Sunshine Coast Regional Councils illegal use of this experimental product and the abuse of the APVMA's Permit System, that the APVMA has regulatory jurisdiction over. I am homeless and living in my car due to your systemic negligence, this is the information and evidence that you need to waiver costs that prohibit this FOI request from being made public.

- 13. Firstly, I wish to make the distinction that the decision under review did not conclude you were *not* under financial duress. Rather, it was noted you had not provided information to back up your claim of financial hardship.
- 14. You have once again failed to provide any specific evidence that would corroborate your claims of financial hardship, such as information that you are in receipt of a pension or unemployment benefits, or details of the debts you have. You have, however, elaborated on the issue of financial hardship in your request for internal review, informing the APVMA that you are effectively destitute.
- 15. I am extremely sorry to hear of the difficult circumstances you find yourself in. In the light of this information, I am persuaded that the \$65.72, if paid, may cause financial hardship as it may, for instance, adversely impact on your ability to buy food or obtain medical treatment.

16. I have therefore decided to further reduce the charge by an additional 30% to \$50.00. I have not waived the fee completely because the APVMA is a cost-recovered agency, which operates on the levies collected from industry.

Public interest

17. I have read your contention of charges and the decision to impose charges in the context of the public interest and I have decided not to vary the amount further on these grounds.
18. I am satisfied that the reduction to the charge on these grounds in the charges contention decision was the correct and preferable outcome.