



5 May 2017

Our reference: LEX 28338

Mr Justin Warren

By email: foi+request-3230-a9030c88@righttoknow.org.au

Dear Mr Warren

Freedom of Information Request – Reconsideration of Charges

I refer to your revised request dated 14 March 2017 and received by the Department of Human Services (the **department**) on the same day, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

'I request the following information relating to the initiative to match Centrelink data with data from the Australian Tax Office (ATO) to detect potential overpayment and the recovery of those overpayments from citizens. This initiative has been extensively covered by the media using various names, including #robodebt and #notmydebt.

- Documents listing identified risks, categorisations (Likelihood, Impact, etc.), and treatments in the period 1 Jan 2016 to 31 Dec 2016. You have previously indicated that these are known more specifically as:

- a) Risk Plans
- b) Weekly Reports
- c) Issues and Escalated Issues Registers.

as per the FOI request listed here:

https://www.righttoknow.org.au/request/risk_governance_and_oversight_of_2, LEX 26567.

Excluding draft documents.'

Background

On 4 April 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 was \$263.05. This charge was calculated as follows:

Search and retrieval time: 4.67 hours, at \$15.00 per hour:	\$70.05
Decision-making time (*after deduction of 5 hours): 9.66 hours, at \$20.00 per hour	\$193.00

TOTAL	\$263.05
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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 5 April 2017 you responded to the preliminary charge notification, contending that the charge be waived on the grounds that release of the documents is in the public interest.

What I took into account

In reaching my decision I took into account:

- the department's correspondence of 4 April 2017, notifying you of the charge;
- your correspondence of 5 April 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**).

Reconsideration of the Charge – Scope of Documents

I have reconsidered the preliminary charge that was notified to you. The searches of the department's records identified documents, which appeared to be within the scope of your request. On the basis of these searches, I determined that you were liable to pay a charge for the processing of your request, in accordance with section 29 of the FOI Act.

In the course of reconsidering the preliminary estimate of charge, the documents originally considered were reviewed. During that review it was determined that some of the documents originally identified do not meet the scope of your request. This includes documents that were thought to be final but are in fact still in draft form and others that do not contain identified risks, categorisations or treatments.

Accordingly, I have decided to reduce the assessment of the charge to \$226.25, calculated as follows:

Search and retrieval time: 3.55 hours, at \$15.00 per hour:	\$ 53.25
Decision-making time (*after deduction of 5 hours): 8.65 hours, at \$20.00 per hour	\$173.00
TOTAL	\$226.25

*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

Reconsideration of the Charge – Your submissions and other considerations

Section 29(4) of the FOI Act provides a discretion to reduce or not impose a charge. In making a decision in relation to this discretion, section 29(5) requires me to consider:

- whether payment of the charge would cause financial hardship to the applicant, and
- whether giving access to the document is in the general public interest or in the interest of a substantial section of the public.

The guidelines state, at paragraph 4.71:

'In addition to considering those two matters, an agency or minister may consider any other relevant matter, and in particular should give genuine consideration to any contention or submission made by an applicant as to why a charge should be reduced or waived'.

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.

The Public Interest

In making my decision, I am also required under paragraph 29(5)(b) of the FOI Act to take into account whether the provision of access to the documents that are the subject of the request, is in the general public interest, or in the interest of a substantial section of the public. In other words, there must be a benefit flowing generally to the public or a substantial section of the public from disclosure of the documents in question. This requires me to consider the nature of the documents and the context of their release.

The Guidelines at 4.81 state that in considering the public interest, matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents.

On 5 April 2017 you wrote to the department contesting the charge. The reasons you provided in support of your contention that the charge should be waived were:

'I contend that the charge should not be imposed because access to these documents is in the general public interest or, at the very least, in the interest of a substantial section of the public.

That this matter is in the general public interest is clear given its extensive media coverage and the fact that the Senate inquiry into the matter is current progressing. It is also clear that this matter is of interest to a substantial section of the public, given the number of submissions to the Inquiry, stories shared on the notmydebt.com.au website, the regular activity on the #notmydebt hashtag on Twitter, and that the Department has made numerous updates regarding this issue on its Media Hub. A matter of inconsequential interest would not have required such a public response from the Department over such a sustained period.

Factors favouring disclosure in the public interest in this case include:

- It will allow or assist inquiry into possible deficiencies in the conduct or administration of the Department with regard to this initiative, particularly in its management of risks.
- It will reveal the reasons for government decisions and any background or contextual information that informed the decision, particularly in its management of risks.

- It will inform debate on a matter of public importance, i.e. the administration of the welfare payments system, which forms a substantial part of the budget.
- It will promote of the effective oversight of public expenditure, both that of the welfare system itself, and the systems put in place to detect and correct over- and under-payments.'

I am not satisfied that there are compelling reasons in favour of reducing or waiving the charge. This is because the documents contain material concerning risk management processes in relation to the Online Compliance Intervention. The release of the documents would adversely affect and compromise the department's ability to undertake audit and compliance activities, an outcome that is not in the general public interest or in the interest of a substantial section of the public.

While I accept that the Online Compliance Intervention has been the subject of media attention, consideration of the public interest is not primarily concerned with curiosity or commentary. The primary question is whether a benefit will flow, to the public generally or a substantial section of the public, should the information in the documents be disclosed.

Since making your FOI request a significant amount of information regarding Online Compliance Intervention has come into the public domain, including the following:

- the transcript of discussion before the Community Affairs Legislation Committee Estimates, which is available [here](#);
- the transcript of discussion before the Senate Community Affairs References Committee Inquiry on the design, scope, cost-benefit analysis, contracts awarded and implementation associated with the Better Management of the Social Welfare System initiative (the **Inquiry**) which is available [here](#);
- the department's responses to a number Questions on Notice arising out of the Inquiry, which are available [here](#); and
- the department's submission to the Inquiry, which is available via this [page](#).

In my view, the information contained in the documents (insofar as their disclosure is not contrary to the public interest) already substantially exists in the public domain, and the release of the full documents would not substantially contribute to the public debate, in a manner that would justify reducing or waiving the charges above.

I contend that the charges have been set at the lowest reasonable cost noting that they have already been reduced.

In light of the above, I am not satisfied that there are compelling public interest factors in favour of reducing or waiving the charge associated with the processing of the documents you have requested.

Other grounds for reduction of the charge

In deciding whether charges should be reduced or waived, I have taken into consideration section 29(4) of the FOI Act that provides a general discretion to reduce or not to impose a charge, which goes beyond matters relating to financial hardship and the public interest.

I note that you have not provided any evidence to indicate that the charges should be reduced or waived on other grounds. On that basis, I have not considered this matter further.

Conclusion

I am not persuaded that the charge should be reduced or waived on the grounds of financial hardship or because to so reduce or waive the charge would be in the general public interest or in the interests of a substantial section of the public.

I have decided to reduce the charge to \$226.25 on the grounds of the reduced number of documents within scope.

Required Action

If you would like the department to continue processing your request, you must notify the department in writing within 30 days of receiving this notice that you:

- a) agree to pay the charge; or
- b) withdraw the request for access.

If you do not provide a written response in accordance with one of Options A or B above within 30 days of receiving this notice, your request will be taken to have been withdrawn under section 29(2) of the FOI Act.

Further information on Options A and B is set out below.

Option A - pay the charge

As the charge exceeds \$100, you are required to pay a deposit of 25%, being \$56.55, within 30 days of receiving this notice. You may, of course, elect to pay the charge in full at this point.

The amount due should be paid by cheque or money order made out to the Collector of Public Monies. Please quote the reference number **FOI LEX 28338** with your payment.

Should you elect to pay the charge 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 - withdraw your request

If you wish to withdraw your request you may do so in writing.

Time limits 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 notice is received until either:

- (a) the day following payment of the charge (in full or the required deposit); or
- (b) if applicable, the day following the notification to the applicant of a decision not to impose the charge.

Address for correspondence

Please send all correspondence regarding your FOI request to me at the following address:

Freedom of Information team
Department of Human Services

PO Box 7820
CANBERRA ACT 2610

Or by email to FOI.LEGAL.TEAM@humanservices.gov.au

Publication of information in the FOI disclosure log

Information released under the FOI Act may be published in a disclosure log on the department's website. Section 11C of the FOI Act requires this publication, subject to certain exceptions, including where publication of personal, business, professional or commercial information would be unreasonable.

You can ask for a review of this decision

I have reconsidered the assessment of charge and reject your contention that this charge has been wrongly assessed. If you disagree with the decision to impose a charge, or the amount of the charge, you can ask for a review. There are two ways you can do this. You can ask for an internal review from within the department, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment B** for more information about how arrange a review.

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Charlotte
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 a 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 a 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.

You can **lodge your application:**

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Note 3: The Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form (the 'Merits Review Form') is available at www.oaic.gov.au.
- If you have one, you should include a copy of the Department of Human Services' decision on your FOI request with your application
- Include your contact details
- Set out your reasons for objecting to the department's decision.

Complaints to the Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Commonwealth Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before making a complaint about a decision.