



13 June 2017

Our reference: LEX 29682

Mr Justin Warren

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

Dear Mr Warren

Freedom of Information Request – Internal Review (Charges) Decision

I refer to your correspondence, dated 14 May 2017 and received by the Department of Human Services (the **department**) on the 15 May 2017. You requested an internal review of the decision made by a delegate of the department under the *Freedom of Information Act 1982* (the **FOI Act**) dated 5 May 2017 (LEX 28338) (the **charges decision**).

I am authorised under subsection 23(1) of the FOI Act to make internal review decisions under section 54C of the FOI Act. My decision is set out below.

Original decision

The department received your original request on 14 March 2017 for access under the FOI Act to the following documents:

'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.'

On 4 April 2017, the department issued you with a preliminary assessment of charges involved in processing your request. On 5 April 2017 you sought reconsideration of those charges, and you were provided with the department's response on 5 May 2017. You then sought internal review of that decision.

Consistent with the requirements of the FOI Act, I have made a fresh decision, which is set out below.

Internal Review Decision

The following is my decision in relation to your request for reduction or non-imposition of the charge imposed under the FOI Act. I have decided, under section 54C and subsection 29(8) to affirm the decision to impose the charge.

You are therefore liable to pay the processing charge of \$226.25

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A** below.

No further action on the request will be undertaken until payment for the charge has been received by the department. After this has occurred, the department will be in a position to continue processing your FOI request.

You can ask for a review of our decision

If you disagree with any part of the decision you can ask for a review. You can ask for 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

Sally
Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division

REASONS FOR DECISION

What you requested

Preliminary assessment of charges

On 4 April 2017, the department issued you with a preliminary assessment of charges involved in processing your request. In accordance with section 29 of the FOI Act, it was determined that you were liable to pay an estimated charge of \$263.05, 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): 9.65 hours, at \$20.00 per hour	\$193.00
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TOTAL	\$263.05

Reconsideration of charges

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

On 5 May 2017, the department notified you of its reconsideration of charges decision after considering your submission. On reconsideration, the department decided to reduce the amount of the charge to better reflect the documents falling within the scope of your request. I note that the department did not reduce this charge on the basis of your submissions regarding the public interest in releasing the documents.

The assessment of the charge was therefore reduced 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
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TOTAL	\$226.25

Request for internal review of charges

On 14 May 2017, you requested an internal review of the department's decision to impose this reviewed charge for FOI request LEX 28338 on the following terms:

'I draw the reviewer's attention to the following aspects of the decision:

"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." This decision is in relation to the charges for processing documents for their release, not whether the documents should be released. This comment suggests that the Department is using the imposition of charges to create a barrier to release.

"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." See the Freedom of Information Act, s3(2), particularly s3(2)(b). You insult my intelligence to suggest that my request is made out of mere curiosity.

"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." The Department is well aware of the FOI Act's provisions that provide for redaction of documents where necessary, e.g. s22 of the FOI Act. If the Department is not well aware, then we are going to have an entirely different, and much more serious, problem to deal with.'

What I took into account

In reaching my decision, I took into account the following:

- 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;
- the department's correspondence of 5 May 2017, notifying you of a reconsideration of charges decision;
- your correspondence seeking internal review of the department's charges decision dated 14 May 2017;
- the content of the documents to which you have sought access;
- the relevant provisions of the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**); and
- the Freedom of Information 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.

Calculation of the charge

I have reviewed the amount of \$226.25, which was the revised assessment of the charge that was notified to you in the reconsideration of charges decision. I note that this amount was based on 3.55 hours of search and retrieval time, and 8.65 hours of decision-making time (excluding the initial five hours of decision-making time).

Search and retrieval time

The 3.55 hours search and retrieval time for your request is based on the following:

- 10 minutes per file for search and retrieval;
- 45 minutes per file for tagging relevant pages; and
- 30 minutes per 10 documents for preparing schedules detailing all relevant documents.

Decision-making time

The total length of decision-making time for your request was 13.65 hours, however the first five hours have been excluded from the calculation of charges and is based on 5 minutes examination and redaction per page, which the Information Commissioner has confirmed is an appropriate benchmark.

The charges associated with FOI requests are not designed to be an application fee, rather they are designed to assist the department deal with the administrative burden of processing FOI requests. I am therefore of the view that the amount of \$226.25 is reasonable and represents the lowest possible cost for the department to process your request.

Waiver or reduction of the charge

I am not satisfied that the department should further reduce or waive the charges imposed under the charges decision, on the following basis:

- you have not provided sufficient evidence of financial hardship;
- the release of documents would not be in the general interest as the scope of the documents does not affect or assist members of the public; and
- you have not put forward other relevant considerations that sufficiently weigh in favour of further reducing or waiving the charges.

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. Financial hardship must be more than an applicant having to meet a charge from his or her own resources, and be more than an applicant discussing the burden of charges to applicants generally, to result in a reduction or non-imposition of a processing charge.

Applicants are generally required to provide some evidence of the financial hardship, which they personally will experience, such as receipt of a pension or income support payment, or

provide evidence of income, debts or assets. You have not provided this evidence. Consequently, I am satisfied that payment of the charge in the amount of \$226.25 would not cause you financial hardship. On that basis, I have not considered this matter further.

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, which 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.

Paragraph 4.81 of the Guidelines provides that when considering the public interest, the matters to be considered include:

- whether the information in the documents is publically 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 documents.

Further, under section 11A(5) of the FOI Act, public interest factors in favour of reducing or waiving a charge are:

- the level of public interest in the documents;
- the general public interest in allowing access to information (including government policy) under the FOI Act;
- the general public interest in openness of administration; and
- promoting the objects of the FOI Act, including:
 - increasing scrutiny, discussion, comment and review of Government activities;
 - facilitating and promoting public access to information, promptly and at the lowest reasonable cost;
 - informing the public on matters of public importance or interest; and
 - assisting participation in debate or discussion.

Paragraph 4.73 of the Guidelines states that circumstances where it may be appropriate to impose an FOI charge include, but are not limited to, where:

- the applicant can be expected to derive a commercial or personal benefit or advantage from being given access and it is reasonable to expect the applicant to meet all or part of the FOI charge;
- the documents are primarily of interest only to the applicant and are not of general public interest or of interest to a substantial section of the public;
- the information in the documents has already been published by an agency and the documents do not add to the public record; or
- the applicant has requested access to a substantial volume of documents and significant work would be required to process the request.

You contended that the department is using the imposition of charges to refuse access to documents, on the basis that the department applied the incorrect public interest test in considering whether charges should be imposed. I note that this is likely in reference to paragraphs 4.79 and 4.80 of the Guidelines which state that:

'The Act requires an agency or minister 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' (s 29(5)(b)).[24] This test is different to and to be distinguished from public interest considerations that may arise under other provisions of the FOI Act.'

'Specifically, 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. Nor will s 29(5)(b) be satisfied by a contention that it is in the public interest for an individual with a special interest in a document to be granted access to it, or that an underlying premise of the FOI Act is that transparency is in the public interest.'

I do not agree that the department has failed to apply the correct test. In finding that '*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*', the department was addressing the question of whether public benefit may flow from the release of documents, as per paragraph 4.81 of the Guidelines.

This response considered the public interest of the general public or a substantial section of the public, as is required by the FOI Act, and identified reasons against disclosure.

Having considered these factors, I am not satisfied that you have provided me with compelling reasons in favour of reducing the charges. As detailed in the previous decision, the documents contain material concerning risk management processes in relation to the Online Compliance Intervention, and the outcome of the release of this material is not in the general public interest or interest of a substantial section of the public.

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

- the transcripts of discussion before the Community Affairs Legislation Committee Estimates, which are available [here](#) and [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](#).

The release of these documents in the public domain has already provided the public with significant information and background into the matters to which your request pertains.

The primary question in determining whether the information would be for the 'general public interest' is whether a benefit would flow, to the public generally or a substantial section of the public, should the information in the documents be disclosed. Due to the release of the documents listed above, I am of the view that the information already substantially exists in the public domain, and the release of the full documents would not significantly contribute to the public debate in a manner that would justify reducing or waiving the charges.

I am not satisfied that you have identified the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure of the documents you are seeking to

access. I also find that the charges fairly reflect the work in providing access to the documents.

In light of these factors, I have decided that there is no public interest in reducing or waiving the revised charge.

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 which 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 the following comment in your correspondence of 10 March 2017 in relation to the department's concerns to properly undertake audit and compliance activities if the information was released:

'This decision is in relation to the charges for processing documents for their release, not whether the documents should be released. This comment suggests that the Department is using the imposition of charges to create a barrier to release.'

I note that charges are designed to be a contribution to the cost of processing a FOI request and do not compensate the full costs associated with the processing of a request. It is my view that the charge has been set at the lowest reasonable cost and the charge has not been used to create a barrier for release, as you contend in your comments above.

On this basis, I am not persuaded by your argument above, as imposing the charge is not contrary to the objectives of the FOI Act or to the provisions in the Guidelines.

Conclusion

In conclusion, I consider that the department was correct in the reconsideration of the charge required in processing your FOI Request 28338. On this basis, I have decided to not to reduce the amount of the charge that was notified to you. Accordingly, the charge imposed for FOI Request 28338 should remain as is \$226.25 and no further reduction or waiver will apply.

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 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.

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 Office of 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 with your application a copy of the Department of Human Services' decision on your FOI request
- 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 Information Commissioner's contact details are:

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

Commonwealth Ombudsman

You may also complain to the 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 Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

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

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