



## Australian Government

### Department of Finance

Reference: FOI 17/53  
Contact: FOI Team  
Telephone: (02) 6215 1783  
e-mail: [foi@finance.gov.au](mailto:foi@finance.gov.au)

Mr Richard Smith  
Right to Know

via email: [foi+request-3246-42f21afb@rightoknow.org.au](mailto:foi+request-3246-42f21afb@rightoknow.org.au)

Dear Mr Smith

### Freedom of Information Request – FOI17/53

Thank you for your email to the Department of Finance (Finance) in which you sought access to the following under the *Freedom of Information Act 1982* (FOI Act).

*... information relating to the booking, mode of transport and cost of the travel for The Hon Josh Frydenberg MP, the Minister of Environment & Energy to attend a press conference in Adelaide on 16th March 2017.*

*Specifically the information I am requesting is:*

- a) The date and time that the Minister's travel to Adelaide was booked;*
- b) The date and time that the Minister travelled to Adelaide;*
- c) The manner of the Minister's travel to Adelaide and the cost of this travel;*
- d) The total cost of travel & accommodation for the Minister & any accompanying staff while in Adelaide on his visit on and around 16th March 2017 (including commonwealth car or hire cars, hotel accommodation, meals etc);*
- e) The date and time that the Minister's travel from Adelaide to his next destination on or after 16th March 2017 was booked;*
- f) The date and time that the Minister travelled from Adelaide on or after 16th March 2017 to his next destination;*
- g) The manner of travel from Adelaide on or after 16th March 2017 to his next destination and the cost of this travel; and*
- h) the details a through g above for any of the Minister's staff that travelled with the Minister for the trip to Adelaide on or around the 16th March 2017.*

### Initial Charges Estimate

On 5 April 2017, Finance notified you that you are liable to pay a charge for processing your request and that the preliminary assessment of that charge is \$43.80.

## **Contention of the charges**

In an email dated 10 April 2017, you outlined your contention of my initial estimate of charges (\$43.80). You sought reduction/waiver of the charges and made the following submissions:

*... 1. I have a fixed income and the discretionary component of my income that is allocated to food each week is \$124. The charges imposed, being \$43.80, represent some 35% of my weekly food budget.*

*I submit to the Department that the payment of the Charges of \$43.80, or part of it, would cause significant financial hardship to me as the amount of \$43.80 represents nearly 2 and a half days of my weekly food budget. In choosing to progress my FOI request, I would have to go without purchasing food for more than 2 days, or forgo other discretionary items of spending to take the place of sustenance; and*

*2. Additionally I also submit to the Department that the call on taxpayer funds to fund the travel costs of elected representatives is a matter of general public interest. This is evident in the significant recent publicity of the travel costs of elected officials including the former Member for Mackellar, Bronwyn Bishop.*

*It therefore follows that, being a matter of general public interest, the release of information in the form of access to the Government Information that is the subject of my FOI request is in the interest of a large section of the Australian public ...*

In accordance with subsections 29(8) and 29(9) of the FOI Act, this letter is a written notice of the reasons for my decision to reject your contention in full and an outline of your rights with respect to review of this decision.

## **Decision on waiver/reduction of charges**

I confirm that I am an authorised officer for the purpose of subsection 23(1) of the FOI Act.

I have considered your request on its merits. In accordance with section 29 of the FOI Act, I have decided not to waive/reduce the charges.

## **Consideration of contention**

In deciding whether to exercise the broad discretion in subsection 29(4), to reduce or not impose a charge, I may consider any relevant matter. However, subsection 29(5) provides that I must consider whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public; and whether the charge would cause financial hardship.

In considering whether charges should be waived, I have had regard to the following:

- the terms of your FOI request;
- the submissions set out in your email of 10 April 2017;
- the content of the documents that fall within the scope of that request;
- the relevant provisions of the FOI Act, including the aims and objectives; and
- the FOI Guidelines and IC Review decisions, as issued by the Office of the Australian Information Commissioner (OAIC).

## Legislation

Subsection 29(5) of the FOI Act provides:

*Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:*

- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and*
- (b) 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.*

In addition, any other relevant matter may be considered, including those matters set out in your submissions.

### *Financial hardship*

You requested reconsideration of the charges on the basis that the charge would impact on your weekly food budget causing significant financial hardship. Although financial hardship exists when payment of a charge leaves you unable to provide basic necessities for yourself, you have not provided any supporting evidence that this may be the case. In the absence of any evidence to verify your claim, I cannot be satisfied that paying the imposed charges of \$43.80 would cause a sufficient degree of financial hardship so as to warrant a reduction or waiver of the charge.

### *Public Interest*

You have also submitted that the release of documents in scope of your request is a matter of general public interest as it relates to taxpayers' funding the travel costs of elected representatives.

The threshold requirement is to identify the benefit that would flow from disclosure of the documents to the public or a substantial section of the public. The test is different to the question of whether it is in the public interest for access to be granted to the documents as set out in the conditional exemptions (see further discussion below).

Section 29(5)(b) requires me to consider 'whether the giving of access to the documents in question is in the general public interest or in the interest of a substantial section of the public'. I have considered your submissions outlined above.

I do not consider that the documents in the request meet the test. While I acknowledge that there are specific community expectations in relation to parliamentary travel, and that the documents may in some way add to the information about the travel of individual elected representatives, it is a reasonable expectation that there would be limited benefit or public debate that would flow from release of the documents due to the specific content and context of the documents.

As such, I consider that release of the documents would not add to public debate or further the public interest in relation to tax payer funding of parliamentary travel. Therefore, I am not persuaded that a case for waiver, on the grounds of public interest, has been demonstrated.

## The public interest test for conditional exemptions

The public interest test for waiver under subsection 29(5) of the FOI Act differs from the public interest test in section 11B of the FOI Act. The fact that giving access would be in the public interest for the purposes of reducing or imposing a charge under section 29 does not mean that giving access to those same, conditionally exempt documents, cannot be, on balance, contrary to the public interest.

No decision on access to the requested documents has been made at this stage.

## Liability to pay a charge

My affirmed assessment of the charge to process this request is as follows:

Task	Rate	Units	Charge
Search & retrieval	\$15 per hour	2.92 hours	\$ 43.80
Decision-making	\$20 per hour	4.83 hours	\$ 96.60
<i>less first 5 hours free</i>		5 hours	\$ -100.00
Photocopies	\$0.10 per page	0 pages	\$ 0.00
<b>TOTAL</b>			<b>\$ 43.80</b>

In accordance with the *Freedom of Information (Charges) Regulations 1982* (Charges Regulations), this estimate has included five hours of decision making time free of charge.

You can agree to pay the charge. If you agree, processing of your request will resume as soon as the department receives a payment, either in full or a deposit.

Payment in full is **\$43.80**. Payment in full entitles you to receive a decision in relation to your request, a schedule which lists the documents relevant to your request, and any documents released.

Regulation 12 of the Charges Regulations provides that the department can receive a deposit. The required deposit for this request is **\$20.00**. Payment of a deposit entitles you to receive a decision in relation to your request and a schedule which lists the documents relevant to your request. Relevant documents would only be released on payment of the balance of charges. Regulation 14 provides a deposit paid by an applicant is not refundable unless the Department decides to waive the charge or fails to make a decision on the applicant's FOI request within the statutory time limit, including any extension.

Your cheque/money order should be made payable to the Collector of Public Monies and addressed to:

FOI Coordinator  
Legal Services Branch  
Department of Finance  
One Canberra Avenue  
FORREST ACT 2603

If you wish to pay by credit card, you should forward a letter which sets out the credit card details and authorises the department to charge that amount to the card. Please note that the department only accepts Mastercard and Visa.

Consistent with paragraph 29(1)(f) of the FOI Act, within 30 days of the date of this notice, you need to either:

- agree to pay the charge indicated above and forward the deposit; or
- withdraw your request; or
- exercise your review rights.

If you fail to notify this department in a manner described above within 30 days of the date on this notice, it will be taken that you have withdrawn your request.

Please note that should you forward a deposit in accordance with section 29 of the FOI Act, you will then accept liability for settlement of the debt with the department upon completion of processing the FOI request. The outstanding charge amount is a debt created in favour of the Commonwealth and therefore, Finance is obliged to pursue recovery of the debt in accordance with the *Public Governance, Performance and Accountability Act 2013*.

### **Processing Time**

In relation to the preliminary assessment of charges, in accordance with section 31 of the FOI Act, the time period for processing your request is suspended from the date of this notice and resumes on either day you pay the deposit or the day on which Finance makes a decision not to impose a charge.

### **Extension of Time - Third Party Consultation**

As document/s falling within the scope of your request may involve the unreasonable disclosure of the business/personal information of a third party, the decision maker is obliged under sections 27 and 27A of the FOI Act to consult with the third parties and give them an opportunity to make submissions regarding possible disclosure of the document/s. The decision maker must take their views into account in determining whether a document is an exempt document.

To enable time for the consultation process, subsection 15(6) of the FOI Act extends the period in which to respond to your request by an additional 30 days. You will be notified of the due date once you have advised the Department in relation to the charges.

### **Review and Appeal Rights**

You are entitled to request an internal review of my decision not to waive/reduce the charges. Your appeal rights are set out in Attachment A as prescribed by 29(9) of the FOI Act.

Please contact the FOI Team on the above contact details if you wish to discuss your request.

Yours sincerely



Greg Miles  
Special Adviser  
Ministerial and Parliamentary Services Division  
Department of Finance

9 May 2017



**Australian Government**

**Department of Finance**

## **Freedom of Information – Your Review Rights**

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

### **Internal Review**

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

### ***How to apply for internal review***

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this attachment.

### **Review by the Australian Information Commissioner (IC)**

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

### ***Do I have to go through Finance's internal review process first?***

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

### ***Do I have to pay?***

No. Review by the IC is currently free.

### ***How do I apply?***

You must apply for IC review in writing and you can lodge your application in one of the following ways:

**Post:** Office of the Australian Information Commissioner

GPO Box 5218  
SYDNEY NSW 2001

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**Fax:** 02 9284 9666

**In person:** Level 3  
175 Pitt Street  
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website ([www.oaic.gov.au](http://www.oaic.gov.au)). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

### ***Making a complaint***

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review.

### ***When can I go to the Administrative Appeals Tribunal (AAT)?***

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$884, although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

### ***Investigation by the Ombudsman***

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the

complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

**Post:** Commonwealth Ombudsman  
PO Box 442  
CANBERRA ACT 2601

**Phone:** 02 6276 0111  
1300 362 072

#### **Finance FOI contact details**

FOI Coordinator

Legal Services Branch

Department of Finance

One Canberra Avenue

FORREST ACT 2603

**Phone:** 02 6215 1783

**Email:** [foi@finance.gov.au](mailto:foi@finance.gov.au)

**Website:** [www.finance.gov.au/foi/foi.html](http://www.finance.gov.au/foi/foi.html)