



21 June 2017

Our reference: LEX 28753

Mr Luke Bacon

By email: [foi+request-3283-a91552e1@righttoknow.org.au](mailto:foi+request-3283-a91552e1@righttoknow.org.au)

Dear Mr Bacon

### Freedom of Information Request – Reconsideration of Charges

I refer to your revised request dated 4 April 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:

‘Could you please send through all documents, including correspondence, from the last year (March 2016 - March 2017) that refer to the payment methods the Department accepts for FOI requesters to pay charges.

Please exclude from the scope all FOI correspondence between requesters and FOI officers. Exclude third party information, but still include correspondence with ministerial staff.

I am only interested in internal documents; and correspondence between department staff, between staff and ministerial staff, and staff and 3rd parties.’

### Background

On 24 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 \$414.80 (the **charge notice**). The charge was calculated as follows:

Search and retrieval time: 8.32 hours, at \$15.00 per hour:	\$124.80
Decision-making time (*after deduction of 5 hours): 14.5 hours, at \$20.00 per hour	\$290.00

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<b>TOTAL</b>	<b>\$414.80</b>
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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 22 May 2017 you responded to the charge notice, contending that the charge should be reduced.

## What I took into account

In reaching my decision I took into account:

- the department's correspondence of 24 April 2017, notifying you of the charge;
- your correspondence of 22 May 2017, contending that the charge should not be imposed;
- documents falling within the scope of your request;
- consultations with departmental officers about:
  - the nature of the requested documents; and
  - the department's operating environment and functions;
- relevant case law;
- 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**).

## Scope of documents

As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the charge.

The searches of the department's records conducted at that time identified 38 documents, totalling 233 pages, which appeared to be within the scope of your request. On the basis of these searches, the department 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, I reviewed the documents that were originally considered. I determined that there were some documents included in the calculation of the preliminary charge which, on further investigation, are not in scope of your revised request. There are in fact 16 documents, totalling 93 pages, in scope of your request. I have re-calculated the estimated charge as follows:

Search and retrieval time: 4.47 hours, at \$15.00 per hour:	\$67.00
Decision-making time (*after deduction of 5 hours): 7.09 hours, at \$20.00 per hour	\$141.80

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<b>TOTAL</b>	<b>\$208.80</b>
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The new estimated charge resulted in a lower amount than the preliminary charge. This is because there are fewer documents than the preliminary estimate.

In reassessing the charge in relation to the documents, I have allowed two minutes to examine each page for decision making and an additional three minutes per page depending on the estimated level of redaction (either in full or in part) that would apply. I note that this is an estimate only and should you proceed with this application, a final charge will be determined at the time of decision, taking into consideration the actual number of pages released in full, released in part, or refused.

On this basis, I have decided to reduce the charge to \$208.80. I am satisfied that this is the lowest reasonable cost when considering the volume of documents involved and the significant amount of work that would be involved in reviewing each document and making the necessary exemptions.

I have also considered your submissions in considering whether to further reduce or waive the reduced charge of \$208.80. My considerations are discussed below.

### **Reconsideration of the charge – your submissions and other considerations**

On 22 May 2017 you wrote to the department contesting the charge. The reasons you provided in support of your contention that the charge be waived were:

'I'd like to apply for reduction of the \$414.80 fee on the basis of the strong public interest in transparency of the department's Freedom of Information process. The method of payment for FOI request charges is an often overlooked but important aspect of the accessibility of the FOI system. Some methods require people to have a credit card, other methods (like money order) require additional fees on top of the FOI charges. These are barriers, potentially reasonable or not, to people making FOI requests. There are important privacy and security considerations that also feed into decisions about payment methods.

The public require access to our documents that refer to FOI payment methods in order to understand and assess how the department makes decisions about them, so that they can participate in modernising the [sic] our public authority's system.

As additional evidence that this request is intended for public benefit, rather than private or commercial, I've made this request through [righttoknow.org.au](http://righttoknow.org.au). All the documents will be immediately public for everyone's benefit.'

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.

Furthermore, in *MacTiernan and Secretary, Department of Infrastructure and Regional Development (Freedom of Information)* [2015] AATA 584 the Administrative Appeals Tribunal found that where release is in the general public interest, or in the interest of at least a substantial section of the public, charges ought to be waived. Conversely, this decision also supports the view that where there is little public interest in the release of information that is within scope, then it is appropriate for the charges to be affirmed.

Paragraph 4.85 of the Guidelines also states that:

'The decision in *MacTiernan and Secretary, Department of Infrastructure and Regional Development (Freedom of Information)* explains that an agency should compare the number of documents within the scope of an FOI request and the cost of processing the request against the subject matter of the request in deciding whether to exercise its discretion to waive a charge on public interest grounds.'

I am not satisfied that the balance in favour of waiver of charges, which existed in *MacTiernan*, is present in this current matter. Unlike *MacTiernan*, in which the amount of \$2,291.36 in charges was significantly less than the amount involved in the subject matter of the FOI request (namely a proposed \$1 billion plus taxpayer funded infrastructure project), the amount of the charge notified to you is not significantly disproportionate to the potential amount involved in the subject matter of your request.

To illustrate, the Office of the Australian Information Commissioners' 2015-2016 Annual Report shows that there was a total of \$147,267.00 collected by Commonwealth Agencies and Ministers in relation to FOI charges. The Department of Human Services collected \$4,289.00 in that financial year, representing less than 3% of the total amount of FOI charges collected. In addition, I note that out of the 4,687 FOI requests received by the department in the 2015-2016 Financial Year, only 61 charges notifications were issued.

Furthermore, I am not satisfied that release of the documents would contribute to public understanding of the reasons for the methods used by the department to collect and process money on behalf of the Commonwealth in relation to FOI requests. The methods currently used by the department are well-established, long-standing and uncontroversial arrangements for making payments. There is sufficient information already available in the public domain in relation to the subject matter of your request. For example, the charge notice issued by the department to each FOI applicant, who is required to pay a charge, contains information on payment methods.

You also submitted that:

'[a]s additional evidence that this request is intended for public benefit, rather than private or commercial, I've made this request through [righttoknow.org.au](http://righttoknow.org.au). All the documents will be immediately public for everyone's benefit.'

I acknowledge that the [righttoknow.org.au](http://righttoknow.org.au) website provides a useful mechanism for the public to make FOI requests and allows correspondence and any documents to be published automatically. However I am not persuaded that this sufficiently demonstrates the necessary public benefit that

may flow from the release of the documents, given that the department already has an obligation to make the documents available to the public under the FOI Disclosure Log when documents are released as a result of an FOI request. Accordingly, I am not persuaded that the charges should be reduced or waived on this ground.

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 have considered that the charges associated with FOI requests are not designed to be an application fee. Rather, they are designed to assist the department to deal with the administrative burden of processing FOI requests. Having viewed the documents within the scope of your request, I am satisfied that estimated time and the amount of charges notified to you are reasonable and appropriate.

In addition, the figures used by the department to calculate the time taken to process your request (2 minutes to examine a page and 3 minutes to consider and apply any exemptions), for the purpose of issuing the charges notification to you, are consistent with what the Australian Information Commissioner has previously found to be reasonable. For example, in *Cash World Gold Buyers Pty Ltd and Australian Taxation Office (Freedom of information) [2017] AICmr 20*, the Information Commissioner found that between 30 seconds to 5 minutes per page is the reasonable estimate of time required for an agency to assess and edit a document.

You have not provided any other submissions 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 or for any other reason.

I have, however, decided to reduce the charge of \$414.80, as notified to you on 24 April 2017 to \$208.80, due to the reduced number of documents in scope. I am satisfied that this amount is appropriate and reasonable in order to provide you with a decision on access to the documents.

#### **Required Action**

If you would like the department to continue processing your request, you should 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.

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

## **Option A - pay the charge**

As the charge exceeds \$100.00, you are required to pay a deposit of 25%, being \$52.20, 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 28753 with your payment.

Should you elect to pay the charge please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto: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](mailto: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 A** for more information about how arrange a review.

**Further assistance**

If you have any questions please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto:FOI.LEGAL.TEAM@humanservices.gov.au).

Yours sincerely

Jonathon  
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](http://www.oaic.gov.au)

Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

Email: [enquiries@oaic.gov.au](mailto: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](http://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](http://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](http://www.ombudsman.gov.au)

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