



Australian Government
Department of Communications and the Arts

Mr Gothe-Snape
Right to Know
(via email: foi+request-3299-cccc19c@righttoknow.org.au)

Re: Freedom of Information (FOI) Request (Reference No. 26-1617) – internal review of charges decision

I refer to your email of 27 April 2017, in which you applied for internal review of the preliminary charges decision made by the Legal Director – Position Number 112404 of this Department's Office of General Counsel.

That decision was in relation to your request under the *Freedom of Information Act 1982* (the FOI Act) for:

"...the topics list for briefs created in preparation for hearings of Senate 2016-17 Additional Estimates."

I am the decision-maker authorised in accordance with the provisions of section 23(1) of the FOI Act to conduct a review of the charges decision. I had no part in the original decision making process.

In making my decision I have had regard to:

- . your original FOI request and request for waiver of charges dated 28 March 2017;
- . the preliminary estimate of charges decision letter of 24 April 2017;
- . your subsequent request for internal review;
- . the documents identified by the Department as potentially relevant to your request; and
- . the *Freedom of Information Act 1982*, the 'Guide to the *Freedom of Information Act 1982*' and the 'Guidelines issued by Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*'.

I am writing to inform you that I have decided to vary the preliminary estimate of charges decision and to waive the re-calculated charge of \$10.00 in full.

Reasons for decision

I note that you have not responded to the Department's email dated 25 May 2017 seeking clarification of the scope of your request and specifically whether it is a request for a singular or multiple documents.

In making my decision, in the absence of such confirmation, I have had particular regard to the fact that your request for "... the topics list" for briefs created in preparation for hearings of Senate 2016-17 Additional Estimates is framed to capture a single document and is not expressed to include drafts or any ancillary documents.

That view is reinforced upon consideration of your submission for waiver of the charges in the public interest, as helping to identify "... the most important policy areas within the department's responsibilities". I note the reference to "The documents" at the beginning of that sentence; however, I consider this to be properly understood as a reference to "the topics". This interpretation of your request is to be preferred as it is a logical construction that makes sense of the request in its entirety without leaving any inconsistency in the request.

I have reviewed the decision-maker's original charges decision. I note that the charges assessment refers to 4 documents with a total of 6 pages as being within scope.

Under section 54C of the FOI Act, I must make a fresh decision. For the reasons given above and based on my review of the documents that could potentially be relevant to your request, I consider that the number of relevant documents is 1 and the number of pages is 2.

I consider that the search and retrieval time previously determined proceeded on the assumption that draft or ancillary documents may be caught by the request. I do not find that your request captured such documents. Therefore, I consider that the relevant time for search and retrieval to be 40 minutes and decision-making time to be 1.25 hours. As the first 5 hours of decision-making is free, I calculate the total applicable charges at \$10.00 for 40 minutes search and retrieval at \$15 per hour. I do not consider that there is any charge applicable for delivery, which will be via email.

Waiver contentions

Public interest

I have taken into account your contentions on the waiver of charges, namely that there is a significant public interest in identifying the most important policy areas within the Department's responsibilities.

I acknowledge the material contained in the documents captured by your FOI request may be of public interest. However, I am not satisfied the giving of access to the documents in question would be *in the general public interest* nor of interest to a substantial sector of the general public. This is because I do not consider the material captured by your request would add value to existing public debate and understanding of the issues which you have identified as being of interest.

In making this finding, I take into account the fact that the Additional Estimates proceedings were streamed live over the internet in full via the Australian Parliament House website free of charge and that an authoritative written transcript is published on that website in the form of Hansard, which is also available free of charge. You have not made any contention that you are unable to access this service. I also take into account the fact that the Department maintains a comprehensive website and publishes a Corporate Plan which is freely available on that

website. I therefore find that there is no basis for waiving the charges on the grounds of public interest.

Financial hardship

As you have not made any submissions in regard to a financial hardship ground for waiver, I have determined that the charges are not to be waived or reduced under section 29(5)(a) of the FOI Act.

Other relevant factors

Charges are a vital component of the FOI regime which makes it sustainable and appropriately balanced. Significant time and cost to the Australian community is attributable to processing of FOI requests. The processing charges are designed to ensure the Australian community recoups a fair portion of the costs of processing non-personal FOI requests, given processing such requests diverts significant community resources away from other key functions. Further, the charges as calculated do not capture the full cost to the Department of responding to FOI requests.

However, I do not consider that I am bound to only take the public interest and financial hardship into account when making a decision on waiver. No charge is applicable for the decision making process or delivery. The charge for search and retrieval time is minimal (\$10.00). The administrative burden of levying a very small charge for the processing of an FOI request is almost identical to that for a significantly larger sum. I take into account the time required to prepare an invoice, make arrangements for the receipt and verification of payment and internal allocation of costs. Taking into account the internal resources required to administer collection of the charge, versus the sum of such a charge (\$10.00); I exercise my discretion to waive the charge in full for processing this request.

Review rights

As previously advised, the FOI Act provides for rights of review of decisions. A copy of 'Office of the Australian Information Commissioner's FOI fact sheet 12 – Your review rights' is attached.

Yours sincerely

A handwritten signature in black ink, appearing to be 'SG', written in a cursive style.

Sarah Godden
General Counsel
29 May 2017