



Mr Jackson Gothe-Snape

By email: [foi+request-3301-58cae542@righttoknow.org.au](mailto:foi+request-3301-58cae542@righttoknow.org.au)

Dear Mr Gothe-Snape

1. I refer to your request received by the Department of Education and Training (the department) on 28 March 2017 for access under the *Freedom of Information Act 1982* (FOI Act) to:

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

### Background

2. On 7 April 2017 the department advised you of the preliminary estimate of the charge for processing your request, being \$75.00 (the Charge).
3. On 13 April 2017 the department received your correspondence contending that the Charge had been wrongly assessed pursuant to section 29 of the FOI Act. Specifically, you made the following submissions in support of your request for non-imposition of the Charge:

*Either:*

*1) Search and decision-making charges should be nil*

*Multiple departments have provided topic lists of estimates briefs for free, most recently the Department of Infrastructure:*

*[https://www.righttoknow.org.au/request/201617\\_additional\\_estimates\\_topi\\_13](https://www.righttoknow.org.au/request/201617_additional_estimates_topi_13)*

*or,*

*2a) Search charges should be nil*

*The document constitutes part of the regular business of the department, and the public can have confidence that the government maintains a professional standard of record-keeping. It should not require searching for.*

*and,*

*2b) Decision-making charge should be below a previous analogous request.*

*According to this request for a topic list of estimates briefs*

*(<https://www.righttoknow.org.au/request/2729/response/7372/attach/3/Gothe%20Snape%20letter.pdf>), decision-making required 5.78 hours of decision-making time. The current request is analogous to that earlier request, so the decision-making time estimate should be equivalent, or below, given the additional legal and decision-making experience accumulated by the department since that estimate was made in November.*

4. I am authorised to make decisions under the FOI Act and the following is my decision in relation to your request for non-imposition of the Charge and the reasons for my decision.

#### Decision

5. I have decided not to waive or reduce the Charge.

#### Reasons for decision

6. I have taken the following material into account in making my decision:
- your request for documents dated 28 March 2017;
  - the department's letter dated 7 April 2017 notifying you of the Charge;
  - your email received on 13 April seeking non-imposition of the Charge;
  - the documents falling within the scope of your request;
  - the FOI Act;
  - the *Freedom of Information (Charges) Regulations 1982* (the Regulations); and
  - Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

#### Calculation of the Charge

7. 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.
8. In its letter dated 7 April 2017, the department advised that it has in its possession approximately 42 pages relevant to your request. The Charge, totalling \$75.00, was calculated as follows:

Search and retrieval time: 1 hour, at \$15.00 per hour:	15.00
Decision-making time: 8 hours minus the first 5 hours* at \$20.00 per hour:	60.00
<b>TOTAL</b>	<b>\$75.00</b>

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

9. In calculating a processing charge for a freedom of information application, the department applies relevant provisions of the FOI Act, the Regulations and the Guidelines in relation to the amount it is permitted to charge. The department calculates the amount it may charge based on:
- the time taken to search for, and retrieve, files containing documents that fall within the scope of the request;
  - the number and size (volume) of the documents that have been identified as falling within the scope of the request and the time taken for decision-making in relation to each page of each document (less the first five hours of decision-making time, which are free of charge); and
  - the number of pages considered sensitive, requiring redaction (potentially requiring extra decision-making time).
10. The department enters the information regarding the number and nature of the documents and the time taken to locate and retrieve those documents into a calculator provided by the Australian Government Solicitor. While use of this calculator is not mandated, it is provided to agencies for use in the calculation of processing charges under the FOI Act and is in common usage. The

decision-maker then applies his or her own experience to evaluate the reasonableness of the amount calculated.

### **Reduction or non-imposition of the Charge**

11. Subsection 29(5) of the FOI Act provides that, without limiting the matters that an 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.
12. I have also considered subsection 3(4) of the FOI Act which provides that one of the objects of the Act is for functions and powers to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

### **Financial hardship**

13. You did not contend and there is no evidence that the imposition of the Charge would cause you financial hardship. As such, I have not given this factor any further consideration in reaching my decision.

### **Public interest**

14. In your correspondence dated 28 March 2017 you contended that all fees should be waived on public interest grounds. According to your submissions this is because '*...the documents help identify the most important policy areas within the department's responsibilities*'.
15. Paragraph 29(5)(b) of the FOI Act provides that the department must 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'. This means that there must be a benefit flowing generally to the public or a substantial section of the public following disclosure of the documents subject to your FOI request.
16. The Guidelines explain at paragraph 4.80 that paragraph 29(5)(b) will not be satisfied '*...by a contention that is in the public interest for an individual with a special interest in a document to be granted access to it...*'.
17. Further at paragraph 4.81 the Guidelines explain that an applicant relying on paragraph 29(5)(b) should identify the 'general public interest' or the 'substantial section of the public' that will benefit from the disclosure of the documents.
18. While you may have a special interest in these documents, I do not think the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public. In my view the documents do little more to identify the most important policy areas within the department's responsibilities, than other publicly accessible resources and I do not think this justifies the waiver or reduction of the Charge.

### **Contention that charge was wrongly assessed**

19. In your correspondence dated 13 April 2017 you contended that the charge was wrongly assessed for two reasons.

*Search and decision-making charges should be nil*

20. Firstly, you contended that search and decision-making time should be nil, because other departments provided similar information without charge. The Charge was calculated and issued in accordance with the FOI Act and Regulations and is consistent with the department's policy of generally charging applicants for the processing of FOI requests.

*Search charges should be nil and decision-making charge should be below a previous analogous request*

21. Your second contention was in two parts. Firstly, you contended that the search charges should be nil because the document is part of the regular business of government; the department should maintain a professional standard of record-keeping; and finding the documents should not require a search. The second part of this contention is that the decision-making component of the Charge should be less than the decision-making component of a preliminary estimate of charge for a similar FOI request you made in 2016. According to your contentions this was because the department should have accumulated additional legal and decision-making experience since your 2016 request.
22. The estimate of 1 hour for search and retrieval was based on discussions with the departmental officer who undertook this task. The search returned 36 separate documents consisting of 42 pages. I am satisfied that this estimate is accurate.
23. The calculation of the decision-making component of the Charge was based on a number of factors including the number of pages within the scope of the request. As noted above, the department has found 42 pages within the scope of your request. I note that the earlier preliminary estimate of charge for the 2016 request was calculated on the basis of 28 pages that were within the scope of that request. I am satisfied that the decision-making component of the Charge accurately reflects the time that would be spent in processing your request.
24. In summary, after reviewing the Charge and the way it was calculated and having considered your contentions, I am satisfied that the Charge was correctly assessed and that the Charge should not be reduced or waived.

**Options to proceed with your request**

25. In order for your request to continue to be processed, you are required to respond in writing in accordance with one of the following options:
- (a) pay the Charge (either the deposit or in full); or
  - (b) request a review of the decision to impose the Charge.
26. Alternatively, if you wish to withdraw your request at this time, you may do so in writing.

*Option A – pay the Charge*

27. As the Charge is less than \$100.00, you are required to pay a deposit of \$20.00 within 30 days of receiving this notice. You may, of course, elect to pay the Charge in full at this point.
28. The amount due can be paid by cheque or money order made out to the Collector of Public Monies—Education, or by credit card. If you'd like to pay by credit card, please fill out the attached authorisation form and send it back to us.

29. Please note, the charge is a fee for the *processing* of your request, not a payment for documents. Payment of the charge in full (or deposit) does not guarantee you access to any or all of the documents you have requested. As your request is being processed, the release of documents will be considered by the decision-maker in accordance with the provisions of the FOI Act.

*Option B – request a review of the decision to impose the Charge*

30. I have enclosed information about your rights of review under the FOI Act at **Attachment A**.
31. If the department has not received payment of the charge within 30 days as specified under Option A, or you do not exercise your rights of review set out in Attachment A within the period required, your FOI request will be taken to have been withdrawn.
32. Please contact me on (02) 6240 8380 if you would like to discuss this matter.

Yours sincerely



Milli Wong  
Principal Government Lawyer (a/g)  
Schools, Child Care and Corporate Legal Branch  
15 May 2017

## **Attachment A**

### **Internal Review**

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Post:           The FOI Coordinator  
                   Schools, Child Care and Corporate Legal Branch  
                   Department of Education and Training  
                   Location code: C50MA10  
                   GPO BOX 9880  
                   CANBERRA ACT 2601

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

### **External Review by the Australian Information Commissioner**

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC you must apply for the review, in writing or by using the online merits review form available on the AIC's website at [www.oaic.gov.au](http://www.oaic.gov.au), within 60 days of receipt of this letter. To assist the AIC your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act.

Applications for review or complaint can be lodged in one of the following ways:

Online:        [www.oaic.gov.au](http://www.oaic.gov.au)  
 Post:           GPO Box 5218 Sydney NSW 2001  
 Fax:           +61 2 9284 9666  
 Email:         [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.

### **The Commonwealth Ombudsman**

You can 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.

A complaint to the Commonwealth Ombudsman may be made orally or in writing. The Ombudsman may be contacted for the cost of a local call from anywhere in Australia on telephone 1300 362 072.

# Credit Card Authorisation

## About this form

You have advised the Department of Education and Training that you would like to pay the charge imposed for the processing of your freedom of information (FOI) request by credit card. This form collects the details required from you in order to process that payment by credit card. Please ensure all fields have been filled in correctly.

## Part 1: Applicant Details

Name:

Contact number:

## Part 2: Credit Card Details

I authorise the Department of Education to debit my credit card in the amount of: (please specify amount in the space provided)

\$

Cardholder's Name (please print name in capital letters):

Credit Card Number:

Credit Card Type (Diner's Card not accepted):

Credit Card Expiry Date:

Card Holders Signature:

Date:

## Privacy Statement

The personal information collected on this form is collected by the Department of Education and Training for the purposes of administering payment of the charge imposed for processing your freedom of information request. The information collected will not be disclosed unless authorised or required by law.