



2 June 2017

Our reference: LEX 28922

Mr Bill Tarte

By email: foi+request-3337-5dc192ae@righttoknow.org.au

Dear Mr Tarte,

Freedom of Information Request – Reconsideration of charge decision

I refer to your request, dated and received by the Department of Human Services (the **department**) on 3 April 2017, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

I request access to a copy of any privacy impact assessments held by DHS Programme Advice and Privacy Branch as referred to in my previous request here by Thomas:

<https://www.righttoknow.org.au/request/3191/response/8981/attach/html/4/LEX%2028087%20Decision%20Decision%20final.pdf.html>. If any PIA's were provided in a combined report, I request access only to that part of the report relating to the PIA'.

The department has interpreted your request to be for all privacy impact assessments from 1 January 2016 that are held by the department's Programme Advice and Privacy Branch.

Reconsideration of Charges

The following is my decision in relation to your request for reduction or non-imposition of the charge imposed under the FOI Act (the **charge**). I have decided to not to reduce the amount of the charge that was notified to you.

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

Background

On 2 May 2017, you were notified that you are liable to pay a charge for the processing of your request and that the preliminary assessment of that charge is \$1,128.95 calculated as follows:

Search and retrieval time: 12.57 hours, at \$15.00 per hour:	\$188.55
Decision-making time (*after deduction of 5 hours): 47.02 hours, at \$20.00 per hour	\$940.40
TOTAL	\$1,128.95

*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 2 May 2017 you responded to the notification of the preliminary charge, challenging the charge of \$1,128.95. You stated that:

'As I am requesting this as a citizen rather than as a memeber [sic] of an organisation I would like to contend that paying this charge would cause me financial [sic] hardship.'

What I took into account

In reaching my decision I took into account:

- your initial request dated 3 April 2017;
- the department's correspondence of 2 May 2017 notifying you of the charge;
- your correspondence of 2 May 2017 contending that the charge should not be imposed;
- documents falling within the scope of your request;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**);
- the Guidelines issued by the Office of the Australian Information Commissioner (OAIC) under section 93A of the FOI Act (the **Guidelines**); and
- the OAIC's *FOI fact sheet 7: Freedom of information - charges*

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

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.

On 2 May 2017, you were notified that you are liable to pay a charge for the processing of your request and that the preliminary assessment of that charge is for the amount of \$1,128.95.

Search and retrieval

The search and retrieval time estimate that was notified to you was 12.57 hours. This was based on the following:

- 10 mins 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 decision making time estimate that was notified to you is 47.02 hours. This is a reduction from the total calculated examination time of 52.02 hours (based on an average examination time of two minutes per page and an average redaction time of three minutes per page) as you have not been charged for the first 5 hours of decision-making time.

My finding on the calculation of the charge

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.

In *'EU' and the Department of Human Services* [2015] AICmr 15, the Australian Information Commissioner held that an estimate of 5 minutes per page in total to examine and edit each page within scope of the request is reasonable. On that basis, I am satisfied that an average examination time of two minutes per page and an average redaction time of three minutes per page is an appropriate estimation.

I have reviewed the documents in scope of the request. There are approximately 13 documents totalling approximately 482 pages. The documents within scope are of a complex and sensitive nature, which would attract the application of one or more exemptions under the FOI Act. I am therefore of the view that the documents would require lengthy examination and extensive redaction on most pages.

In light of the reasoning set out above, I am of the view that the estimated processing time for decision making as advised to you is reasonable and the corresponding charge represents the lowest possible cost for the department to process your request.

I am of the view that the charge, as calculated, fairly reflects the work involved in processing your request and is a fair contribution towards the cost of processing your request.

Reasons for decision

I note that subsection 29(5) of the FOI Act prescribes matters that I must take into account in determining whether or not to reduce or not to impose the charge. 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.

Paragraph 4.75 of the Guidelines states:

'Whether payment of a charge would cause financial hardship to an applicant is primarily concerned with the applicant's financial circumstances and the amount of the estimated charge. Financial hardship means more than an applicant having to meet a charge from his or her own resources. The decision in *'AY' and Australian Broadcasting Corporation* referred to the definition of financial hardship in guidelines issued by the Department of Finance for the purpose of debt waiver decisions:

Financial hardship exists when payment of the debt would leave you unable to provide food, accommodation, clothing, medical treatment, education or other necessities for yourself or your family, or other people for whom you are responsible.'

I note that you have contested the preliminary charge amount on the basis of financial hardship. However, you have not provided any evidence to support this contention. On that basis, I do not consider that you have sufficiently demonstrated that payment of the charges cause financial hardship.

Public Interest

Paragraph 29(5)(b) of the FOI Act provides that, without limiting the matters the 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 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 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.

Relevantly, paragraph 4.81 of the Guidelines states:

'an applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur'.

In addition, paragraph 4.80 of the Guidelines state that:

'...the public interest test for waiver in s 29(5)(b) is different to the public interest test in s11A(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.'

Public interest factors in favour of reducing or waiving a charge include:

- 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; and
 - informing the public on matters of public importance or interest, and assisting participation in debate or discussion.

In your email of 2 May 2017, you did not make a submission on how the waiver of the charge would be in the public interest. Nevertheless I have considered whether there is a public interest in reducing or waiving the charge.

I am not satisfied that there are compelling reasons in favour of reducing or waiving the charge. This is because the documents contain material regarding a number of the department's systems and processes, across several programs, which relate to the collection, management and protection of personal information. The release of the documents would compromise the department's ability not only to protect personal information but also to obtain accurate and comprehensive information from its customers, who may understandably be reluctant to provide their personal information to the department if they did not feel confident that the department would properly safeguard their personal information. This is an outcome that is not in the general public interest or in the interest of a substantial section of the public.

I contend that the charges have been set at the lowest reasonable cost noting that they have already been reduced.

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 note that you have not provided any evidence to indicate that the charges should be reduced or waived on other grounds. On that basis, I have not considered this matter further.

Conclusion

On balance, I am not persuaded that there is financial hardship, public interest or other grounds to support a reduction or waiver of the charge. I consider that the calculation of the charge is a fair reflection of the work involved in processing your request.

I have therefore decided to affirm the charge for the amount of \$1,128.95 that was notified to you on 2 May 2017.

Options to proceed with your request

In order for your request to continue to be processed, you are required to respond in writing within 30 days of receipt of this notice in accordance with one of the following options:

- A. Pay the charge;
- B. Request a review of the decision to impose the charge; or
- C. Withdraw your request.

Further information on each of these options is set out below.

Option A – Pay the charge

The amount due should be paid by cheque or money order and made out to the Collector of Public Monies. Please quote reference number LEX 28922 with your payment.

Please send this cheque or money order to:

FOI and Information Release Branch
Legal Services Division
Department of Human Services
18 Canberra Ave, Forrest ACT 2603

If you elect to pay the reduced charge amount, please email FOI.Legal.Team@humanservices.gov.au once you have posted your cheque or money order to advise us of your payment.

Option B – Request a review of the decision to impose the charge

Please find attached a document setting out your rights of review at **Attachment A**.

Option C – Withdraw your request

If you wish to withdraw your request, you may do so in writing. Alternatively, you may wish to consider narrowing the terms of your request. If the scope of your request can be reduced, the charge may be recalculated accordingly.

Further Information

Should you have any enquiries concerning this matter, please contact me at FOI.Legal.Team@humanservices.gov.au.

Yours sincerely

Charlie
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 an 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.