



3 July 2017

Our reference: LEX 30073

Mr Bill Tarte

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

Dear Mr Tarte

Freedom of Information Request - Internal Review of Charges

I refer to your correspondence, dated and received by the Department of Human Services (the **department**), on 3 June 2017. You requested an internal review of the decision made by a delegate of the department on 2 May 2017 (LEX 28922) under the *Freedom of Information Act 1982* (the **FOI Act**) (the **charges decision**).

I am an authorised decision-maker under subsection 23(1) of the FOI Act to make internal review decisions under section 54C of the FOI Act. As you have requested an internal review, I am also a separate decision-maker to the FOI Delegate involved with your substantive FOI request LEX 28922. My decision is set out below.

Background

The department received your original request on 3 April 2017 for access to the following documents under the FOI Act:

'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'.

On 2 May 2017, the department issued you with a preliminary assessment of the charges involved in processing your request (as the requested documents contain non-personal information). In this letter, the department also advised you that 13 documents (totalling 482 pages) had been identified as falling within the scope of your FOI request. In accordance with section 29 of the FOI Act, it was determined that you were liable to pay an estimated charge of \$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

On 2 May 2017, you wrote to the department by email, contending that the charge of \$1,128.95 be waived on the grounds that payment of the charge would cause financial hardship.

On 2 June 2017, the department notified you of a decision in relation to the reconsideration of the charges decision. In this decision, the department decided to not to reduce or waive the charge on the grounds of financial hardship, public interest or other grounds. On that basis, the charge of \$1,128.95 was affirmed.

On 3 June 2017, you requested an internal review of the department's decision to impose charges for FOI request LEX 28922, in the following terms:

'I am writing to request an internal review of Department of Human Services's handling of my FOI request 'Privacy impact assessments held by DHS Programme Advice and Privacy Branch'.

I believe that I have been unable to directly correspond in a way that protects my anonymity and at the same time can take into account how the imposition of the charges will cause me financial hardship. All I require is a way of me calling the FOI officer to discuss this.

A full history of my FOI request and all correspondence is available on the Internet at this address: https://www.righttoknow.org.au/request/privacy_impact_assessments_held'.

Internal Review Decision on charges

I have decided, under section 54C and subsection 29(8) of the FOI Act, to affirm the decision, made following your request for reconsideration, to impose a charge. You are therefore liable to pay the processing charge of \$1,128.95.

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

Information Considered

In reaching my decision, I took into account the following:

- 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;
- the department's correspondence of 2 June 2017, notifying you of the decision to affirm the charge imposed;
- your correspondence seeking internal review of the department's decision to affirm the charge, dated 3 June 2017;
- the contents of the documents falling within the scope of your request;
- the relevant provisions of 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**).

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 were liable to pay a charge for the processing of your request and that the preliminary assessment of that charge was \$1,128.95, based on 13 documents totalling 482 pages.

As set out above, the preliminary estimate of charge was calculated as follows:

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

A detailed breakdown of the time taken to process the request is set out below:

Search and retrieval time	12.57 hours
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Examine pages for decision-making at an average of 2 minutes per page	16.07 hours
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Redaction time at 5 minutes per page for 482 pages	24.10 hours
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Consult with third parties (1 hour per third party)	5.00 hours
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Draft statement of reasons	6.86 hours

TOTAL***64.60 hours**

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

Search and retrieval

The search and retrieval time for processing your request has been estimated at 12.57 hours, 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.

Given the broad range of documents requested, the process of searching for and retrieving the relevant documents will be a time-consuming task.

This is because, the documents are held across a number of electronic files, each of which required an individual search in order to obtain the documents you have requested. As such, the estimated processing time for search and retrieval is a conservative estimate.

Decision making time

In the calculation, as set out above, the estimated processing time for decision-making is 47.02 hours (after the deduction of five hours).

On my review of the documents you have requested, I have found that the documents contain a substantial amount of third party business information as well as sensitive operational information. Due to the complex nature of these documents, making a decision on disclosure of the documents would require lengthy examination and extensive redaction of most pages identified. On that basis, I am satisfied that the estimated processing time for decision making is reasonable.

In light of the reasoning set out above, 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.

The charges associated with FOI requests are not designed to be an application fee or a fee ensuring the release of documents. Rather, they are designed to assist the department to deal with the administrative burden of processing FOI requests.

Waiver or reduction of the charge

I am not satisfied that the department should reduce, or waive the charges imposed under the reconsidered charges decision, for the following reasons:

- you have not provided any evidence of financial hardship;
- the documents would not assist members of the public in debate or discussion; and

- you have not put forward other relevant considerations that sufficiently weigh in favour of reducing, or waiving the charges.

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.

In your email dated 3 July 2017, you provide the following:

‘I believe that I have been unable to directly correspond in a way that protects my anonymity and at the same time can take into account how the imposition of the charges will cause me financial hardship.’

In regards to waiver of a charge on the grounds of financial hardship, paragraph 4.77 of the Guidelines states:

‘An applicant relying on this ground could ordinarily be expected to provide some evidence of financial hardship. For example, the applicant may rely upon (and provide evidence of) receipt of a pension or income support payment; or provide evidence of income, debts or assets’

I understand that you wish to protect your anonymity, however, the department cannot consider your financial circumstances in the absence of evidence. On that basis, I have not considered this matter further.

Public interest

In your emails dated 2 May 2017 and 3 June 2017, you did not provide submissions regarding how disclosure of the documents would be in the public interest. Nevertheless, under paragraph 29(5)(b) of the FOI Act, I am required to take into account whether the provision of access to the documents 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.

Paragraph 4.81 of the Guidelines 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.

I am not satisfied that there are compelling reasons in favour of reducing or waiving the charge, because providing access to the documents is contrary to the public interest as their release would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the department’s operations.

This is because the documents include detailed information regarding the process of collection, management and protection of personal information. Release of the documents would adversely

affect and compromise the department's ability to collect accurate and comprehensive information about customers, and protect disclosure of such information to the general public.

In *'IN' and Australian Taxation Office* [2016] AICmr 33 (the *IN* decision), the then Acting Australian Information Commissioner agreed that release of documents containing certain processes used by the ATO when conducting audits:

- could reasonably be expected to make it more difficult for the ATO to undertake audit activities generally; and
- have a substantial adverse effect on the proper and efficient conduct of ATO operations.

In my view, the *IN* decision applies in relation to the documents that are the subject of your request, in that there is a public interest in protecting the confidentiality of the department's management of personal information. Release of such information could reasonably be expected to impede the management of personal information and thereby impede the proper and efficient conduct of the department's operations. Therefore, release of the documents would be contrary to the public interest.

Further, while I accept that the department's collection of personal information has been the subject of media attention, consideration of the public interest is not primarily concerned with curiosity or commentary. The primary question is whether a benefit will flow to the public generally or a substantial section of the public from disclosure of the information in the documents.

I note that since the department received your initial request, there has been a significant increase in the amount of information that is now in the public domain.

For example, the following information is available:

- the Community Affairs Legislation Committee Estimates Additional Budget Estimates 2016-17 Report (pages 15 – 16), which is available at http://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/claccte/estimates/ad1617/index;
- the department's responses to a number Questions on Notice arising out of the Inquiry, which are available http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/SocialWelfareSystem/Additional_Documents; and
- the department's submission to the Inquiry, which is available via this http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Community_Affairs/SocialWelfareSystem/Submissions.

In my view, the information contained in the documents (insofar as their disclosure is not contrary to the public interest) already substantially exists in the public domain, and the release of the full documents would not substantially contribute to the public debate, in a way that would justify reducing or waiving the processing charge for your request.

In summary, I am not satisfied that you have identified the 'general public interest' or the 'substantial section of the public' that would benefit from disclosure of the documents. I contend that the charges have been set at the lowest reasonable cost.

In light of these factors, I have decided that there is no public interest in reducing or waiving the charge.

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 which 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

In conclusion, I consider the department have been correct in their assessment of the charges required in processing your FOI Request 28922. On this basis, I have decided not to reduce the amount of the charge that was notified to you.

Accordingly, the charges imposed for the FOI Request 28922 should remain at \$1,128.95 and no reduction or waiver will apply.

Going forward, no further action on the request will be undertaken until the charges imposed for FOI Request 28922 have been received by the department. After this has occurred, the department will be in a position to continue processing your FOI request.

You can ask for a review of our decision

If you disagree with any part of the decision you can ask for 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.

Yours sincerely

Stacey

Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division
Department of Human Services



Attachment A

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Application for review of decision

The *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by the Information Commissioner.

Information Commissioner review

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218, Sydney NSW 2001
Email: enquiries@oaic.gov.au

An application form is available on the website at 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.

Complaints to the Commonwealth Ombudsman

You may complain to the 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 Ombudsman may be made in person, by telephone or in writing. The Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

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