



18 May 2017

Our reference: LEX 28941

Mr Ben Fairless

By email: foi+request-3345-1413504c@righttoknow.org.au

Dear Mr Fairless

Freedom of Information Request – Charges - Reconsideration

I refer to your request received by the Department of Human Services (the **department**) on 5 April 2017, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

' Can you supply a copy of the below document:
Customers recording interactions 104-07020060

Link is here: <https://operational.humanservices.gov.au/public/Pages/complaints-privacy-and-foi/104-07020060-01.html>'

Preliminary Assessment of the Charge

On 18 April 2017, the department notified you that you are liable to pay a charge for the processing of your request and advised that the preliminary assessment of that charge was \$14.55. This charge was calculated as follows:

Search and retrieval time: 0.97 hours, at \$15.00 per hour:	\$14.55
Decision-making time (*after deduction of 5 hours): 0 hours, at \$20.00 per hour	\$0.00
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TOTAL	\$14.55

*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 18 April 2017, you wrote to the department contending the charge should not be imposed. In particular, you submitted that:

Thanks for your charges letter - I contend that the charges are excessive and should be reduced to nil.

The document in question is listed (but not provided) on the DHS Operational Documents portal. I provided the document ID and it should have been possible to search the relevant system using that ID and recover the document in a few seconds. If it took you time to review the document, that should be included in the review time.



In addition, as the document relates to decisions made by the department in relation to the public, I contend that the document should be released under the Information Publication Scheme.

I also note the public importance of this request. This document was singled out by the "#notmydebt" campaigners as a document they want to access. The request received many views and retweets online and would inform the public around the departments response to customers recording interactions.

In my preliminary assessment of charges, I advised you there was one document of 10 pages that fell within the scope of your request. The charge has been calculated on the processing of those ten pages.

Reconsideration of the Charge

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'.

Financial Hardship

You did not request reconsideration on the basis that the charge would cause you financial hardship. I have no evidence available to me to indicate the charge would cause you financial hardship. Accordingly, I am not satisfied the charge should be reduced or waived on this ground.

Public Interest

In considering whether something is of the public interest for the consideration of charges, the Guidelines relevantly provide, at paragraph 4.83:

'The 'public interest' is a concept of wide import that cannot be exhaustively defined... The following examples nevertheless illustrate circumstances in which the giving of access may be in the general public interest or in the interest of a substantial section of the public:

- the document relates to a matter of public debate, or a policy issue under discussion within an agency, and disclosure of the document would assist public comment on or participation in the debate or discussion.'

You submit that the release of documents in the scope of your request is in the public interest. Namely, you submit that the document was singled out by the "#notmydebt" campaigners as an important document, release of which would help inform the public around the department's response to customers recording interactions. I note that the #notmydebt website relates specifically to the department's Online Compliance Interventions (**OCI**).

The department has a broad range of procedures in relation to interactions between staff members and customers. The majority of these procedures are not specific to the OCI. Having reviewed the document in the scope of your request, I am satisfied that it is not about the subject matter of recent public debate, hence its release would not assist public comment or participation in that debate. I am not satisfied there is any general or specific section of the public that would have an interest in the material being released.

In weighing up these matters, I am satisfied it is not in the public interest for the information to be released, and accordingly I am not satisfied the charge should be waived or reduced on this ground. With this in mind, I am satisfied the department has calculated the charge correctly.

Calculation of the search and retrieval time

You provided the department with the relevant Operational Blue Print number and a link to the document. As such, you contend that the search and retrieval time of 0.97 hours is excessive.

I contacted the relevant departmental line area as part of reconsidering the preliminary estimate of charges. The line area confirmed that the estimate of 0.97 hours was an accurate reflection of the actual time taken to search and retrieve the document.

Although the information provided in your request assisted the department to identify the relevant document, the department submits that the estimate of 0.97 hours for search and retrieval of the document is an accurate reflection of the true time required to:

- search and retrieve the document;
- search the document and tag any relevant pages (including identifying any possible sensitivities with release); and
- prepare a schedule detailing the relevant document (including identifying any possible sensitivities with release).

As such, I am satisfied the department has calculated the preliminary estimate of charges correctly.

Release of the document under the Information Publication Scheme

You also contend that the document within the scope of your request is listed on the department's "Operational Documents" portal and relate to decisions made by the department. As such, it should be released under the Information Publication Scheme.

The department holds that a decision on the release of a document is a question that should be answered in the decision making stage rather than during the charges reconsideration stage. In this regard, 'CF' and Department of Finance [2014] AICmr 73 relevantly states that:

The fact that giving access to documents is in the general public interest for the purposes of reducing or not imposing a charge (under s 29(4)) does not mean that giving access to those same — conditionally exempt — documents cannot be, on balance, contrary to the public interest (under s 11A(5)). Additionally, the fact that documents may or may not be exempt under any provision of the FOI Act, does not lead to an automatic assumption that there can

*be no public interest for the purpose of s 29. The test is distinct. **If an agency or Minister needs to assess release of the documents, that should come later at the decision making stage.***

I am satisfied that determining whether the document can be released will require a thorough assessment of the document against the provisions of the FOI Act. In reliance of the decision in 'CF' above, any assessment of the reasonableness of release of the document will be considered at the decision making stage and were not included in this reconsideration of charges.

Conclusion

After carefully considering your contentions, the document within the scope of your request, the provisions of the FOI Act and the FOI Guidelines, I am satisfied that the preliminary assessment of charges is correct. As such, I affirm the \$14.55 preliminary assessment of charges.

Options

If you would like the department to continue processing your request, you must:

- a) pay the charge;
- b) seek an internal or external review of the reconsideration of the decision to impose a charge; or
- c) withdraw the request for access.

Further information on options A, B and C is set out below.

Option A - pay the charge

As the charge is less than \$25, you are required to pay the full amount of \$14.55 within 30 days of receiving this notice.

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 28941 with your payment.

Should you elect to pay the charge 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 – seek review

If you disagree with any part of the decision 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 B** for more information about how arrange a review.

Option C - withdraw your request

If you wish to withdraw your request you may do so in writing.

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

Further assistance

If you have any questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Charlie
Authorised FOI Decision Maker
Freedom of Information 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 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.

You can **lodge your application:**

Online: www.oaic.gov.au
Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Note 3: The Office of 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.
- If you have one, you should include with your application a copy of the Department of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the department's decision.

Complaints to the Information Commissioner and Commonwealth Ombudsman

Information Commissioner

You may complain to the 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 Information Commissioner must be made in writing. The Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also 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.