



**Australian Government**  
**Department of Finance**

Reference: FOI 17/82  
Contact: FOI Team  
Telephone: (02) 6215 1783  
e-mail: [foi@finance.gov.au](mailto:foi@finance.gov.au)

Mr Mark Newton  
Right to Know

via email: [foi+request-3588-1ad28188@righttoknow.org.au](mailto:foi+request-3588-1ad28188@righttoknow.org.au)

Dear Mr Newton,

**Freedom of Information Request – FOI 17/82: Decision on charges  
contention**

Thank you for your email to the Department of Finance (**Finance**), dated 29 May 2017, in which you sought access to the following documents under the *Freedom of Information Act 1982 (FOI Act)*:

1. *The "Application for a Waiver of Debt owed to the Government" form submitted by Mr. Day, or any other correspondence from Mr. Day or his agents which serve the purpose of an application for waiver of debt,*
2. *The report of the advisory committee which considered the appropriateness of the Minister's authorisation for debt waiver, pursuant to sections 24(2) and 24(3) of the Public Governance, Performance and Accountability Rule 2014 (Federal Register of Legislation F2017L00203),*
3. *The names and positions held of the advisory committee's members,*
4. *Submissions from affected non-corporate Commonwealth Entities (NCEs) to the advisory committee established in (2) above, and/or provided to Mr. Day,*
5. *Minutes, notes, or other annotations which show that the relevant Minister received the advisory committee's report and considered it,*
6. *Records which indicate the amount of time elapsed between the application in (1) above and the Minister's decision; and*
7. *Notification from the decision maker to Mr. Day ...*

The purpose of this letter is to provide you with written notice of my decision, and reasons for my decision, in accordance within subsections 29(8) and (9) of the FOI Act, in relation to your contention that a charge should be waived.

### **Preliminary Assessment of Charges**

On 8 June 2017, Finance notified you of its intention to impose a charge, and provided a preliminary estimate of charge in the amount of **\$493.16**, pursuant to subsection 29(1) of the FOI Act.

### **Contention of the charges**

In an email dated 8 June 2017, you contended that the charge should not be imposed, and made the following submissions in support of your contention:

*I request waiver of the charges associated with this request pursuant to subsections 29(5)(a) and 29(5)(b) of the Freedom of Information Act 1982.*

*With respect to 29(5)(b): Considerable public interest has been generated by the waiver of Mr. Day's debts, contrasted against the behavior of the Government in relation to the waiver of far more trivial (and often incorrectly calculated) debts asserted against Centrelink Newstart and Disability Support Payment recipients. Media articles and social media discussions have already progressed as a result of these circumstances, and the resulting public debate should be grounded in the facts I am seeking in this application, rather than conjecture and supposition.*

*It is an OBVIOUS matter of public interest if the Government is allegedly driving unemployed people to suicide by garnishing Centrelink payments that are already below the official poverty line while simultaneously forgiving hundreds of thousands of dollars worth of debt owed by a wealthy property developer, who only incurred the debt in the first place because he was ineligible to be a Senator on account of his receipt of yet more hundreds of thousands of dollars worth of commercial rent payments for his office.*

*With respect to 29(5)(a): I am not a wealthy property property developer, and I am not in a position to pays hundreds of dollars for factual data to settle the aforementioned debate.*

### **Charges Decision**

I am authorised under subsection 23(1) of the FOI Act to make decisions regarding requests for access to documents under that Act, including decisions relating to the imposition of charges.

I have decided not to reduce or waive the charge under subsection 29(4) of the FOI Act. The amount you are therefore liable to pay is **\$493.16**.

## **Reasons for Decision**

In making my decision, I have had regard to the following:

- the terms of your FOI request;
- the documents that fall within the scope of your request;
- the submissions set out in your email dated 8 June 2017;
- the relevant provisions of the FOI Act, including the aims and objectives of that Act;
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**), to which agencies must have regard in performing a function or exercising a power under the FOI Act;
- relevant case law, including Information Commissioner (**IC**) review decisions.

### ***Assessment of the amount of the charge***

Your email of 8 June 2017 did not raise any specific concerns about how the charge was calculated.

Given the volume and nature of the requested documents, I consider the estimate of how long it would take to process the request is reasonable. I am satisfied that the estimate of charge in the amount of \$493.16 is realistic and represents the lowest reasonable cost required by the FOI Act.

### ***Exercise of discretion to reduce or not to impose a charge***

Subsection 29(4) of the FOI Act provides a discretion to reduce or not impose a charge. In deciding whether to exercise the discretion, I may consider any relevant matter. However, subsection 29(5) provides that I must consider whether giving access to the documents in question is in the general public interest, or in the interest of a substantial section of the public; and whether the charge would cause financial hardship:

*Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:*

- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and*
- (b) 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.*

The general discretion under subsection 29(4) is not limited to financial hardship and public interest grounds.

### **Financial hardship**

You requested that the charge be waived on the basis that you are '*not a wealthy property developer*', and that you are '*not in a position to pay hundreds of thousands of dollars for factual data*'.

For the purposes of section 29 of the FOI Act, financial hardship means more than having to meet the FOI costs from an applicant's own resources. Financial hardship exists when payment of a charge leaves you unable to provide basic necessities for yourself.

The mere fact that you are not a wealthy property developer does not necessarily mean that financial hardship exists, or that you do not have the capacity to pay some or all of the charge. Moreover, you have not provided any supporting evidence that this may be the case. In the absence of any such evidence, I cannot be satisfied that paying the amount of charge would cause you financial hardship, such that a reduction or waiver of the charge would be warranted.

#### *Public Interest*

Paragraph 29(5)(b) of the FOI Act requires me to consider whether the giving of access to the requested documents is in the general public interest, or in the interest of a substantial section of the public. This involves identifying the benefit that would flow from the disclosure of the documents to the public or a substantial section of the public. The FOI Guidelines relevantly explain (at paragraph 4.81):

*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 this disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur. 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*

The term 'public interest' is a broad concept, and the FOI Guidelines (at paragraph 4.83) provide the following examples in which the giving of access may be in the public interest:

- the document relates to a matter of public debate, and disclosure of the document would assist public comment on or participation in the debate or discussion;
- the document relates to an agency decision that has been a topic of public interest or discussion, and disclosure of the document would better inform the public as to why or how the decision was made, including highlighting any problems or flaws that occurred in the decision-making process;
- the document would add to the public record on an important and recurring aspect of agency decision making.

You have submitted that the documents covered by your request are a matter of general public interest as '*considerable public interest has been generated by the waiver of Mr. Day's debts*'.

I accept that the release of the requested documents may be of some interest to the public. I also acknowledge that the giving of access could add to the public record concerning, and may contribute towards informing public discussion in relation to, the government's decision to waive debts owed by former Senator Bob Day.

However, your request covers substantially more documents than what I consider would be reasonably necessary to contribute to a meaningful public discussion on this issue, noting that the public interest is already served by a large volume of relevant information already being available in the public domain (see paragraph 4.84 of the OAIC Guidelines). Further, you indicated in your submission that the requested documents are relevant to the public debate regarding the waiver of debts owed by Centrelink customers. I do not consider that giving

access to the requested documents would materially contribute towards public debate relating to Centrelink debts, which are subject to separate statutory debt waiver mechanisms.

#### Other relevant factors

The general discretion under subsection 29(4) is not limited to financial hardship and public interest grounds. It is also relevant whether disclosure of the requested documents would advance the objects of the FOI Act, including increasing scrutiny, discussion, comment or review of government activities.

As discussed above, a considerable amount of information relating to the waiver of former Senator Day's debt is publicly available, and the contents of the requested documents are unlikely to hold any material value in further informing public debate on that matter.

Further, processing the FOI request would (amongst other processing tasks) require a significant amount of third party consultation. The FOI charges regime is not a full cost recovery mechanism, and the actual cost to Finance in processing the request would significantly exceed the amount of charges.

#### Conclusion

In balancing the factors discussed above, I have decided that in the circumstances, it is not appropriate to reduce or waive the amount of charge.

You are therefore liable to pay a charge in the amount of **\$493.16**.

#### **Review and Appeal Rights**

You are entitled to request an internal review, or a review by the Australian Information Commissioner, of my decision not to waive or reduce the charges. Your appeal rights are set out in Attachment A as prescribed by 29(9) of the FOI Act.

#### **Next steps in relation to processing your request**

In accordance with section 31 of the FOI Act, the statutory period for processing your request is suspended from the date you were notified of the charge (8 June 2017) until the earliest of the following days:

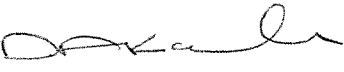
- the day you pay the amount of the charge or relevant deposit;
- if the amount of the charge is changed following review under the FOI Act – the day you pay the revised charge or relevant deposit; or
- if, following review under the FOI Act, a decision is made not to impose a charge – the day you are notified of that decision.

As the charge exceeds \$25, a deposit of \$123.29 must be paid to enable the processing of your request to proceed. It is of course open to you to pay the full charges amount.

#### **Further information**

Please contact the FOI Team on the above contact details if you wish to discuss my decision or your request generally.

Yours sincerely

Per 

Brent Heaver  
Assistant Secretary  
COMCAR Branch  
Department of Finance  
10 July 2017



## Australian Government

### Department of Finance

## Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

### Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

### How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this attachment.

### Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

### *Do I have to go through Finance's internal review process first?*

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

### *Do I have to pay?*

No. Review by the IC is currently free.

### ***How do I apply?***

You must apply for IC review in writing and you can lodge your application in one of the following ways:

**Post:** Office of the Australian Information Commissioner

GPO Box 5218

SYDNEY NSW 2001

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**Fax:** 02 9284 9666

**In person:** Level 3  
175 Pitt Street  
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website ([www.oaic.gov.au](http://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.

### ***Making a complaint***

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review.

### ***When can I go to the Administrative Appeals Tribunal (AAT)?***

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$884, although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

### ***Investigation by the Ombudsman***

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the

complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

**Post:** Commonwealth Ombudsman  
PO Box 442  
CANBERRA ACT 2601

**Phone:** 02 6276 0111  
1300 362 072

### **Finance FOI contact details**

FOI Coordinator

Legal and Assurance Branch

Department of Finance

One Canberra Avenue

FORREST ACT 2603

**Phone:** 02 6215 1783

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

**Website:** [www.finance.gov.au/foi/foi.html](http://www.finance.gov.au/foi/foi.html)