



2 August 2017

Our reference: LEX 30071

Mr Anatoly Kern

By email: [foi+request-3600-59a4e17d@righttoknow.org.au](mailto:foi+request-3600-59a4e17d@righttoknow.org.au)

Dear Mr Kern

### Freedom of Information Request – Reconsideration of Charges

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

‘Could you please provide the list of physical offices/locations allocated to Child Support Smart Centres within Australia, outside of L5 570 Bourke Street, Melbourne, which I believe is the location of the head office (would be nice to confirm that).’

### My Decision

I have decided to affirm the charge of \$14.55. Please see below for the reasons for my decision.

### Background

On 22 June 2017 you were notified 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): 0.00 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 5 July 2017 you responded to the preliminary charge notification. Your correspondence stated, in relation to your reason for seeking a reconsideration of charges:

‘I wish to proceed with option 2, requesting to dismiss the charge due to its amount and processing costs.’

## What I took into account

In reaching my decision I took into account:

- the department's correspondence of 6 April 2017;
- your correspondence of 24 April 2017, contending that the charge should be reduced or not imposed;
- documents falling within the scope of your request;
- 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**).

## Reconsideration of the Charge – Your submissions and other considerations

The charges associated with FOI requests are not designed to be an application fee, rather, they are a fee that is designed to assist the department to deal with the administrative burden of processing FOI requests.

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'.

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.

I have considered that your request to 'dismiss the charge due to its amount and processing costs', relates to your financial circumstances, and the effect payment of the charge would have on those circumstances.

The Guidelines state at paragraph 4.75 that the primary considerations in determining whether a charge should be reduced or waived on the grounds of financial hardship are firstly the applicant's financial circumstances and secondly the amount of the estimated charge. In the same paragraph, the Guidelines refer to a definition of financial hardship 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.'

At paragraph 4.77 the Guidelines further state:

‘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.’

You have not provided any specific details or evidence regarding the effect of this charge on your financial circumstances. While you are not required to provide a detailed explanation of your financial circumstances, without more information about the effect of the charge, I am unable to find that imposition of it would cause you sufficient hardship to warrant waiving or reducing the charge.

Further, in this instance, the amount of the estimated charge is \$14.55. This is a small charge that assists the department to offset the total cost of processing requests for non-personal information.

Based on the information currently before me, I am not able to conclude that payment of the charge would cause you financial hardship. Therefore I have decided not to reduce or waive the charge on this basis.

#### The Public Interest

In making my decision, I am also required under paragraph 29(5)(b) of the FOI Act to take into account whether the provision of access to the documents that are the subject of the request, 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.

I note that you have not made any specific contentions or provided any evidence to indicate that the charge should be reduced or waived as a matter of public interest.

The Guidelines at 4.81 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.

You have requested a list of locations of Child Support Smart Centres within Australia. The Child Support Smart Centres are secure facilities the locations of which are not made publically available for the protection of staff and families engaged in the Child Support system. As this information is not in the public domain for reasons of safety and security, I am not satisfied that provision of this information to you would benefit the public, or a substantial section of it. Therefore I am not satisfied that the charge imposed in relation to this request should be reduced or not imposed on the basis of public interest.

I have decided not to reduce or waive the charge on this ground.

#### 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**

I am not persuaded that the charge should be waived on the grounds of financial hardship, or because release of the information requested is in the general public interest. Further I am not persuaded that the charge should be waived for any other reason.

## **Required Action**

If you would like the department to continue processing your request, you must notify the department in writing within 30 days of receiving this notice that you:

- a) agree to pay the charge; or
- b) withdraw the request for access.

If you do not provide a written response in accordance with one of options a) or b) above within 30 days of receiving this notice, your request will be taken to have been withdrawn under section 29(2) of the FOI Act.

Further information on options a) and b) is set out below.

### **Option a) - pay the charge**

The charge is \$14.55.

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 30071** with your payment.

Should you elect to pay the charge please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto:FOI.LEGAL.TEAM@humanservices.gov.au) once you have posted your cheque or money order to advise us of your payment.

### **Option b) - withdraw your request**

If you wish to withdraw your request you may do so in writing to [FOI.Legal.Team@humanservices.gov.au](mailto:FOI.Legal.Team@humanservices.gov.au).

## **Time limits for processing your request**

Section 31 of the FOI Act provides that where a notice is sent to an applicant regarding the payment of a charge in respect of a request, the time limit for processing the request is suspended from the date the notice is received until either:

- (a) the day following payment of the charge (in full or the required deposit); or
- (b) if applicable, the day following the notification to the applicant of a decision not to impose the charge.

## **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](mailto:FOI.LEGAL.TEAM@humanservices.gov.au)

## **Publication of information in the FOI disclosure log**

Information released under the FOI Act may be published in a disclosure log on the department's website. Section 11C of the FOI Act requires this publication, subject to certain exceptions, including where publication of personal, business, professional or commercial information would be unreasonable.

## **You can ask for a review of this decision**

I have reconsidered the assessment of charge and reject your contention that this charge has been wrongly assessed. If you disagree with the decision to impose a charge, or the amount of the charge, 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 A** for more information about how arrange a review.

## **Further assistance**

If you have any questions please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto:FOI.LEGAL.TEAM@humanservices.gov.au).

Yours sincerely

Chelsea  
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 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 a 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](http://www.oaic.gov.au)

Post: Australian Information Commissioner  
GPO Box 5218  
SYDNEY NSW 2001

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

**Note 3:** 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](http://www.oaic.gov.au).
- If you have one, you should include a copy of the Department of Human Services' decision on your FOI request with your application
- Include your contact details
- Set out your reasons for objecting to the department's decision.

**Complaints to the Australian Information Commissioner and Commonwealth Ombudsman**

***Australian Information Commissioner***

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

Telephone: 1300 363 992  
Website: [www.oaic.gov.au](http://www.oaic.gov.au)

***Commonwealth Ombudsman***

You may also 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. There is no fee for making a complaint. A complaint to the Commonwealth Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072  
Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

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