



7 August 2017

Our reference: LEX 30212

Mr Derek Adams

By email: foi+request-2936-2480a920@righttoknow.org.au

Dear Mr Adams

Freedom of Information Request – Charges - Reconsideration

I refer to your request received by the Department of Human Services (the **department**) on 14 June 2017, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

I request, under the Freedom of Information Act 1982, copies of the following documents in their original electronic file formats (eg .html for webpages, .xlsx or .xls for spreadsheets and so on):

All documents contained within the file "Perpetual Centrelink Calendar 107-03040000" as listed on this page:

<http://operational.humanservices.gov.au/public/Pages/debts/107-03040000-01.html>'.

Preliminary Assessment of the Charge

On 6 July 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
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.

In my preliminary assessment of charges, I advised you there was one document of one page that fell within the scope of your request. This reconsideration of charges has been calculated on the processing of that single page.

On 6 July 2017, you wrote to the department contending the charge should not be imposed, in particular, you submitted that you wished to rely on your submissions relating to the preliminary estimate of charges issued by the department in FOI request LEX 25125. Namely, you submit that:

I contend that the charge should not be imposed for several reasons, one of which is that the department is acting in bad faith and in breach of the FOI Guidelines regarding imposition of fees, and that the release of these documents is in the public interest.

The requested charge seems to breach several sections of the FOI Guidelines provided by the Office of the Australian Information Commissioner, in particular: 4.4, 4.5, 4.6, 4.18, 4.24 and 4.30.

Section 4.4 states that "[w]here the cost of calculating and collecting a charge might exceed the cost to the agency to process the request, it would generally be more appropriate not to impose a charge." It adds, "[i]n assessing the costs of calculating and collecting a charge, agencies should also take into account the likely costs that may be incurred by the agency, as well as other review bodies, if the applicant decides to seek further review." This has become self-evident, as the cost imposition is now being disputed.

Due to the fact that cost itself is merely \$15 for an apparent 1 hour of finding documents which you already know to be 3 pages, 4.5 states "[a] charge must not be used to unnecessarily delay access or discourage an applicant from exercising the right of access conferred by the FOI Act." I contend that this fee is being imposed precisely and exclusively for this purpose.

4.6 requires that the department "should ensure that the notice to an applicant of a charge fully explains and justifies that charge", which has not been achieved with the email provided in response to my request.

4.18 states "the use of agency computers to produce copies of electronic documents is nowadays usually a negligible expense. Agencies and ministers should be guided by the 'lowest reasonable cost' objective in the FOI Act in deciding whether a charge specified in the Charges Regulations is warranted." You are positing that \$15 should be charged for something that takes seconds to achieve in 2017, compared to when the Act was written.

4.24, provided in full: "Time used by an officer in searching for a document that is not where it ought to be, or that is not listed in the official filing system, cannot be charged to an applicant. In summary, applicants cannot be disadvantaged by poor or inefficient record keeping by agencies or ministers." It is strongly implied by the fact that the department has stated that the document is 3 pages that either the DHS has a filing system from 1982 itself, or is purposely delaying or impeding access to information.

4.30 states that "[t]he Charges Regulations do not stipulate a method for charging for part of an hour of decision-making time. If such a charge is to be imposed, it should appropriately be calculated on a proportionate basis." This section makes it clear that if the amount of time to find a document falls into the early part of an hour, it is more reasonable to not charge whatsoever for that hour.

However, the above arguments only speak to the point of the DHS acting in bad faith in regards to the request. The requested documents are also in the public interest.

These documents are from a file listed on the site map of the operation's website of the DHS as being relevant to debts due to its listing under the Debts section as 107-03040000. These documents are of interest to a substantial section of the public, in particular those persons who have been affected by the imposition of arbitrary debt notices from Centrelink. The public at large has a strong interest in this topic, as it has been considered relevant by the media for more than a month now as well. It will be difficult for the DHS to argue that this request is not in the public interest.

Furthermore, the release will increase the scrutiny, discussion, comment and review of the Government's activity, which are supported rationale under 4.72 of the guidelines.

Advising an applicant that they are liable for a minimal fee of \$15 is behaviour that strongly implies the DHS is acting in bad faith. The DHS must be aware that the cost of a money order is approximately \$10, and that the cost of processing these fees would cancel out the fees entirely, making the entire exercise merely for the purpose of impeding access to information for the public. The public expects better from the public service.

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'.

Given that your submissions cover various issues, I will respond to each issue separately.

The cost of processing the reconsideration of charges

You submit that:

Section 4.4 states that "[w]here the cost of calculating and collecting a charge might exceed the cost to the agency to process the request, it would generally be more appropriate not to impose a charge." It adds, "[i]n assessing the costs of calculating and collecting a charge, agencies should also take into account the likely costs that may be incurred by the agency, as well as other review bodies, if the applicant decides to seek further review." This has become self-evident, as the cost imposition is now being disputed.

Part 4.4 of the Office of the Australian Information Commissioner Guidelines (the **Guideline**) refer to the Administrative Appeals Tribunal decision in *MacTiernan and Secretary, Department of Infrastructure and Regional Development (Freedom of Information)* [2015] AATA 584 (**MacTiernan**).

An important consideration is that the test established in *MacTiernan* is not purely economical in nature. Rather, the test requires a genuine public interest to subsist in the release of the documents in order for charges to be waived.

Given that the document is publicly available, in full, the department is satisfied that it contains no information, release of which would be in the general public interest or in the interest of a substantial section of the public.

Therefore, the necessary precondition for waiving charges has not been established and I am satisfied that the charge of \$14.55 is appropriate.

Imposing a charge to frustrate your request

You submit that:

Due to the fact that cost itself is merely \$15 for an apparent 1 hour of finding documents which you already know to be 3 pages, 4.5 states "[a] charge must not be used to

unnecessarily delay access or discourage an applicant from exercising the right of access conferred by the FOI Act." I contend that this fee is being imposed precisely and exclusively for this purpose.

You contend that the charge has been imposed in order to unnecessarily delay access or discourage you from exercising the right of access conferred by the FOI Act.

I am not satisfied with the basis of your submission. The department has calculated the preliminary estimate of charges with reference to a true estimation of the search and retrieval time required for your request.

The preliminary estimate of charges was calculated in line with the procedure outlined in section 29 of the FOI Act. I am not satisfied that the preliminary estimate of charges should be waived on the basis of this submission.

Requirements as to form of notice

4.6 requires that the department "should ensure that the notice to an applicant of a charge fully explains and justifies that charge", which has not been achieved with the email provided in response to my request.

Section 29(1) sets out the requirements as to the form and contents of the department's preliminary assessment of charges notice.

Although this submission appears to relate exclusively to FOI request LEX 25125, the department has met its statutory obligations in relation to section 29(1) of the FOI Act. I am not satisfied that the preliminary estimate of charges should be waived on the basis of your submissions.

The department's document storage system

You submit that:

4.18 states "the use of agency computers to produce copies of electronic documents is nowadays usually a negligible expense. Agencies and ministers should be guided by the 'lowest reasonable cost' objective in the FOI Act in deciding whether a charge specified in the Charges Regulations is warranted." You are positing that \$15 should be charged for something that takes seconds to achieve in 2017, compared to when the Act was written.

4.24, provided in full: "Time used by an officer in searching for a document that is not where it ought to be, or that is not listed in the official filing system, cannot be charged to an applicant. In summary, applicants cannot be disadvantaged by poor or inefficient record keeping by agencies or ministers." It is strongly implied by the fact that the department has stated that the document is 3 pages that either the DHS has a filing system from 1982 itself, or is purposely delaying or impeding access to information.

The document is located and maintained on the department's Operational Blue Print (**OBP**) intranet page. The OBP intranet page has search functionality that allows for the easy identification and retrieval of specific OBP documents. As such, I am satisfied that the department's document storage system did not cause any unnecessary search and retrieval time.

I confirmed with the relevant line area that 0.97 hours is an accurate reflection of the time taken to:

- consider the terms of the request;
- search for any documents within scope;
- retrieve any documents identified; and
- complete a document search minute responding to the Freedom of Information Team.

As such, I am satisfied that the preliminary estimate of 0.97 hours is accurate.

As the second part of your submissions relates solely to the processing of FOI request LEX 25125, no response is necessary.

I am not satisfied that the preliminary estimate of charges should be reduced on the basis of your submissions.

Calculation of the preliminary estimate

You submitted that:

4.30 states that "[t]he Charges Regulations do not stipulate a method for charging for part of an hour of decision-making time. If such a charge is to be imposed, it should appropriately be calculated on a proportionate basis." This section makes it clear that if the amount of time to find a document falls into the early part of an hour, it is more reasonable to not charge whatsoever for that hour.

The department's preliminary estimate of charges identified that search and retrieval of the document would take approximately 0.97 hours. I am satisfied that this charge has been appropriately calculated on a proportionate basis. This is especially the case noting that it has been calculated to a value of two decimal places.

Further, the department refutes your claim that where search and retrieval 'falls into the early part of an hour, it is more reasonable to not charge whatsoever for that hour.' It is the clear intention of the Guidelines that charges are to be calculated on a proportionate basis, rather than rounding up or down to the nearest hour.

Given the above considerations, I am not satisfied that the preliminary estimate of charges should be reduced.

Public Interest

These documents are from a file listed on the site map of the operation's website of the DHS as being relevant to debts due to its listing under the Debts section as 107-03040000. These documents are of interest to a substantial section of the public, in particular those persons who have been affected by the imposition of arbitrary debt notices from Centrelink. The public at large has a strong interest in this topic, as it has been considered relevant by the media for more than a month now as well. It will be difficult for the DHS to argue that this request is not in the public interest.

Furthermore, the release will increase the scrutiny, discussion, comment and review of the Government's activity, which are supported rationale under 4.72 of the guidelines.

You submit that the release of documents in the scope of your request is in the public interest and will allow for greater scrutiny, discussion, comment and review of the department's activity.

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 document within the scope of your request is listed on the department’s OBP page under the ‘Debts section’. As such, you submit that it is of interest to the public as it relates to the department’s Online Compliance intervention activities, about which there has been historic media attention.

Issues relating to the Online Compliance Intervention have been extensively canvassed through Senate Estimates, a Senate enquiry, the media and multiple other channels. With respect to the document you are seeking access to, the department has previously provided this document to you via the RighttoKnow website. The RighttoKnow website is publicly available, and as such, the document has been taken to be released to the world at large.

Given the considerations above, I am satisfied that the further release of the exact same document will serve no public interest. Contrary to your contentions, I am satisfied that the content of the document, all of which is publicly available from other sources, is such that it will not add to any public debate around debt recovery process of the department.

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

Bad Faith

Advising an applicant that they are liable for a minimal fee of \$15 is behaviour that strongly implies the DHS is acting in bad faith. The DHS must be aware that the cost of a money order is approximately \$10, and that the cost of processing these fees would cancel out the fees entirely, making the entire exercise merely for the purpose of impeding access to information for the public. The public expects better from the public service.

You submit that the department is acting in bad faith in choosing to impose a charge for this request.

I do not accept your submission. The charge has been calculated with reference to a true estimation of the work it would take for the department search and retrieve the document within the scope of your request.

The preliminary estimate of charges was calculated in line with the procedure outlined in section 29 of the FOI Act. I do not consider your submission regarding bad faith to be convincing. Accordingly, I am not satisfied that it constitutes a reasonable justification for a reduction or waiver of the charges.

With the above considerations in mind, I am satisfied the department has calculated the charge correctly.

Options

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

- a) pay the charge;
- b) seek 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 \$15 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 30212 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 external review

If you still believe a decision is incorrect, section 54L of the FOI Act allows you to apply for a review of an FOI decision by the Australian Information Commissioner. Further information regarding this option can be found at **Attachment B**.

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

Bruce
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 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 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 section 54L of the FOI Act, you can apply for a review of an FOI decision by the Australian Information Commissioner.

Note: There are no fees for these reviews.

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.

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.