



18 August 2017

Our reference: LEX 30445

Mr Justin Warren

Only by email: [foi+request-3660-5024fedb@righttoknow.org.au](mailto:foi+request-3660-5024fedb@righttoknow.org.au)

Dear Mr Warren

**Freedom of Information Request – Reconsideration of Charges**

I refer to your request, dated 23 June 2017 and received by the Department of Human Services (the **department**) on the same date, for access under the *Freedom of Information Act 1982* (the **FOI Act**) to the following:

*'I request a copy of the Multical Entitlement and Debt Calculator, which I believe is a Microsoft Excel workbook.*

*I request an electronic copy of the Excel file itself.*

On 12 July 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 hours, at \$20.00 per hour	\$0.00
<b>TOTAL</b>	<b>\$14.55</b>

\*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 19 July 2017, you responded to the notice of preliminary charge:

*'I contend that the charges have been both wrongly assessed and should not be imposed because they deal with the incorrect document.*

*The document the Department has identified does not match the scope of my request'.*

**Reconsideration of the Charge**

**Relevant FOI legislation**

Subsection 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.



Subsection 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.

➤ Financial hardship

The decision to reduce, or not impose, a processing charge on the grounds of financial hardship, requires consideration of the applicant's specific financial circumstances and the amount of the estimated charge. Financial hardship must be more than an applicant having to meet a charge from his or her own resources, and be more than an applicant discussing the burden of charges to applicants generally, to result in a reduction or non-imposition of a processing charge.

Applicants are generally required to provide some evidence of the financial hardship, which they personally will experience, such as receipt of a pension or income support payment, or provide evidence of income, debts or assets. You have not provided this evidence, or any submissions in relation to the financial implications of paying the charge. Consequently, I am satisfied that payment of the charge in the amount of \$14.55 would not cause you financial hardship.

➤ Public interest

In making my decision, I am also required under subsection 29(5) of the FOI Act to take into account whether the provision of access to the documents 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.

Public interest factors in favour of reducing or waiving a charge are:

- the level of public interest in the documents;
- the general public interest in allowing access to information (including government policy) under the FOI Act;
- the general public interest in openness of administration; and
- promoting the objects of the FOI Act, including:
  - increasing scrutiny, discussion, comment and review of Government activities;
  - facilitating and promoting public access to information, promptly and at the lowest reasonable cost; and
  - informing the public on matters of public importance or interest, and assisting participation in debate or discussion.

You did not provide any submissions regarding the public interest.

Having considered the factors detailed above, I am not satisfied that there are compelling reasons in favour of reducing the charge in the public interest. While I accept that the department's management of compliance and debt-related issues has attracted significant 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 document. I consider that there would not be any substantial public benefit flowing from the release of the relevant document. I am not satisfied that the document you are seeking access to will give special insight into the department's management

of compliance activities and debt matters. For this reason, I have decided not to reduce the imposed charge on public interest grounds.

➤ Your submission

I have considered your response to the preliminary assessment of charges, dated 19 July 2017 and detailed above. I have also had regard to your correspondence dated 13 July 2017, wherein you contended:

*"Subject to subsection (3) and to section 22, where the applicant has requested access in a particular form, access shall be given in that form."*

*I have asked for access in a particular form: "an electronic copy of the Excel file" not of a printout of the spreadsheet as a PDF.*

*The macros and calculations embedded in the Excel file are a central part of the information I have requested, and cannot be supplied merely by printing out what appears on the screen. You are incorrect in your assertion that the PDF you have located fits the scope of my request. It does not.'*

I have considered the relevant document and section 20 of the FOI Act, which relevantly provides:

...  
'(2) Subject to subsection (3) and to section 22, where the applicant has requested access in a particular form, access shall be given in that form.

(3) If the giving of access in the form requested by the applicant:

(a) Would interfere unreasonably with the operations of the agency, or the performance by the Minister of his or her functions, as the case may be;

...

Access in that form may be refused and access given in another form.'

It is my view that giving you access to the document in the form requested would interfere unreasonably with the operations of the agency. The Freedom of Information guidelines issued by the Office of the Australian Information Commissioner are silent on the subject of section 20 of the FOI Act. However, I have considered the *Freedom of Information Act 1982: Fundamental Principles and Procedures* (the **Guide**), issued by the Attorney-General's Department, and it has informed my decision. Specifically, at paragraph 3.58 of the Guide, it is noted that there are security and privacy issues arising in relation to information stored as metadata within Microsoft Office documents. It is noted that, usually, an agency will not intend to provide access to information that allows collaboration on writing and editing the document. It is my view that Microsoft Excel formulas are analogous, as they constitute operationally specific details which allow for data editing and manipulation.

I consider that it is not appropriate for the tool to be released into the public domain in editable form, as manipulation of the tool could reasonably be expected to lead to circumstances that interfere unreasonably with the operations of the agency. Specific officers within the department are trained to use the Multical tool. These officers are Subject Matter Experts equipped with resources that enable them to enter and interpret relevant data. In addressing enquiries from the public regarding use of the tool, the department's Compliance Risk Branch would be diverted from management of the department's compliance activities in order to provide advice to customer service staff on correct use of the tool. Alternatively, following release of the document, all customer service staff in the department would need to be provided with training in the use of the tool, so that they are properly equipped to field enquiries from the public. It is my view that the level of training and advice that

would be required within the department in order to effectively manage the increase in public enquiries regarding proper use of the tool, would unreasonably interfere with the operations of the agency.

The Guide further notes that it is preferable that all Microsoft Office documents are converted into PDF format, prior to being sent outside the agency network. This conversion mitigates the risks associated with release of sensitive information, such as formulas. For this reason, it is appropriate that the department is proposing to provide you with a copy of the requested Microsoft Excel spreadsheet in the form of a PDF document. We have issued a charge for the requested document in an alternative form, which is consistent with our obligations under section 20 of the FOI Act.

Consequently, the document proposed for processing is within the scope of your request and you remain liable to pay the charge for access to the PDF.

### ***Other considerations***

In deciding whether charges should be reduced or waived, I have also taken into consideration:

- the cost to the department, including staff and other resources, in processing the FOI request; and
- the impact of diverting staff resources to process the FOI request on the department's other operations.

I note that processing charges are designed to be a contribution to the cost of processing FOI requests and do not compensate the full costs associated with the processing of a request. It is possible that the true processing time is larger than what was notified to you for the purposes of the preliminary assessment of charges.

### **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;
- b) wish to contend that the charge:
  - i. should be reduced or not imposed; or
  - ii. both; or
- c) withdraw the request for access.

If you do not provide a written response in accordance with one of Options a), b) or c) 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), b) and c) is set out below.

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

As the charge is less than \$25.00, you are required to pay the charge, in full, 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 30445** 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) - seek reduction or non-imposition of the charge**

You may seek internal review and contend that the charge should be reduced or not imposed. Section 29(5) of the FOI Act provides that, in deciding whether to reduce or not to impose a charge, the decision-maker must take into account any relevant reasons, including whether payment of the charge, or part of it, would cause you financial hardship, and whether the giving of access to the documents is in the general public interest or in the interest of a substantial section of the public.

If you wish to contend that the charge should be reduced or not imposed, please set out your reasons and the evidence in support of your reasons as clearly as possible. If you believe that payment of the charge would cause you financial hardship, please provide sufficient details of your financial circumstances to enable the decision-maker to make a well-informed decision in this regard.

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

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

### **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:

- the day following payment of the charge (in full or the required deposit); or
- 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)

### **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 B** 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

**Jack**

Authorised FOI Decision Maker

FOI Legal Team

FOI and Litigation Branch Legal Services Division

Department of Human Services

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

## 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 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.