



25 September 2017

Our reference: LEX 31631

Mr Justin Warren

Only by email: foi+request-3660-5024fedb@righttoknow.org.au

Dear Mr Warren

Freedom of Information Request – Internal Review Decision (Charges)

I refer to your correspondence, dated 24 August 2017 and received by the Department of Human Services (the **department**) on the same date. You requested an internal review of the decision made by a delegate of the department under the *Freedom of Information Act 1982* (the **FOI Act**) dated 19 August 2017 (LEX 30445) (the **reconsideration of charges decision**).

I am authorised under section 23(1) of the FOI Act to make internal review decisions under section 54C of the FOI Act. My Internal Review Decision (Charges) is set out below.

I note that you have requested an “internal review of the Department of Human Services’ handling of my FOI request” in your correspondence, dated 24 August 2017. This internal review is confined to the imposition of charges for the processing of your FOI request. I note that you have made a complaint to the Office of the Australian Information Commissioner in relation to the handling of FOI request LEX 30445.

Original decision

The department received your original request on 23 June 2017 for access under the FOI Act to the following document:

‘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, not a printout, delivered via email. If electronic delivery via email is not possible for some reason, I can supply a secure upload facility where it can be uploaded via a browser.’

On 12 July 2017, the department issued you with a preliminary assessment of charges involved in processing your request amounting to \$14.55. On 19 July 2017, you sought reconsideration of those charges as you contended that the charges have “been both wrongly assessed and should not be imposed because they deal with the incorrect document.”

On 18 August 2017, you were provided with the reconsideration of charges decision which affirmed the processing charges associated with your request. You then sought internal review of that decision.

Consistent with the requirements of the FOI Act, I have made a fresh decision, which is set out below.

Internal Review Decision (Charges)

The following is my decision in relation to your request for reduction or non-imposition of the charge imposed under the FOI Act. I have decided, under sections 29(8) and 54C of the FOI Act to affirm the reconsideration of charges decision.

You are therefore liable to pay processing charge of \$14.55 (the **charge**).

The reasons for my decision, including the relevant sections of the FOI Act, are set out in **Attachment A**.

No further action on the request will be undertaken until the charge amount of \$14.55 has been received by the department. After this has occurred, the department will be in a position to continue processing your FOI request.

You can ask for a review of our decision

If you disagree with any part of the decision you can ask for a review. You can ask for 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.

Yours sincerely

Elizabeth
Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division

REASONS FOR DECISION

What you requested

On 12 July 2017, the department issued you with a preliminary assessment of charges involved in processing your request. In accordance with section 29 of the FOI Act, it was determined that you were liable to pay an estimated charge of \$14.55, 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
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On 13 July 2017, you responded to the notification of the preliminary charge, in which you indicated that you would like the department to reconsider its position in the following terms:

'I note that the Freedom of Information Act 1982 (the FOI Act) s20 (2) states that:

"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.

Please reconsider your response.'

On 18 July 2017, the department responded to you indicating that it disagreed with your view and that the charge was payable in relation to your request.

On 19 July 2017, you wrote to the department contending the following:

'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.'

On 18 August 2017, the department notified you of the reconsideration of charges decision considering your submission. The department confirmed its view that the charge was not wrongly assessed as it dealt with the correct document, but that granting you access to the document in an electronic format would interfere unreasonably with the operations of the department). The department also affirmed the charge.

On 24 August 2017, you requested an internal review of the department's decision to impose the charge.

What I took into account

In reaching my decision, I took into account the following:

- the department's correspondence, dated 12 July 2017, notifying you of the charge;
- your correspondence, dated 13 July 2017 and 19 July 2017, contending that the charge should not be imposed and was wrongly assessed;
- the department's correspondence to you, dated 18 August 2017, notifying you of the reconsideration of charges decision;
- your correspondence, 24 August 2017, seeking internal review of the reconsideration of charges decision;
- the content of the document to which you have sought access;
- the *Freedom of Information Act 1982: Fundamental Principles and Procedures* (the **Guide**);
- the relevant provisions of the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the **Regulations**); and
- the Freedom of Information Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the **Guidelines**).

Relevant legislation

Section 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.

Section 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.

Section 29(8) of the FOI Act provides that, if an applicant makes a contention about a charge as mentioned in subsection 29(4) of the FOI Act and the agency makes a decision to reject the contention in whole or in part, then the agency must give the applicant written notice of the decision and the reasons for the decision.

Form of the document considered as falling within the scope of your FOI request

I have reviewed your submissions in your correspondence to the department, dated 24 August 2017. In particular, I note that you have requested "an electronic copy of the Excel file itself" and that:

"the Department has incorrectly asserted that it 'located a PDF version of a document (totalling 1 page) that fits the scope of your FOI request.' A PDF document is not an Excel workbook. This is neither the document I requested, nor is it in the particular form I requested."

I do not consider that the department erred in its approach of calculating the charge based on a PDF version of the Multical Entitlement and Debt Calculator, which is the document you have requested. Further, I am satisfied that the calculation of the charge has been done so in a manner that would amount to the lowest reasonable cost to you.

You have submitted that the "department has, at this late stage of proceedings, decided that it

will now refuse access to the document in the form I have requested". I do not consider that this is accurate. Rather, the department outlined its for reasons calculating the charge based on an alternative form of the requested document in pages 3 and 4 of the reconsideration of charges decision. While the department foreshadowed that granting you access to the document in the form you requested may unreasonably interfere with the operations of the department, the form of access to this document is a matter for the substantive decision for your FOI request which has not yet been settled. I note that the majority of your submissions are in relation to this access issue and the department's responses to these will be addressed in the substantive decision, should your FOI request proceed on payment of the charge.

To reiterate the reasoning in the reconsideration of charges decision, I have considered 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.

Calculation of the charge

I have examined the calculations which were used to determine the charge. The department previously advised you that the preliminary assessment of the charge to process your request was for the amount of \$14.55, based on search and retrieval time of 0.97 hours at \$15 per hour.

The 0.97 hours search and retrieval time is based on the following:

- 10 minutes per file for search and retrieval;
- 45 minutes per file for tagging relevant pages; and
- 30 minutes per 10 documents for preparing schedules detailing all relevant documents.

The charges associated with FOI requests are not designed to be an application fee, rather they are designed to assist the department deal with the administrative burden of processing FOI requests. I am therefore of the view that the amount of \$14.55 is reasonable and represents the lowest possible cost for the department to process your request.

Waiver or reduction of the charge

I am not satisfied that the department should reduce, or waive the charges imposed under the charges decision, on the following basis:

- you have not provided sufficient evidence of financial hardship;
- on balance, the document would not be in the general public interest, or in the interest of a substantial section of the public, to release; and
- you have not put forward other relevant considerations that sufficiently weigh in favour of reducing, or waiving the charge.

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. 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 in your request for an internal review of the reconsideration of charges decision. Consequently, I am satisfied that payment of the charge in the amount of \$14.55 would not cause you financial hardship. On that basis, I have not considered this matter further.

Public interest

In making my decision, I am also required under section 29(5)(b) of the FOI Act to take into account whether the provision of access to the document 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 document in question. This requires me to consider the nature of the document and the context of its release.

Under section 11A(5) of the FOI Act, 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;
 - 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 in your request for an internal review of the reconsideration of charges decision.

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.

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 which provides a general discretion to reduce or not to impose a charge which goes beyond matters relating to financial hardship and the public interest. This has included the following:

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

I consider the charge of \$14.55 appropriately reflects the cost of processing your request. The cost to the department, both financially and in diverting resources to process your request, substantially outweighs the public interest of the information existing in the public domain. Accordingly, the calculation is a fair reflection of the work required in processing your request.

Conclusion

In conclusion, I have determined that the correct charges amount to process your request is \$14.55. I have also considered whether the charge should be further reduced or waived and on this occasion, I have determined that no waiver or further reduction would apply.

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

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 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

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

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