



Australian Government

Department of Infrastructure and Regional Development

Decision on request for waiver or reduction of charges made under the *Freedom of Information Act 1982*

Decision and reasons for decision of Judith Zielke, Executive Director, Surface Transport Policy

Applicant: Mr Greg Bean
Decision date: November 2013
FOI reference number: 14-32
Documents: Details relating to The Motor Vehicles Standards Act

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Summary

1. I have made a decision to refuse your request for a waiver or reduction of charges.

Authority to make this decision

2. I, Judith Zielke, Executive Director, Surface Transport Policy, am an officer authorised by the Secretary of the Department of Infrastructure and Regional Development (the Department) to make decisions about imposing charges in relation to access to documents in the possession of the Department in accordance with section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 16 September 2013, you made a request for access to documents in the possession of the Department. Your request sought access to:

"...copies of all correspondence, including emails, that occurred between me and staff of the Department, related conversations between staff within the Department regarding my request, related conversations between the Minister of the Department and his staff including the Parliamentary Secretary for the Department and her staff regarding my request, and between any of these and my Federal Member of Parliament, Bronwyn Bishop.

The issue I was pursuing has not been resolved to my satisfaction, nor explained with any valid comprehensive and cohesive details. Some, but not all of these conversations, will be tied to a request reference number 2011-123286 issued by the Department.

While I have copies of my email communications and responses to me, I do not have and was not privy to the internal communications between these other involved parties and therefore do not understand the conclusions they have arrived at or why they decided to take no further action without any acknowledgement from me that I had been satisfied.

The timeframe of this communication was between May 2011 and March 2012.

As the response was inadequate, and I have no means to understand how it was arrived at, I request the details of conversations between these other involved participants as I may pursue this matter to a logical conclusion supported by fact rather than opinion and a dismissive attitude."

4. On the same date you provided further clarification about the scope of your request as follows:

"My original request, for which this FOI request is now seeking that I be provided with all related communication, was about the price gouging by foreign corporations that is only possible due to the very curious restrictions that exist in the Motor Vehicle Transport Act.

My communications, directly with the Department or through my Federal Member, Bronwyn Bishop, were with a number of Departmental staff and were, for my part, all sent by me and responded to from the Department at my [greg at acaze dot com] email address. I am uncertain what email address B Bishop used to communicate with the Department, or who she communicated with.

I am also uncertain what conversations took place internally within the Department as I was not copied into these communications.

It is copies of this full set of communications I seek to have provided to me.

I expect that the communications would have referenced the 2011-123286 request ID, or that a search of communications within the Departments email server for emails received from me, sent to me, or from and to B. Bishop would provide excellent start and end points to communications that likely included many internal staff, the Minister, A Albanese, the Parliamentary Secretary, C. King, and staff within their offices."

5. On 27 September 2013, the Department sought further clarification about the scope of your request.
6. On 14 October 2013, the Department provided you with an estimate of charges for \$860.73.
7. On 16 October 2013, you requested a waiver of the charges associated with your request on the basis that access to the documents was in the interest of the general public.

Decision

8. I have made a decision to refuse your request for waiver or reduction of charges associated with processing your FOI request.

Reasons for decision

9. I am not satisfied that the documents are in the interest of the general public or a substantial section of the public.
10. In your request you have indicated that you believe it is in the public interest to waive charges. You consider the documents you are requesting will assist you to pursue the issue of what you believe to be high costs of imported vehicles in Australia, and that seeking change will result in a public benefit in the order of \$250 million annually. You have also indicated that you feel the Department has not taken your concerns seriously, nor taken action to review the *Motor Vehicle Standards Act 1989* (the MVSA) in light of the issues you have raised.
11. However, you have not provided evidence to support your claim that the documents you have requested are a matter of interest to the public, nor that the release of the documents at no cost would benefit the public. In particular, I note that you are requesting documents that are already in your possession (correspondence between yourself and the Department or Minister).
12. Furthermore, you have indicated that you believe there is a 'flaw or quirk' in the MVSA that has resulted in Australian consumers paying more for vehicles. I understand that you have previously received correspondence from the Department and the Hon Catherine King MP, former Parliamentary Secretary for Infrastructure and Transport explaining the functions of the MVSA, the Australian Design Rules, the vehicle type approval system, and concessional import schemes. The issues you have raised about trade and vehicle costs in Australia, do not relate to the objects or operation of the MVSA, or the role of this Department in administering the MVSA.
13. Accordingly, I do not believe there is a public interest in the issues you have raised, rather it is a matter where you believe Government policy and legislation should be altered to allow for cheaper vehicles in the Australian market. As such, I have decided not to waive charges.

14. Please be aware that the Department has recently conducted some preliminary consultation on whether a review of the Act is necessary. You can find out more about this initial consultation at http://www.infrastructure.gov.au/vehicles/mv_standards_act/index.aspx (including the consultation paper and responses). Some submissions identified the need to consider the cost of vehicles in Australia. It is expected that there will be further consultation in future. Any comments you wish to provide would be welcome in any future review.

Your rights of review

15. If you disagree with the Department's decision to impose charges in relation to your FOI request, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).

Internal Review

16. You can ask the Department to review its decision to impose a charge. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. You must apply in writing and you can lodge your application in one of the following ways:

Post: FOI Coordinator
Department of Infrastructure and Regional Development
GPO Box 594
Canberra ACT 2601
Fax: (02) 6275 1347
Email: FOI@infrastructure.gov.au

Information Commissioner Review

17. You can ask the OAIC to review the Department's decision to impose a charge and/or the preliminary assessment of charges. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking an internal review from the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

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

Online: www.oaic.gov.au
Post: Office of the Australian Information Commissioner
GPO Box 2999, Canberra ACT 2601
Facsimile: (02) 9284 9666
Email: enquiries@oaic.gov.au

In person: Level 3, 175 Pitt Street, Sydney 2000

18. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: www.oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights.

Contacts

19. If you wish to discuss this decision, please do not hesitate to contact the Department's FOI coordinator on (02) 6274 6495 or via email at FOI@infrastructure.gov.au.



Judith Zielke
Executive Director
Surface Transport Policy

12 November 2013



Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);

- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
 - (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.