

3. On 26 September 2017 you sought a review of the charges associated with your request on public interest grounds.

Decision maker

4. By arrangements made by Defence under section 23 of the FOI Act, I am authorised to decide on your request for waiver of the processing charges.

Material taken into account

5. In coming to my decision, I had regard to:

- a. your submission in support of remission of the charges;
- b. the relevant provisions of the FOI Act;
- c. the relevant provisions of the FOI (Charge) Regulations; and
- d. the Guidelines published by the Office of the Australian Information Commissioner (the Guidelines).

Relevant legislation – section 29(5) of the FOI Act

6. Section 29(5) of the FOI Act provides as follows:

Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charges, the agency or Minister must take into account:

- a. *whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the applicant was made; and*
- b. *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.*

Consideration of financial hardship

7. As noted above, I am required to take into account whether access to the requested documents would cause you any financial hardship.

8. The Guidelines provide the following advice:

4.75 Whether payment of a charge would cause financial hardship to an applicant is primarily concerned with the applicant's financial circumstances and the amount of the estimated charge. Financial hardship means more than an applicant having to meet a charge from his or her own resources. The decision in 'AY' and Australian Broadcasting Corporation referred to the definition of financial hardship in guidelines 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.

4.76 Different hardship considerations may apply if the request is made by an incorporated body or an unincorporated association. The mere fact that costs for FOI requests have not been budgeted for has been held to be a commercial decision, rather than a matter of a lack of funds.

4.77 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. However, an agency should be cautious about conducting an intrusive inquiry into an applicant's personal financial circumstances. Agencies need to have regard to the policy of the Privacy Act, which is to minimise the collection of personal information to what is required for the particular function or activity. For example, in this case, to make a decision as to whether to waive or reduce a charge.

9. In the absence of any such information in relation to your request I am not satisfied that the payment of the charge, or part of it, would cause you any financial hardship.

Consideration of public interest

10. In relation to public interest considerations, the Guidelines state:

4.79 The Act requires an agency or minister to consider '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' (s 29(5)(b)). This test is different to and to be distinguished from public interest considerations that may arise under other provisions of the FOI Act.

4.80 Specifically, the public interest test for waiver in s 29(5)(b) is different to the public interest test in s 11A(5) that applies to conditionally exempt documents. Nor will s 29(5)(b) be satisfied by a contention that it is in the public interest for an individual with a special interest in a document to be granted access to it, or that an underlying premise of the FOI Act is that transparency is in the public interest.

4.81 An applicant relying on s 29(5)(b) should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from this disclosure. This may require consideration both of the content of the documents requested and the context in which their public release would occur. 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.

11. In your email dated 26 September 2017 you provided arguments in favour of the charges being waived. Specifically you stated "Over a number of years, there has been repeated media reporting, ANAO and Senate Committee reports into Defence management of DTC/DPC credit cards. How and what Defence is using Commonwealth funds for, is also of long continued interest to members of the public, and has attracted wide media coverage. Also, as the

Australian Information Commissioner stated in Australian Associated Press Pty Ltd and Department of Immigration and Border Protection [2016] AICmr 54 (31 August 2016), "To my mind, there is a significant public interest in understanding how and for what purpose public funds are being used".

12. While I acknowledge that there is a public interest in showing how public funds are being used and ensuring agencies are acting transparently, I do not consider there is a public interest in providing all of the supporting documentation. I consider that the public interest can be served by providing access to the higher level reports.

13. I note that paragraph 4.83 of the Guidelines provides a list of examples that demonstrate when giving access to a document may be in the general public interest or in the interest of a substantial section of the public. The example I consider relevant to this case is that:

- The transactional reports relate to a matter of public debate and disclosure of these reports would assist public comment on or participation in the debate or discussion.

14. While I consider that the higher level reports would assist with public comment or discussion, I do not consider this relevant for the supporting documentation.

15. In addition to the above, I note that the preliminary assessment of charges accurately reflects the level of work involved by the Department to identify, retrieve and consider the documents matching the scope of the request.

16. Notwithstanding the above, I note in your email of 26 September 2017 that you are willing to reduce the scope of your request to exclude the supporting documentation relating to the transactions. I also note that paragraph 4.89 of the Guidelines suggest it may also be appropriate to reduce or waive a charge if the applicant responds to a charge notice by revising the terms of their request so that it requires less work to process. Following advice from the Chief Information Officer Group, I am satisfied that reducing the scope to exclude supporting documentation for the top ten transactions would significantly reduce the amount of work involved in processing the request.

Charges decision

17. After taking all of the above into consideration, I consider there is a public interest argument in providing access to the transactional reports but not the supporting documentation. Should the scope be reduced as you have suggested, I consider that the remaining charge would be minimal. Given that one of the objects of the FOI Act is to provide prompt access at the lowest reasonable costs to applicants, I have decided to waive the charges on the revised scope.

Way forward

18. Noting the above, I suggest the revised scope would be for access to:

Item 1: The top ten highest transactional value recorded in CMS for FY2016/17, for Defence Travel Card (DTC) and Defence Purchasing Card (DPC) expenditures for the following expense type expenditures:

- * *Hotel Accommodation*
- * *Cash Advances*
- * *Airfares*
- * *Hospitality*
- * *Car Hire (self drive)*
- * *Taxis or similar car with driver expenditures*
- * *Meals*

The above is for SES(E) level employees only (that is on cards issued in their name),

Item 2: The top 10 largest reimbursement payments to DTC/DPC accounts (held by SES(E) level employees) for FY2016/2017 (that is reimbursement using private funds to offset over-payments or non Departmental expenses transacted on DTC/DPC cards in the name of SES(E) level employees).

excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers, contained in documents that fall within the scope of a FOI request and duplicates of documents.

19. If you agree with the revised scope, and wish to proceed, please confirm via return email.
20. Alternatively, if you disagree with my decision, you are entitled to apply for an internal review. Such an application should be made within 30 days of receipt of this letter or such further time as the Department may allow. The fact sheet *Freedom of Information – Your Review Rights* is at Enclosure 1.

Further advice

21. Please contact me if you have any queries about your request.

Yours sincerely

Melissa Davidson
Assistant Director Information Access

Enclosure 1: Freedom of Information – Your Review Rights