



By email: [foi+request-4178-68d83ede@righttoknow.org.au](mailto:foi+request-4178-68d83ede@righttoknow.org.au)

Dear Mr Adams

1. I refer to your request received by the Department of Education and Training (the department) on 27 October 2017 for access under the *Freedom of Information Act 1982* (FOI Act) to:

*'the full Financial Questionnaire (reference <https://ssphelp.education.gov.au/financial-questionnaire>) submitted by non-Government schools in the Coffs Harbour region (within postcode 2450) from 2009-2016'.*

2. On 10 November 2017, I sent you a notice of my intention to refuse your above request under section 24 of the FOI Act because processing your request would amount to a substantial and unreasonable diversion of the department's resources. Accordingly, I initiated a request consultation process under section 24AB of the FOI Act.

3. On 10 November 2017, you revised your request to:

*'3 schools (Bishop Druitt College, St Augustine's and St John Paul College) across 4 years (2016, 2014, 2012, 2010). It should only require a single document in each case (refer attached sample), that's 12 documents in total'.*

#### Background

4. On 15 November 2017 the department advised you of the preliminary estimate of the charge for processing your request, being \$270.15 (the Charge).
5. On 16 November 2017 the department received your request that the charge estimate had been wrongly calculated and should be reconsidered by the department. Specifically, you made the following submission in support of your request for reduction of the Charge:

*'18.13 hours (approximately 2.5 FTE work days) to review and consult seems excessive for this specific request. While 12 documents have been identified as relevant, they all share a single template and the information contained within is structured, predominately numerical and relatively simple. There should be very little that requires interpretation or evaluation.*

*Additionally, approximately one third of the data is already in the public domain and available via MySchools.'*

5. I am authorised to make decisions under the FOI Act and the following is my decision in relation to your contention of the Charge and the reasons for my decision.

#### Decision

6. I have decided to reduce the Charge to \$231.70.

## Reasons for decision

7. I have taken the following material into account in making my decision:
- the department's letter dated 15 November 2017 notifying you of the Charge;
  - your email received on 16 November 2017 contending the calculation of the charge;
  - the documents falling within the scope of your request;
  - information provided by the School Payments and Assurance Branch about the relationship between the Financial Questionnaire and finance report on the MySchools website;
  - the FOI Act;
  - the *Freedom of Information (Charges) Regulations 1982* (the FOI Regulations); and
  - Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

## Calculation of the Charge

8. As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the Charge.
9. In its letter dated 15 November 2017, the department advised that it has in its possession approximately 12 documents totalling 37 pages relevant to your request. The Charge, totalling \$270.15, was calculated as follows:

Search and retrieval time: 0.5 hours, at \$15.00 per hour:	7.50
Decision-making time: 13.13 hours minus the first 5 hours* at \$20.00 per hour:	262.65
<b>TOTAL</b>	<b>\$270.15</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.

10. In calculating a processing charge for a freedom of information application, the department applies relevant provisions of the FOI Act, the FOI Regulations and the Guidelines in relation to the amount it is permitted to charge. The department calculates the amount it may charge based on:
- the time taken to search for, and retrieve, files containing documents that fall within the scope of the request;
  - the number of third parties with whom it will be necessary to consult in the course of making a decision regarding release of the documents;
  - the number and size (volume) of the documents that have been identified as falling within the scope of the request and the time taken for decision-making in relation to each page of each document (*less the first five hours of decision-making time, which are free of charge*); and
  - the number of pages considered sensitive, requiring redaction (potentially requiring extra decision-making time).
11. The department enters the information regarding the number and nature of the documents into a calculator provided by the Australian Government Solicitor. While use of this calculator is not mandated, it is provided to agencies for use in the calculation of processing charges under the FOI Act and is in common usage. The decision-maker then applies his or her own experience to evaluate the reasonableness of the amount calculated.

12. In relation to your request, the Charge was calculated on the basis that the department will need to consult with six external third parties and, following this, the deletion of exempt material may be required, potentially increasing the decision-making time.
13. After reviewing the information used to calculate the Charge, I consider that the number of third parties I would need to consult should be reduced to five. This is because two of the proposed third party consults appear to be the same legal entity but have changed their name over time.
14. I note that in your email of 16 November 2017, you stated that my charge estimate includes '*18.13 hours (approximately 2.5 FTE work days) to review and consult*'. Under the FOI Regulations, there is no charge for the first five hours spent making a decision (Schedule, Part I, Item 5). Although my charge estimate letter stated that there would be 18.13 hours of decision making time, consistent with the FOI Regulations, I only charged you 13.13 hours (\$262.65) for decision making.
15. I have also considered your contention that '*approximately one third of the data is already in the public domain and available via MySchools*'. In particular, as there should be no charge for information already in the public domain. My understanding is that the information reported in the Financial Questionnaire is *selectively* used to create the school's finance report that is published on the MySchools website. For instance, as part of the Financial Questionnaire, schools are required to report any Commonwealth Government General Recurrent Grants and Indigenous Educations Grants. These two figures are then added together and reported as the total Australian Government recurrent funding in the school's finance report. Therefore, it appears that the information in the Financial Questionnaire is not exactly the same as the information that is published in the school's finance report on the MySchool's website. Indeed, the Financial Questionnaire appears to be the 'raw data' which is used to create the finance report. Accordingly, I do not consider that I have charged you for information that is already publicly available.
16. With the reduction in the number of third party consults, the Charge is now \$231.70.
17. I am satisfied that this Charge is realistic and represents the lowest reasonable cost required by the FOI Act.

#### **Reduction or non-imposition of the Charge**

18. Subsection 29(5) of the FOI Act provides that, without limiting the matters that an 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**

19. Your submissions of 17 November 2017, you have not contended that payment of the Charge, in full or in part, would cause you financial hardship. Accordingly, there is no basis upon which I can make a decision to reduce or not impose the Charge by reason that doing so would cause you financial hardship.

#### **Public interest**

20. Paragraph 29(5)(b) of the FOI Act provides that the department must 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'. This means that there must be a benefit flowing generally to the public or a substantial section of the public following disclosure of the documents subject to your FOI request.

21. The Guidelines further explain at paragraph 4.54 that the question to be considered by the decision maker is not whether it is in the public interest for the Charge not to be imposed or reduced, nor whether it is in the public interest for the particular applicant to be granted access to the document. Rather, the decision maker must identify the 'general public interest' or the 'substantial section of the public' that will benefit from the disclosure of the documents.
22. When considering whether there is a benefit flowing to the 'general public' or a 'substantial section of the public' from disclosure of the particular documents subject to the request, factors relevant to this request that may be considered include information that is already publically available, the nature and currency of the topic of public interest and the way in which the public benefit may flow from the release of the document (paragraph 4.55 of the Guidelines).
23. The material falling within the scope of your request is the Financial Questionnaire of three schools (Bishop Druitt College, St Augustine's and St John Paul College) for the years 2010, 2012, 2014 and 2016.
24. Your submissions of 17 November 2017 did not identify how granting you access to the documents would provide a derivative benefit to either the general public interest or a substantial section of the public.
25. In my view, there would not be a benefit flowing to the 'general public' or a 'substantial section of the public' from disclosure of the particular documents subject to the request. In particular, the documents relate to three particular schools in the Coffs Harbour area. While these documents may be of interest to the parents whose children attend or may in future attend those schools, I do not consider that this segment of the community would constitute the 'general public' or a 'substantial section of the public'.
26. Additionally, there is already aggregate financial information – based on the Financial Questionnaires submitted by these schools – in the finance report published on the MySchools website. It is difficult to understand how providing the figures that underpin some of the information published in the finance reports would result in a benefit to the 'general public' or a 'substantial section of the public' from disclosure of the particular documents.
27. In light of this, I have decided not to reduce the Charge on public interest grounds.

#### **Options to proceed with your request**

28. In order for your request to continue to be processed, you are required to respond in writing in accordance with one of the following options:
  - (a) pay the Reduced Charge (either the deposit or in full); or
  - (b) request a review of the decision to impose the Reduced Charge.
29. Alternatively, if you wish to withdraw your request at this time, you may do so in writing.

#### *Option A – pay the Reduced Charge*

30. As the Reduced Charge exceeds \$100.00, you are required to pay a deposit of 25 per cent, amounting to \$59.90, within 30 days of receiving this notice. You may, of course, elect to pay the Reduced Charge in full at this point.

31. The Reduced Charge can be paid by cheque or money order made out to the Collector of Public Monies—Education or by credit card.
32. If you would like to pay by cheque or money order, please send them to:  
Schools, Child Care and Corporate Legal Branch  
Department of Education and Training  
Location code: C50MA10  
GPO Box 9880  
CANBERRA ACT 2601
33. If you'd like to pay by credit card, please fill out the authorisation form at **Attachment A** and send it back to us at [foi@education.gov.au](mailto:foi@education.gov.au).

*Option B – request a review of the decision to impose the Reduced Charge*

34. I have enclosed information about your rights of review under the FOI Act at **Attachment B**.
35. If the department has not received payment of the charge within 30 days as specified under Option A, your FOI request will be taken to have been withdrawn.

Please send any further correspondence in relation to this matter to [foi@education.gov.au](mailto:foi@education.gov.au).

Yours sincerely



Genevieve Fiot  
Senior Government Lawyer  
Schools, Child Care and Corporate Legal Branch  
December 2017

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## Attachment A

# Credit Card Authorisation

### About this form

You have advised the Department of Education and Training that you would like to pay the charge imposed for the processing of your freedom of information (FOI) request by credit card. This form collects the details required from you in order to process that payment by credit card. Please ensure all fields have been filled in correctly.

### Part 1: Applicant Details

Name:

Contact number:

### Part 2: Credit Card Details

I authorise the Department of Education to debit my credit card in the amount of: \$

(please specify amount in the space provided)

Cardholder's Name (please print name in capital letters):

Credit Card Number:

Credit Card Type (Diner's Card not accepted):

Credit Card Expiry Date:

Card Holders Signature:

Date:

### Privacy Statement

The personal information collected on this form is collected by the Department of Education and Training for the purposes of administering payment of the charge imposed for processing your freedom of information request. The information collected will not be disclosed unless authorised or required by law.

## **Attachment B**

### **Internal Review**

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Email: [foi@education.gov.au](mailto:foi@education.gov.au)

Post: The FOI Coordinator  
Schools, Child Care and Corporate Legal Branch  
Department of Education and Training  
Location code: C50MA10  
GPO BOX 9880  
CANBERRA ACT 2601

### **External Review by the Australian Information Commissioner**

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC, you must apply for the review, in writing or by using the online merits review form available on the [AIC's website](#), within 60 days of receipt of this letter. To assist the AIC, your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The AIC advises that, before making a complaint to it, you should raise your concerns directly with the relevant agency.

Applications for review or complaint can be lodged in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)

Post: GPO Box 5218 Sydney NSW 2001

Fax: +61 2 9284 9666

Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.