



Australian Government
Australian Public Service Commission

Fliccy

By email: foi+request-4192-53e33be4@righttoknow.org.au

Our reference: C17/2088

Dear Applicant,

Freedom of Information Request - Determination of the Charge

1. On 15 December 2017 you wrote to the Australian Public Service Commission (the **Commission**). You argued that under section 29(1)(f)(ii) of the *Freedom of Information Act 1982* (Cth) (the **FOI Act**), that the preliminary charge assessment sent to you on 15 November 2017 should not be imposed on public interest grounds.
2. This correspondence sets out my determination about the applicable charges in your matter.

Background

3. I refer to your email correspondence dated 2 November 2017 received by the Commission, requesting access under the FOI Act to the following documents:

I request access to all documents held by the APSC that relate to the APSC produced document for the IPA.

To narrow the scope of my request I am willing for it to relate only to email documents (ie. Emails and any attachments to those emails) and I am willing for the APSC to disregard all but the last email in email chains/threads (but only on the basis that the preceding emails in those email chains will be included in the last email of those email chains). I am also willing for the APSC to disregard any documents within the scope of my request that have already been made available [link provided to previous FOI request].

4. You reference a previous Freedom of Information (FOI) decision released by the Commission in April 2017; in particular, you refer to a document provided by the Commission to a third party organisation.
5. On 15 November 2017, the Commission sent you correspondence detailing its preliminary assessment of an applicable charge of \$233.77. I note that the preliminary assessment was calculated in line with Schedule 1 of the *Freedom of Information (Charges) Regulations 1982* (the **FOI Regulations**); accordingly, as provided under the FOI Act, the first 5 hours of decision-making time were calculated at a nil charge.

Alternative administrative release

6. In your submissions you assert that the document titled 'examples of *'soft' arrangements in Commonwealth Enterprise Agreements'* (the **EA Document**) was created for the purpose of supplying information to a third party organisation.
7. Having consulted with the relevant line areas and reviewed certain documents falling within the scope of your request, I advise that the EA document was originally created at the request of the Commissioner, for the purpose of preparing a paper for release to media.
8. I have determined that the *administrative release* of particular documents may satisfy your request. The administrative release option proposed would comprise of a de-identified email between Commission staff, evidencing the request and reason for creating the document.
9. Release of these documents to you under administrative access arrangements would be in satisfaction of your FOI request; accordingly we would ask that you withdraw your present FOI request.
10. Please contact the Commission by reply email within 30 days of receiving this notice should you wish to withdraw your request and seek administrative release as above.

Charges Determination

11. I am an officer authorised under s23(1) of the FOI Act to make decisions in relation to FOI requests.
12. On 15 December 2017 you wrote to the Commission contending that the preliminary charge assessment in respect of your FOI request should not be imposed. You have made a number of submissions in support of your contention that release of the requested documents is in the public interest.
13. Section 29(4) of the FOI Act provides discretion where an applicant has notified an agency that the applicant contends that the charge should be reduced or not imposed, the agency may decide that the charge is to be reduced or not to be imposed.
14. The FOI Act does not limit the matters that the agency may take into account in determining whether or not to reduce or not to impose the charge; however section 29(5) of the FOI Act specifies that consideration must be given to whether the payment of the charge, or part of it, would cause financial hardship to the applicant, and also to whether the giving of access to the document(s) in question is in the general public interest or in the interest of a substantial section of the public. I will address these considerations below.

Financial Hardship

15. Consideration of whether payment of a charge would cause financial hardship means more than an applicant having to meet a charge from their own resources. Consideration is given to the applicant's financial circumstances and the amount of the estimated charge.
16. You did not provide submissions regarding any hardship that may be incurred by payment of the charge, nor have you elected to provide evidence of any financial hardship in support of a

reduction to, or waiver of the charge. Accordingly, I am satisfied that the payment of the charge would not cause you financial hardship.

Public Interest

17. Section 29(5)(b) of the FOI Act requires consideration of 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 is different test to the public interest test considered in relation to conditionally exempt documents under the FOI Act.
18. Where an applicant seeks to rely on this consideration for reduction or waiver of the charge, paragraph 4.81 of the FOI Guidelines notes that the 'general public interest' or the 'substantial section of the public' should be identified with specificity. Consideration of a waiver or reduction of the charge will not be satisfied by a general contention that release of a document to an individual with a special interest in it will be in the public interest; neither will it be satisfied by a contention that transparency in itself is in the public interest.
19. Assessment of what the public interest is in this context requires consideration of both the content of the documents requested and the context in which the public release would occur.
20. I consider that disclosure of the documents sought, being emails relating to the EA document is not in the general public interest or of interest to a substantial section of the public. This is because the documents you are seeking were created three years' ago and in my view, release of the same do not meet the objectives of the FOI Act.
21. I have determined that release is not likely to increase public participation in government processes. Further, it would have limited benefit to public debate or discussion; noting that no public debate about the documents relating to the EA Document exists and that little public benefit would flow from release.
22. In '*FG*' and *National Archives of Australia* [2015] AICmr 26, the Information Commissioner held that any submissions an FOI applicant chooses to make in support of their application as to their reasons for seeking access and their intended or likely use or dissemination of the information is a relevant and appropriate factor to be considered in determining whether disclosure of personal information is unreasonable.
23. I have determined that release of personal information contained within the requested documents is not in the public interest. Instead, it is in the public interest to protect and preserve the individual's right to privacy.
24. You have asserted that persons associated with the creation of the EA document acted improperly, or illegally.
25. I refute your assertion that Commission employees have acted improperly, or illegally. I note that the Commission is obliged, under the *Work, Health and Safety Act 2011* to protect the wellbeing and physical safety of its employees.
26. I consider it is reasonably foreseeable that the release of the requested documents which contain the personal information of agency employees, would be unreasonable; do so would expose third persons (employees) to undue public scrutiny, and potentially expose them to cyber bullying, harassment, undue stress and/or breach of their privacy.

27. I have determined that release of the document would not provide a notable benefit to a substantial section of the public, nor is release in the general public interest. Accordingly I have decided not to reduce (or not impose) the estimated charge on public interest grounds. I have determined that release of the requested documents would not advance public debate or discussion about the topics at hand, particularly in light of the material already available in the public domain. I have found that the reduction or waiver of the assessed charge is not in the public interest.

Your submissions

28. I confirm that in determining whether or not the charge be imposed, I have considered all comments and referenced links you have supplied.

29. I disagree with your assertions relating to Commission employees. It is not uncommon for Commission staff to undertake research-based tasks, either on request from the Executive or from members of the general public requesting assistance for research purposes, including but not limited to media, research students or bodies or state authorities.

Further considerations

30. As previously noted, the FOI Act does not limit the considerations of an agency, and an agency is entitled to consider matters that weigh against those relied upon by the applicant.

31. I have also taken into consideration the cost to the Commission in processing your FOI request, noting that the processing charges do not compensate the actual costs associated with the processing of your request. The true processing time for your request is longer than the total time considered for the purposes of determining the preliminary assessment of charges.

Charges determination

32. I have independently considered the calculation of the preliminary charges assessment, and I am satisfied that the estimated charge is valid, based on discussions with the relevant line area and my own knowledge of the time required to undertake third party consultations, and to draft and settle a decision.

33. I confirm that in the event the work undertaken to respond to your request takes less time than originally estimated, an appropriate reduction or refund will be assigned to your matter.

Your action is required

34. Please notify the Commission in writing within 30 days of receiving this notice if you would like the Commission to continue processing your request.

35. Please indicate whether you:

- a. Intend to pursue administrative access to the documents;
- b. Agree to pay the affirmed charge;
- c. Wish to seek review of the charge determination; or
- d. Withdraw the request.

Further information on each of these options is set out below.

36. If, within 30 days of receiving this notice you do not provide a written response in accordance with one of the options listed above, your request will be taken to have been withdrawn.

Option A – Administrative access

37. Please contact the Commission by reply email within 30 days of receiving this notice, indicating your agreement to administrative access release of the publicly available documents. If you accept this option, you will need to withdraw your request.

Option B - Pay the charge

38. As the preliminary assessment of the charge exceeds \$25.00, you are required to pay a deposit of \$58.44 (being 25% of the preliminary charge) within 30 days of receiving this notice. You may elect to pay the charge in full if preferred.

39. 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 C17/2088 with your payment. Details for alternative payment methods, including BPAY are available on request.

40. Should you elect to pay the charge please email FOI@apsc.gov.au once you have posted your cheque or money order to advise us of your payment. You will be notified of the final determination of applicable charges on release of the Commission's decision in this matter.

Option C - seek review of the charge

41. If you disagree with my decision to impose a charge, you may seek review in the following ways:

- a. You can ask for an internal review of the decision; or
- b. You can seek external review of the decision by the Australian Information Commissioner.

42. If you wish to seek internal review of this decision, section 54 of the FOI Act gives you a right to apply. You must apply in writing within 30 days of you receiving this notice. Applications for internal review can be lodged by email to FOI@apsc.gov.au, or by post to the FOI Coordinator at the Australian Public Service GPO Box 3176 Canberra ACT 2601.

43. If you choose to seek internal review, you will subsequently have a right to apply to the Australian Information Commissioner for review of the internal review decision if desired.

44. If you wish to seek external review, section 54L of the FOI Act confers a right to apply directly to the Australian Information Commissioner. You must apply for such a review in writing within 60 days of receiving this notice. Applications can be made to enquiries@oaic.gov.au. Further information about the Australian Information Commissioner at www.oaic.gov.au.

Option D - withdraw your request

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

Time limits for processing your request

46. 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:

- a) the day following payment of the charge (in full or the required deposit); or
- b) if applicable, the day following the notification to the applicant of a decision not to impose the charge.

Contacts

47. If you require clarification of any of the matters discussed in this letter you should contact the Commission's FOI Officer by email at foi@apsc.gov.au.

Yours sincerely

Susannah

Authorised FOI decision maker

12 January 2018