



**Australian Government**  
**Department of Defence**

Freedom of Information  
CP1-6-001  
PO Box 7910  
CANBERRA BC ACT 2610  
Tel: 02 626 62200  
Fax: 02 626 62112  
FOI@defence.gov.au

Our reference: FOI 244/17/18

Ms Verity Pane

Right to Know

By email: [foi+request-4276-ae4aa40c@righttoknow.org.au](mailto:foi+request-4276-ae4aa40c@righttoknow.org.au)

Dear Ms Pane

**NOTICE OF DECISION ON REQUEST FOR REVIEW OF CHARGES**

1. I refer to your email, dated 21 December 2017 in which you requested access, under the *Freedom of Information Act 1982* (FOI Act), to:

*I seek under FOI any documents held by the Information Management and Access Branch of the Governance and Reform Division, relating to guidance, procedure or policy for the management and administration of FOI applications made by members of the public.*

*I also seek any documents relating to guidance, procedure or policy on “difficult” or “problematic” applicants that relate to Defence’s management and administration of FOI applications.*

*I would also be interested in any documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence’s management and administration of FOI applications.*

2. On 6 February 2018 you agreed to the following revised scope:

*I seek under FOI any documents held by the Information Management and Access Branch of the Governance and Reform Division, relating to:*

*ITEM 1 - current guidance, procedure or policy for the management and administration of FOI applications made by members of the public.*

*ITEM 2 - current documents relating to guidance, procedure or policy on “difficult” or “problematic” applicants that relate to Defence’s management and administration of FOI applications.*

*ITEM 3 - current documents relating to guidance, procedure or policy with respect to the training of delegates, with respect to Defence’s management and*

*administration of FOI applications.*

*Excluding historical documents, proposed documents, templates, informal notes and draft documents.*

### **Liability to pay charges**

3. In a letter dated 6 February 2018, you were advised of the decision, in accordance with section 29 of the FOI Act, that you were liable to pay a charge for the processing of your request and for giving access to the requested documents.

4. On 6 February 2018 you sought a review of the charges associated with your request on the grounds the estimate given was disproportionate to the documents subject to your request.

### **Decision maker**

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

### **Material taken into account**

6. 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;
- d. the Guidelines published by the Office of the Australian Information Commissioner (the Guidelines); and
- e. the Office of the Australian Information Commissioner review decision in 'M' and Department of Agriculture, Fisheries and Forestry [2013] AICmr 24 (13 March 2013).

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

7. 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**

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

9. 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.*

10. 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**

11. 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 s29(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.*

12. In the absence of any such information in relation to your request I am not satisfied that public interest considerations apply in this case.

### **Further Considerations**

13. While the FOI Act states that the above considerations must be taken into account, as a delegate I am not limited to the consideration of those two factors. This is evidenced in section 29(5) which states '*without limiting the matters the agency,...may take into account.*' Accordingly, I have also had regard to the points you raised in your email dated 6 February 2018 to Mr Ashauer.

14. In your email you stated: "*Estimates need to be based on reasonable assessments, and must be supported by evidence*", further you state: "*Defence would be well aware of the documents in scope, and their contents, given these are day to day reference material used by this FOI section*".

15. Paragraph 4.84 of the Guidelines refers to the consideration of the range or volume of documents requested by an applicant when considering whether to impose charges for processing. Our office conducted preliminary searches for documents matching your revised scope which amounted to over 500 pages. The FOI Directorate use many various guidelines, advice and policy documents in processing FOI requests. There is no single guide Defence FOI practitioners use to process requests and as such your scope has captured all reference material currently in use. These documents will need to be reviewed closely prior to release and some documents may require redaction. I have taken this into account when considering your arguments, and in the first instance have assured myself that the estimated charge of \$319.60 is reasonable in terms of the amount of work required to process the request. I am an experienced FOI practitioner and I consider the calculations reflect the time it would take to process the request.

### **Charges decision**

16. Taking into account the work that has already been undertaken on this matter, I have decided to impose the charges in the amount previously estimated.

17. If you agree with my decision, and wish to proceed, a deposit of **\$79.90** is required. The deposit is not refundable except in some limited circumstances (for example, if Defence fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid.

18. Please complete the authorisation form at Enclosure 1 and return it to the FOI Directorate by 4 April 2018. Upon receipt of the form an invoice will be sent to you within five working days. Details about payment of the invoice are on the form. Our office will not process your request until a receipt is received in our office notifying that the deposit amount has been paid. If

you do not respond to this letter within 30 days of receiving it (or by a later deadline if we give you an extension), we will take it that you have withdrawn your request.

19. 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 2.

**Further advice**

20. Please note if you would like to revise your scope further and potentially reduce your charges then please don't hesitate to contact our office.

Yours sincerely

Cos Cameron  
Assistant Director  
Freedom of Information

Enclosures:

1. Payment Authorisation form
2. Freedom of Information – Your Review Rights



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**Department of Defence**

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**FREEDOM OF INFORMATION REQUEST - PAYMENT AUTHORISATION**

FULL NAME or ORGANISATION	Ms Verity Pane		
POSTAL ADDRESS:			
CONTACT PHONE NUMBERS:	H	M	B
EMAIL:	<a href="mailto:foi+request-4276-ae4aa40c@righttoknow.org.au">mailto:foi+request-4276-ae4aa40c@righttoknow.org.au</a>		
FOI REFERENCE :	244/17/18		
AMOUNT \$	<b>79.90</b>		

By signing this form you are agreeing to pay the charges notified to you by the Freedom of Information Directorate. The deposit is not refundable except in some limited circumstances (for example, if Defence fails to make a decision on your request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit paid:

**PLEASE DO NOT SEND CHEQUES OR MONEY ORDERS TO FOI**

Once our office receives this form, the Department of Defence will generate an invoice in order for you to make payment of the agreed charges via one of the payment options.

**Our office will not proceed to process your request until a receipt has been received in our office notifying that the deposit amount has been paid.**

Please sign below and return this form by one of the following:

via email to [FOI@defence.gov.au](mailto:FOI@defence.gov.au)  
via fax 02 6266 2112  
by post to the address noted above.

Signature: \_\_\_\_\_