



Reference: Objective ID: [R33759141]

FOI 244/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT

1. I refer to the email of 19 March 2018, in which Ms Verity Pane confirmed she had applied for an internal review of charges under section 53A (e) of the *Freedom of Information Act 1982* (FOI Act) of the Accredited Decision Maker's decision dated 5 March 2018, to impose a charge in the amount of \$319.60.

2. The applicant's request was for access to the following documents under the FOI Act:

I seek under FOI any documents held by the Freedom of Information (FOI) Branch of the Governance and Reform Division, relating to:

ITEM 1 - current guidance, procedure or policy held on the Defence corporate records management system, for the management and administration of FOI applications used by FOI staff to process requests made by members of the public on a day to day basis.

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 and training with respect to Defence's management and administration of FOI applications.

Excluding websites, historical documents, proposed documents, templates, informal notes and draft documents.

Background and contentions to challenge charges decision

3. On 8 March 2017, Ms Pane was provided with Defence's charges decision. In response, Ms Pane stated she was of the view that the decision did not provide substantive evidence to support the decision and therefore she was seeking a review of Defence's "ridiculous rubber stamp of the original estimate decision"

4. The purpose of this statement of reasons is to provide the applicant with a fresh decision relating to the charges.

Reviewing officer

5. I am authorised to make this internal review decision under arrangements approved by the Secretary of Defence under section 23 of the FOI Act.

Internal review decision

6. I have made a fresh decision and for the reasons given below I have decided not to reduce or waive the charge payable. Essentially, I have decided to uphold the original decision to impose a charge in the amount of \$319.60.

Material taken into account

7. In arriving at my decision, I had regard to:
- a. the applicant's application for an internal review of charges;
 - b. a sampling of the documents subject to the original FOI request;
 - c. relevant provisions in the FOI Act; and
 - d. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines).

Considerations in making my decision

8. When an applicant seeks reduction or waiver of the charge, in response to a notice under section 29(5) [Charges] of the FOI Act, the decision maker 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 request 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.

9. An agency also has a general discretion to reduce or not impose a charge, and this discretion is not limited to financial or public interest grounds.

10. In the absence of any such information, I am not satisfied that the payment of the charges, or part of it, would cause the applicant any financial hardship.

Guiding principles taken into account

11. I acknowledge that one of the principal objects of the FOI Act is, as far as possible, to facilitate and promote, promptly and at the lowest reasonable cost, the disclosure of information held by government. However, the FOI Act does not go so far as to say access to information should be free of any cost to the applicant. An agency is required when processing an FOI request to determine whether an applicant is liable to pay a charge.

12. In considering the application for internal review, I have also referred to the Guidelines, specifically Part 4 – Charges for providing access, which contains guidance about the imposition of charges. In relation to the general guiding principles involved, I have taken into account the following information referred to in paragraph 4.3 which states as follows:

‘4.3 An agency or minister has a discretion to impose or not impose a charge, or impose a charge that is lower than the applicable charge under reg 3 of the Charges Regulations. In exercising that discretion the agency or minister should take account of the ‘lowest reasonable cost’ objective, stated in the objects clause of the FOI Act (s 3(4)):

... 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.

13. I also considered the following principle at paragraph 4.5 which is relevant to charges under the FOI Act:

- ‘Charges **should fairly reflect the work involved in providing access to documents on request.**’ [my emphasis in bold]

14. The power to reduce or waive FOI charges is a discretionary one, subject to law and government policy. Even if I were to concede that disclosure of the documents subject to the FOI request would serve the public interest or in the interest of a substantial section of the public – and I do not make that concession – I may, and have in reaching my decision into account other factors.

15. Upon internal review, I sought a sample of the documents matching the scope of the FOI request. In my view, the basis for the preliminary assessment of charges provided to the applicant reflects the work involved in providing access to documents. The applicant has not specially challenged the actual time involved in processing the FOI request, therefore I do consider the preliminary assessment is more than fair and reasonable.

16. The estimated time to be taken to administer the applicant’s request covers over 500 pages of documents. The work involved in administering the applicant’s FOI request relates to searching for documents while liaising with many areas in Defence to ensure all documents falling within the scope have been identified. Decision making time relates to examining the pages for decision making, removing information from pages, consulting third parties, drafting and finalizing a statement of reasons and completing a schedule in accordance with the decision. Therefore, I consider the applicant should pay the original estimate as this reflects a contribution to the actual cost.

Public interest considerations

17. I note in the applicant’s email of 21 December 2017, she stated the documents were being sought ‘with respect to Defence’s management and administration of FOI applications’. However, I note the applicant did not provide reasons as to how the material would be ‘applicable to the general public’.

18. In relation to ‘public interest’ considerations, paragraphs 4.79, 4.80 and 4.81 of the Guidelines state as follows:

‘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 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.’

19. As the Guidelines explain, an applicant should identify or specify the ‘general public interest’ or the ‘substantial section of the public’ that would benefit from disclosure. Matters to be considered include the way in which a public benefit may flow from the release of the documents.

20. While there may be a public interest in the release of the documents, the question I have considered is whether the giving of access to such documents would be of general public interest or in the interest of a substantial section of the public. I note there is publicly available information relating to the processes of applying for Freedom of Information requests in the public domain, specifically the Office of the Australian Information Commissioner. In the internal review application, the applicant has not provided any reasons regarding why the disclosure of the documents would be in the public interest and as such, I am not satisfied the application would justify waiver of charges.

21. I am also not convinced the information that may be released would contribute to the knowledge of a substantial section of the public or how it would contribute to public debate. There are not, in my view, sufficient grounds to justify that the giving of access to documents would be in the general public interest.

22. I have also considered paragraph 4.84 of the Guidelines which states:

4.84 In applying those and related examples, an agency or minister may also consider whether the range or volume of documents requested by an applicant could be considered reasonably necessary for the purpose of contributing to public discussion or analysis of an issue.

23. As I have made note that there is sufficient material in the public domain on the processing of FOI requests, I believe the public interest has already been satisfied as this material provides guidance material to Commonwealth agencies on the administration and management of FOI requests. As such, I have decided not to reduce or waive the charge payable on public interest grounds.

Financial hardship

24. As provided for in paragraph 29(5)(a) of the FOI Act, in deciding whether or not to reduce or impose a charge, in this case I must take into account ‘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 application was made’. However, the applicant has not contended that payment of the assessed charge would cause her financial hardship. Moreover, I have no information available to me to enable me to come to a decision about financial hardship.

Deposit required if the applicant wishes to proceed

25. Taking the above into consideration, if the applicant wishes to proceed with the FOI request and agrees to pay the charge, 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 the applicant's request within the statutory time limit), or may be refundable in part if the final charge is less than the deposit required.

26. Please complete the attached authorisation form and return it to the FOI Directorate by 7 May 2018. Upon receipt of the form an invoice will be generated, which may take up to five business days. Details about payment of the invoice are on the form. The FOI Directorate will not process the request until a receipt is received notifying that the deposit amount has been paid. If the applicant does not respond to this letter within 30 days of receiving it (or by a later deadline if we give the applicant an extension), we will take it that the request has been withdrawn.

27. Alternatively, if the applicant disagrees with my decision, the applicant is entitled to apply for an external review. Such an application should be made within 30 days of receipt of this letter or such time as the Department may allow. The fact sheet *Freedom of Information – Your Review Rights* is at Enclosure 2.

Further information

28. If the applicant does not respond to this letter within 30 days of date of receipt, Defence will deem the request as withdrawn.

Mr Jarrod Howard
Authorised Decision Maker – Internal Review