



29 May 2018

Our reference: LEX 35790

Posty

Only by email: foi+request-4448-01ce07d8@righttoknow.org.au

Dear Posty

Freedom of Information Request – Reconsideration of Charges Decision

I refer to your request, dated 22 March 2018, and received by the Department of Human Services (**department**) on that same date, for access under the Freedom of Information Act 1982 (**FOI Act**) to the following:

'All documents contained within the file "Telephone standards 111-05010040" as listed on this page - referred to as your "Operational Blueprint" portal:

<http://operational.humanservices.gov.au/public/Pages/specialist-manuals-and-system-tools/111-05010040-01.html>

This includes all four "tabs" on the page –

"Background", "Process", "References" and "Resources".'

On 28 April 2018, you requested that the preliminary assessment of charges for the amount of \$14.55 (**preliminary charge**) that was notified to you on 9 April 2018 be reconsidered by the department.

I have reconsidered the preliminary charge of \$14.55 and determined that it is an appropriate and reasonable charge for processing your request. I have therefore decided to affirm the preliminary charge.

Background

The department conducted searches of its records and identified 1 document, totalling 4 pages, that is within the scope of your request. On the basis of these searches, the department determined that you were liable to pay a charge for the processing of your request, in accordance with section 29 of the FOI Act.

On 9 April 2018, you were notified that you are liable to pay this charge and that the preliminary assessment of the charge was \$14.55 (**preliminary charge**). The charge was calculated as follows:

Search and retrieval time: 0.97 hours, at \$15.00 per hour:	\$14.55
Decision-making time (*after deduction of 5 hours): 0 hours, at \$20.00 per hour	\$0.00

TOTAL **\$14.55**

*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.



On 28 April 2018, you responded to the preliminary charge notification, contending that the preliminary charge should be reconsidered (**reconsideration request**).

What I took into account

In reaching my decision I took into account:

- the preliminary charge;
- your reconsideration request;
- the documents falling within the scope of your request;
- relevant case law;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982 (Regulations)*; and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**).

Reconsideration of the preliminary charge

Section 29(4) of the FOI Act provides that, where an applicant has notified an agency that the applicant contends that a charge should be reduced or not imposed in relation to a request under the FOI Act, then the agency has the discretion to determine whether the charge is to be reduced or not imposed.

In making a decision in relation to this discretion, section 29(5) requires that I consider:

- whether payment of the charge would cause financial hardship to the applicant; and
- whether giving access to the document is in the general public interest or in the interest of a substantial section of the public.

The Guidelines state at paragraph 4.71:

'In addition to considering those two matters, an agency or minister may consider any other relevant matter, and in particular should give genuine consideration to any contention or submission made by an applicant as to why a charge should be reduced or waived'.

Given that your submissions cover various issues, I will respond to each issue separately.

Financial hardship

Paragraph 29(5)(a) of the FOI Act provides that, without limiting the matters an agency may take into account in determining whether or not to reduce or not to impose the charge, the agency must take into account whether the payment of the charge, or part of it, would cause financial hardship to the applicant.

Relevantly, paragraph 4.75 of the Guidelines states:

'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.'

Furthermore, paragraph 4.77 of the Guidelines further states:

'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.'

You submitted that:

'...I am not a man of significant financial means, I'm supporting my wife (unpaid leave) and a small child as well as a mortgage on a similar income as yourselves (Centrelink Band 3 (APS 5 & 6) I believe). times are tight.'

Having carefully considered your submissions and the Guidelines, I am unable to conclude that payment of the charge would cause you financial hardship. This is for two reasons. First, and most significantly, it is difficult to quantify how a charge of \$14.55 would cause financial hardship as described in paragraph 4.75 of the Guidelines. Second, while I acknowledge that you have provided an outline of your financial circumstances, the Guidelines state an applicant is ordinarily expected to provide evidence, for example of income, debts or assets. Your statement, taken alone, does not meet the requirement provided in paragraph 4.77 of the Guidelines.

In summary, based on the information currently before me, I am not satisfied that the charge should be waived or reduced on the ground of financial hardship.

The public interest

In making my decision, I am also required under subsection 29(5) of the Act to take into account whether the provision of access to the documents is in the general public interest, or in the interest of a substantial section of the public. In other words, there must be a *benefit* flowing generally to the public or a substantial section of the public from disclosure of the documents in question. This requires me to consider the nature of the documents and the context of their release.

Paragraph 4.81 of the Guidelines states that, in considering the public interest, matters to be considered include:

- whether the information in the document is already publicly available,
- the nature and currency of the topic of public interest to which the document relates, and
- the way in which a public benefit may flow from the release of the document.

In your request for a reconsideration of the charge, you submitted that:

'I also dispute the charge on public interest grounds - it is currently of great public interest the phone services that Centrelink provide. to support this claim just look at the sheer amount of recent results for a google news search of "centrelink phone"

EG:

https://www.google.com.au/search?q=centrelink+phone&safe=off&source=lnms&tbn=nws&sa=X&ved=0ahUKEwiZ1rCcqNraAhXHw7wKHUcsCTYQ_AUICigB&biw=1435&bih=953&dpr=2 (psst I like this one <http://junkee.com/centrelink-ultimate-fuckboy/156100>).

One thousand two hundred and fifty new contractors are being employed in Centrelink's call centres - ensuring that they are all meeting the telephone standards expected is of paramount consequence. Knowing what those standards are is kind of required for that.'

Consideration of the public interest is not primarily concerned with curiosity or commentary. The primary question is whether a benefit will flow to the public generally, or a substantial section of the public, from disclosure of the information in the document.

Relevantly, in *Cashman & Partners v Secretary, Department of Human Services and Health* (1995) FCR 301, 307, the Federal Court held that:

'The [Administrative Appeals] Tribunal has consistently, and in my view correctly, accepted that the proper approach to the question of benefit to the general public is that stated in *Cazalas v US Department of Justice* [1983] USCA5 1422; (1983) 709 F 2d 1051 at 1053. In *Cazalas*, it was held that the question of benefit to the general public was concerned with benefits flowing from the fact that information previously withheld by the agency is now accessible to the community.'

Having considered your submissions, I am not satisfied that they are sufficiently compelling reasons for the charge to be waived in the public interest.

You submit that the documents relate to a topic that is a strong area of public interest. While I accept that the engagement of contractors answering Centrelink calls has been the subject of recent media coverage, the information contained in the document you have requested is not related to the engagement of contractors or staffing arrangements for Centrelink calls.

The department has made information about its telephone services available in the public domain, for example:

- Department of Human Services 2016-2017 Annual Report, a link to which can be found here: <https://www.humanservices.gov.au/sites/default/files/2017/10/8802-1710-annual-report-2016-17.pdf>;
- the Australian National Audit Office 2015 report titled 'Management of Smart Centres' Centrelink Telephone Services' which can be found here: <https://www.anao.gov.au/work/performance-audit/management-smart-centres-centrelink-telephone-services>.

On this basis, I do not consider that the release of the document you have requested would significantly contribute to the information currently in the public domain, to the extent that the public generally, or a substantial section of the public, would benefit from disclosure of the requested documents.

As a result, I am not satisfied that the charge should be waived or reduced on public interest grounds.

The cost of searching and retrieving the documents

You submit that:

'Should any charge be allowed to stand - in any case - your estimation of 0.97 hours is laughably incorrect. This is an estimate of 58 minutes and 12 seconds to perform the likely following actions:

- 1) Open your web browser
- 2) load your operational portal intranet search page
- 3) search for the exact code of the file that I provided you - "Telephone standards 111-05010040" or even just "111-05010040"
- 4) copy that hyperlink result to your clipboard.

Note: this is precisely where all charges should stop - no malarkey about exporting to other formats like PDF, no opening an email to the person you need to discuss it with or considering it yourself for delivery to me - that is the entire scope of the FOI act in this regard as per section 4.25 of the FOI act:

"4.25 Search and retrieval time does not include time spent by agency officers, other than the decision maker, discussing and reviewing the results of search and retrieval activities.[4]"

...section 4.5 also states:

"Charges should fairly reflect the work involved in providing access to documents on request."

I estimate that a charitable estimate to perform the preceding four actions is five minutes. which at \$15 an hour comes to a total charge of \$1.25.'

Paragraph 4.22 of the Guidelines provides:

'An agency or minister can charge for 'the time spent ... in searching for or retrieving the document' (Charges Regulations, Schedule, Part I, Item 2). This encompasses time spent:

- consulting relevant officers to determine if a document exists
- searching a file index to establish the location of a document
- searching a file to locate a document
- physically locating a document and removing it from a file.'

I consider that the search and retrieval time is a valid calculation, on the basis that the steps taken to search for and retrieve the document are more than what you have indicated. For instance, the department conducts the necessary quality assurance and clearance steps to ensure that the document which has been located, is the correct document. In addition, the department aims to locate the original version of the document where reasonably practicable. However, depending on the format in which the original version is stored, it may be necessary to convert it to a more appropriate format. This is provided for in sections 17 and 20 of the FOI Act.

I note that you have not been charged for decision making time.

Procedural fairness

You submit that:

'I do not believe this is in the sprit of procedural fairness and that it is an attempt to cause detriment to myself for having made similar requests - an act in bad faith. I do not think this is proper use of commonwealth resources (in relation to human resource time) in accordance with the APS Code of Conduct - which is supported by the Public Governance, Performance and Accountability Act 2013 (PGPA Act) which states in section 27:

"An official of a Commonwealth entity must not improperly use his or her position:

(a) to gain, or seek to gain, a benefit or an advantage for himself or herself or any other person; or

(b) to cause, or seek to cause, detriment to the entity, the Commonwealth or any other person."

...I'd like to remind you yet again that section 4.5 of the FOI act states "[a] charge must not be used to unnecessarily delay access or discourage an applicant from exercising the right of access conferred by the FOI Act." I contend that this fee is being imposed precisely and exclusively for this purpose.'

As stated above, I consider that the charge calculated by the department is a minimal amount, on the basis that it was the lowest possible cost of search and retrieval of the document you requested. The FOI Act and Charges Regulations enables agencies to impose charges in accordance with their provisions. In *Re Herald & Weekly Times and Secretary, Department of Finance and Administration* [2000] AATA 506, the AAT held at [48]:

'Section 29 establishes the prima facie position that charges should be imposed so that the applicants contribute to the cost of processing all their requests.'

Accordingly, I do not consider that the decision to impose charges, nor the amount of charges calculated, in relation to your request, are inconsistent with the principles of procedural fairness, on the basis that they are consistent with the intention and provisions of the FOI Act and do not indicate an intention to discourage or delay the processing of FOI requests.

Conclusion

For the reasons given above, I have decided to affirm the preliminary assessment of the amount of \$14.55 as the appropriate and reasonable charge to process your request.

Required Action

If you would like the department to continue processing your request, you must notify the department in writing within 30 days of receiving this notice that you:

- a) agree to pay the charge; or
- b) withdraw your request.

Please note that the payment of a charge does not guarantee access to documents, redacted or otherwise.

Further information on options a) and b) is set out below.

Option a) - pay the charge

As the charge is below \$25, you are required to pay the full amount of \$14.55 within 30 days of receiving this notice.

I note that you referred to 'payment by money order' as the only payment method accepted by the department. On the contrary, as referred to in the department's letter and in the following paragraphs, two other payment methods are available to you. You may select one of the following payment methods:

1. Online payment via Government EasyPay - follow [this link](#) and enter the relevant details. You will need your FOI LEX reference number, **LEX 35790**; or
2. Cheque made out to the Collector of Public Monies and posted to Freedom of Information, Department of Human Services, PO BOX 7820, Canberra BC, ACT 2610; or
3. Money order made out to the Collector of Public Monies and posted to Freedom of Information, Department of Human Services, PO BOX 7820, Canberra BC, ACT 2610.

If you elect to pay the charge, please email FOI.Legal.Team@humanservices.gov.au to advise us of your payment. Please quote reference number **LEX 35790** in this correspondence.

Option b) - withdraw your request

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

Time limits for processing your request

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 stopped 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.

You can ask for a review of this decision

If you disagree with the decision to impose a charge, or the amount of the charge, you can ask for a review. There are two ways you can do this. You can ask for an internal review from within the department, or an external review by the Office of the Australian Information Commissioner. You do not have to pay for reviews of decisions. See **Attachment A** for more information about how arrange a review.

Further assistance

If you have any FOI questions please email FOI.LEGAL.TEAM@humanservices.gov.au.

Yours sincerely

Doug

Authorised FOI Decision Maker
Freedom of Information Team
FOI and Litigation Branch | Legal Services Division
Department of Human Services



Attachment A

INFORMATION ON RIGHTS OF REVIEW

FREEDOM OF INFORMATION ACT 1982

Asking for a full explanation of a Freedom of Information decision

Before you ask for a formal review of a FOI decision, you can contact us to discuss your request. We will explain the decision to you. This gives you a chance to correct misunderstandings.

Asking for a formal review of a Freedom of Information decision

If you still believe a decision is incorrect, the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for a review of the decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of an FOI decision by:

1. an Internal Review Officer in the Department of Human Services (the department); and/or
2. the Australian Information Commissioner.

Note 1: There are no fees for these reviews.

Applying for an internal review by an Internal Review Officer

If you apply for internal review, a different decision maker to the departmental delegate who made the original decision will carry out the review. The Internal Review Officer will consider all aspects of the original decision and decide whether it should change. An application for internal review must be:

- made in writing
- made within 30 days of receiving this letter
- sent to the address at the top of the first page of this letter.

Note 2: You do not need to fill in a form. However, it is a good idea to set out any relevant submissions you would like the Internal Review Officer to further consider, and your reasons for disagreeing with the decision.

Applying for external review by the Australian Information Commissioner

If you do not agree with the original decision or the internal review decision, you can ask the Australian Information Commissioner to review the decision.

If you do not receive a decision from an Internal Review Officer in the department within 30 days of applying, you can ask the Australian Information Commissioner for a review of the original FOI decision.

You will have 60 days to apply in writing for a review by the Australian Information Commissioner.

You can **lodge your application**:

Online: www.oaic.gov.au

Post: Australian Information Commissioner
GPO Box 5218
SYDNEY NSW 2001

Email: enquiries@oaic.gov.au

Note 3: The Office of the Australian Information Commissioner generally prefers FOI applicants to seek internal review before applying for external review by the Australian Information Commissioner.

Important:

- If you are applying online, the application form the 'Merits Review Form' is available at www.oaic.gov.au.
- If you have one, you should include with your application a copy of the Department of Human Services' decision on your FOI request
- Include your contact details
- Set out your reasons for objecting to the department's decision.

Complaints to the Australian Information Commissioner and Commonwealth Ombudsman

Australian Information Commissioner

You may complain to the Australian Information Commissioner concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Australian Information Commissioner must be made in writing. The Australian Information Commissioner's contact details are:

Telephone: 1300 363 992
Website: www.oaic.gov.au

Commonwealth Ombudsman

You may also complain to the Commonwealth Ombudsman concerning action taken by an agency in the exercise of powers or the performance of functions under the FOI Act. There is no fee for making a complaint. A complaint to the Ombudsman may be made in person, by telephone or in writing. The Commonwealth Ombudsman's contact details are:

Phone: 1300 362 072
Website: www.ombudsman.gov.au

The Commonwealth Ombudsman generally prefers applicants to seek review before complaining about a decision.