



24 July 2018

Our reference: LEX 37804

Posty

Only by email: [foi+request-4448-01ce07d8@righttoknow.org.au](mailto:foi+request-4448-01ce07d8@righttoknow.org.au)

Dear Posty

### Freedom of Information Request – Internal Review of Charges Decision

I refer to your correspondence, dated 24 June 2018, and received by the Department of Human Services (**department**) on the same date. In that correspondence, you requested an internal review of the reconsideration of charges decision made by the department on 29 May 2018 (LEX 35790) under the *Freedom of Information Act 1982* (**FOI Act**).

I am authorised under subsection 23(1) of the FOI Act to make internal review decisions under section 54C of the FOI Act.

#### Background

On 22 March 2018, the department received your original request for access to documents under the FOI Act, made in the following terms:

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 9 April 2018, the department issued you with a preliminary assessment of the charges for the department to process your FOI request (**preliminary charges decision**). In accordance with regulation 3 of the Freedom of Information (Charges) Regulations 1982 (**Regulations**), the department determined that you were liable to pay an estimated charge of \$14.55, 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
<b>TOTAL</b>	<b>\$14.55</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.

On 28 April 2018, you requested reconsideration of the preliminary charge notification.

On 29 May 2018, the department notified you of its reconsideration of charges decision to not waive or reduce the charge of \$14.55 (**reconsideration of charges decision**).

On 24 June 2018, you requested internal review of the reconsideration of charges decision.

### **Internal review decision on charges**

I have decided, under section 54C of the FOI Act, to affirm the charge of \$14.55. I have also decided not to reduce or waive the charge.

The reasons for my decision, including the relevant sections of the FOI Act, are set out below.

### **What I took into account**

In reaching my decision, I took into account the following:

- your FOI request (LEX 35790);
- the preliminary assessment of charges decision dated 9 April 2018;
- your email, dated 28 April 2018, requesting reconsideration of the preliminary charge notification;
- the reconsideration of charges decision dated 29 May 2018;
- your email, dated 24 June 2018, requesting internal review of the reconsideration of charges decision;
- the relevant provisions of the FOI Act;
- the Regulations; and
- the guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**Guidelines**).

### **Relevant legislation**

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

Section 29(5) of the FOI Act provides that, without limiting the matters that the 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.

### Calculation of the charges

I have reviewed the calculation of the charge to the amount of \$14.55. I have decided that this is fair and accurate reflection of the time that would be involved to process your request, on the basis that the relevant line area would need to be consulted by the department's FOI Team, as they would hold the relevant document that you have requested. That line area would need to conduct the relevant searches and quality checks to ensure that the correct document is located. Accordingly, I consider that the charge amount is the lowest reasonable cost in relation to the processing of your request.

The following paragraphs are in relation to whether the charge should be reduced or waived.

### 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.

In your request for reconsideration of the preliminary charge notification, you did not provide any evidence to indicate that payment of the charge would cause financial hardship. In your request for internal review of that decision, you did not contend waiver or reduction of the charge on the ground of financial hardship. Accordingly, I have not considered this ground further.

### Public Interest

Section 29(5)(b) of the FOI Act provides that, without limiting the matters the 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 giving access to the document in question 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 document you requested.

Relevantly, paragraph 4.80 of the Guidelines states that:

...the public interest test for waiver in s 29(5)(b) is different to the public interest test in s11A(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.

In addition, paragraph 4.81 of the Guidelines states that:

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.

Public interest factors in favour of reducing or waiving a charge include:

- the level of public interest in the documents;
- the general public interest in allowing access to information (including government policy) under the FOI Act;
- the general public interest in openness of administration; and
- promoting the objects of the FOI Act, including:
  - increasing scrutiny, discussion, comment and review of Government activities;
  - facilitating and promoting public access to information, promptly and at the lowest reasonable cost; and
  - informing the public on matters of public importance or interest, and assisting participation in debate or discussion.

In your request for reconsideration of the preliminary assessment decision, you stated in relation to the document you have requested that 'it is currently of great public interest the phone services that Centrelink provide'.

In your request for internal review, you did not provide any additional submissions in support of your request for waiver or reduction of the charge on public interest grounds.

I have considered all of your previous submissions on why waiver or reduction of the charge is in the public interest and I am not persuaded to reduce or waive the charge on public interest grounds.

In *Fingal Head Community Association Inc and Department of Infrastructure and Regional Development* [2014] AICmr 70 (***Fingal***), the then Information Commissioner held at [41] that:

Deciding whether the giving of access to documents is in the general public interest or in the interest of a substantial section of the public will ordinarily require consideration both of the content of the documents and the context of their release.

In *Tennant and Australian Broadcasting Corporation* [2014] AATA 452, Senior Member Creyke of the Administrative Appeals Tribunal held that waiver of the charge in relation to a request for documents regarding the classification of programs by the Australian Broadcasting Corporation (**ABC**) was not appropriate. Senior Member Creyke found that whilst there was current debate on matters relating to the ABC, it was not the same as debate about classification issues.

I consider *Tennant* to be analogous to the current request. Whilst I accept that there has been recent public commentary regarding the department's call centre capability, there has been little or no public interest in the information contained in the document in question.

In *Fingal*, the then Information Commissioner held that, as a large portion of the information contained in the requested document has already been made publicly available, it limited the benefit flowing to the general public from the release of the documents.

I am satisfied that the department has made publicly available an extensive range of information about the department's phone services, such that no further or additional benefit would flow from release of the document.

For example, in response to a range of Question on Notice responses provided by the department subsequent to the recent May 2018 Senate Estimates, an array of information about the department's phone services was made publicly accessible. This information is available via the following link:

[https://www.aph.gov.au/Parliamentary\\_Business/Senate\\_Estimates/ca](https://www.aph.gov.au/Parliamentary_Business/Senate_Estimates/ca)

Similarly, detailed information about the department's phone services is contained in the department's 2016-17 Annual Report at pages 19 – 22, available via the following link:

<https://www.humanservices.gov.au/sites/default/files/2017/10/8802-1710-annual-report-2016-17.pdf>

For the reasons above, I have decided not to reduce or waive the charge on public interest grounds.

#### Other grounds for reduction of the charge

In deciding whether charges should be reduced or waived, I have taken into consideration section 29(4) of the FOI Act which provides a general discretion to reduce or not to impose a charge which goes beyond matters relating to financial hardship and the public interest.

I note that in your request for internal review of charges, you have referred to paragraph 4.4 of the Guidelines which states that:

Agencies and ministers should interpret the 'lowest reasonably cost' objective broadly in imposing any charges under the FOI Act...

As discussed earlier, I am satisfied that the charge of \$14.55 represents the lowest reasonable cost associated with the processing of your request.

Additionally, the general principle underpinning the charges mechanism under section 29 of the FOI Act was described by O'Connor J in *Re Herald & Weekly Times and Secretary, Department of Finance and Administration* [2000] AATA 506 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.

This is echoed in *Tennant*, where Senior Member Creyke stated at [14]-[15], when reviewing the principles and considerations in relation to the reduction or waiver of FOI processing charges:

One such matter is the intention discernible in the imposition of the charge that the amount should reflect the time and effort involved in accessing the requested documents... In other words, there is an intention that a user pays principle should apply.

Accordingly, I am satisfied that the intention of the legislature in drafting the FOI Act was that a portion of the cost of processing requests is to be borne by the applicant, though qualified by assessment of public interest and financial hardship factors on review of any processing charge issued in relation to an FOI request.

I am satisfied that the charge issued represents the lowest reasonable cost associated with the processing of your request, and that the issuing of the charge is aligned with the intention of the legislature in the drafting of the FOI Act.

In light of this I am not persuaded that the charge should be reduced on any other ground.

## **Conclusion**

In conclusion, I have to affirm:

- the charge of \$14.55; and
- the decision that the charge should not be reduced or waived.

## **Required Action**

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

- a) agree to pay the charge;
- b) are seeking an Information Commissioner review of the charge, or
- b) withdraw your request for access.

If you do not provide a written response in accordance with options a) or b) above within 30 days of receiving this notice, your request will be taken to have been withdrawn consistent with paragraph 4.94 of the Guidelines.

## **Option a) - pay the charge**

You are required to pay the charge of \$14.55 to receive a decision on your request for information.

You may select from 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 37804**; 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](mailto:FOI.Legal.Team@humanservices.gov.au) to advise us of your payment. Please quote reference number **LEX 37804** in this correspondence.

## **Option b) – seek review**

You can ask for an external review by the Office of the Australian Information Commissioner. You do not have to pay for review of decisions. See **Attachment A** for more information about how arrange a review.

**Option c) - withdraw your request**

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

**Further assistance**

If you have any questions please email [FOI.LEGAL.TEAM@humanservices.gov.au](mailto:FOI.LEGAL.TEAM@humanservices.gov.au).

Yours sincerely

**Bruce**

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***

**Application for review of decision**

The FOI Act gives you the right to apply for a review of this decision. Under sections 54 and 54L of the FOI Act, you can apply for a review of this decision by the Information Commissioner.

**Information Commissioner review**

You must apply in writing within 60 days of the receipt of the decision letter and you can lodge your application in one of the following ways:

Online: [www.oaic.gov.au](http://www.oaic.gov.au)  
Post: GPO Box 5218, Sydney NSW 2001  
Email: [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

An application form is available on the website at [www.oaic.gov.au](http://www.oaic.gov.au). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

**Complaints to the Commonwealth Ombudsman**

You may complain to the Commonwealth Ombudsman (**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 Ombudsman's contact details are:

Phone: 1300 362 072  
Website: [www.ombudsman.gov.au](http://www.ombudsman.gov.au)

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