



Reference: Objective ID: R34124768

## **FOI 368/17/18 STATEMENT OF REASONS UNDER THE FREEDOM OF INFORMATION ACT**

1. I refer to the email of 17 May 2018, in which Ms Verity Pane sought an internal review under section 54 of the *Freedom of Information Act 1982* (FOI Act) of the assessment of charges decision dated 14 May 2018.

2. The applicant's request was for a review of the assessment of charges decision for access to the following documents under the FOI Act:

*“Under FOI, and in particular s 17, I apply for summary statistician information to be compiled (if not already compiled) of the number of Code of Conduct complaints received by Defence, about Defence public servants, for the last three financial years, as well as how many of those were investigated by Defence, and of those how many where eventually upheld.*

*I'd also like those to be broken down by the APS level involved.”*

*‘Excluding personal email addresses, signatures, personnel (PMKeyS) numbers and mobile telephone numbers, contained in documents that fall within the scope of the FOI request. In addition, excluding duplicates of documents.’*

### **Background and contentions to challenge charges decision**

3. On 4 April 2018, Ms Pane was provided with Defence's preliminary assessment of charges. In response, on 15 April 2018 the applicant contended that Defence already collects statistics for internal reporting purposes and therefore sought a review of the charges.

4. On 14 May 2018, Mrs Melissa Davidson, Assistant Director FOI reviewed the applicant's request for waiver of charges and decided to reduce the charges to \$60.00.

5. On 17 May 2018, the applicant confirmed she was seeking an internal review of charges. The applicant made no public interest or hardship grounds and stated the sole factor she put forward is that the new charges estimate falls below Information Commissioner's threshold.

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

### **Reviewing officer**

7. 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

8. Upon internal review of the charges decision, I reviewed the advice provided by the business area which stated the data for 2017 was not in a form available for release without adjustments or creating a workable document.

9. Based on the information provided, I have decided to uphold the review of charges decision to impose a charge in the amount of \$60.00.

### Material taken into account

10. In arriving at my decision, I had regard to:

- a. the application for an internal review of charges;
- b. a review of the material subject to the FOI request;
- c. relevant provisions in the FOI Act;
- d. advice by the business area; and
- e. the *Guidelines published by the Office of the Australian Information Commissioner under section 93A of the FOI Act* (the Guidelines).

### 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.

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 information 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. On review, the basis for the review of charges decision reflects the work involved in providing access to documents. The applicant has not specifically challenged the actual time involved in processing the FOI request, therefore I do consider the review of charges is more than fair and reasonable.

16. As mentioned above, the business area advised that the data for 2017 was not in a form available for release without adjustments or creating a workable document. This required each entry to be cross checked and corrected, if applicable, prior to entering information in to the document that falls within the scope of the request. I also note that the original estimate was based on the time it would take to extract and review approximately 116 referrals, with each referral consisting of 1-1.5 pages. Therefore, I consider the applicant should pay the charges as stated in the charges decision as this reflects a contribution to the actual cost.

### **Public interest considerations**

17. 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.’*

18. I note the applicant did not provide reasons as to how the material would be ‘applicable to the general public’.

19. 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.

20. 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.

**Financial hardship**

21. 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. Further, 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**

22. Taking the above into consideration, if the applicant wishes to proceed with the FOI request and agrees to pay the charge, a deposit of **\$20.00** 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.

23. Please complete the attached authorisation form and return it to the FOI Directorate by 11 July 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 provide the document in the form approved for release until a receipt is received notifying that the deposit amount has been paid.

24. 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 applicant has sought an external review of the charges. Such an application should be made within 30 days of receipt of this letter or such time as the Department may allow.

Mr Jarrod Howard  
Accredited Decision Maker – Internal Review