



Charges notice made under the *Freedom of Information Act 1982*

Decision to impose a charge and preliminary assessment of charge of Information Law,
Legal Services & Assurance

Applicant: Verity Pane
Decision date: 27 September 2018
FOI reference number: FOI 23544
Documents: Request for document to be created (as detailed at paragraph 3 below)

Dear Verity Pane

Freedom of Information Request: FOI 23544

1. I have made a decision to impose charges in the amount of \$690.75.

Authority to make this decision

2. I, Position Number 62210022, Information Law, Legal Services & Assurance, am an officer authorised by the Secretary of the Department of Veterans' Affairs (the Department) to make decisions about charges applying to requests for access to documents in the possession of the Department, in accordance with Section 23(1) of the *Freedom of Information Act 1982* (the FOI Act).

Background

3. On 16 July 2018, you made a request for access to documents in the possession of the Department. Your request sought access to:

In light of recent media reporting and admissions by the Minister in Federal Parliament that the Department spent more than \$0.6m in external legal services fees in regards to just one veteran - Martin Rollins - in relation to DVA's deliberate backdating of a rewrite of a DVA policy to exclude Mr Rollins' receiving a benefit he was entitled to at the time of his applying for it (<http://www.abc.net.au/7.30/dva-secretly-changed-rules-to-deny-veterans-claim/9883774>) there is a public interest in understanding how the Department is expending public funds on external legal services.

While the Department reports just one summary total of expenditure on external legal services in its annual reports, this is clearly insufficient and far too opaque to understand what the Department is spending on external legal costs for individual matters. While this information does indicate the Department spends between \$7m - \$10m on external legal services roughly every financial year, it gives no indication whether it may relate to only a small number of individual veterans or many or what the Department roughly spends per legal issue - which is

important to understand when considering if the claims that the Department is combative and litigious are overstated or not.

Certainly the recent admission (initially refuted) that the Department has spend in excess of half a million dollars, litigiously, to defend this backdated change of policy to deny Martin Rollins a benefit that existed at the time he applied for it (and ironically this legal expenditure many hundreds of thousands of dollars greater than the benefit he was otherwise entitled to receive), raises public interest questions whether such excessive external legal expenditure is endemic or is a one off isolated case.

To that end, under FOI, I seek under s 17 of the FOI Act for a summary document to be created (so as to avoid unnecessary disclosure of irrelevant Departmental information) from data in the Departments financial and information management systems, to break down these global external legal services expenditure, so that greater transparency is given.

I seek a breakdown to be provided for the last three financial years - FY17/18, FY16/17, and FY15/16 - and to be broken down to matters involving individual veterans and other. Where matters involved individual veterans, this should be further broken down to stating the cumulative external legal services expenditure per veteran involved (with each veteran referred to by pseudonym - so first veteran is Veteran A, next is Veteran B, and so on). In order to reduce burden, where external legal expenditure involving an individual veteran is below \$10K cumulative for each financial year, they may be reported as a group (as the interest is in excessive external legal expenditure). An example of the layout I seek is below:

	<i>.....FY17/18.....</i>	<i>.....FY16/17.....</i>	<i>.....FY15/16</i>
	<i>.....\$.....</i>	<i>.....\$.....</i>	<i>.....\$</i>
<i>Other</i>			
<i>Veteran A</i>			
<i>Veteran B</i>			
<i>etc</i>			
<i>Veterans > \$10K</i>			

4. On 15 August 2018, the Department issued you a notice in accordance with section 24AB of the FOI Act, on the grounds that processing your request would unreasonably divert the resources of the Department from its operations as specified in section 24AA(1)(a)(i) of the FOI Act due to its *size and complexity*; noting 60 hours would be required to process the request.
5. Following this notice, you revised the scope of your request, noting you “ *...would however be willing to refine the scope to FY15/16 in the first instance...*” As this removed the practical refusal reason, it was agreed the Department would process the request.

Your liability to pay a charge

6. In accordance with Section 29(1) of the FOI Act, I have decided that you are liable to pay a charge in relation to your request.

Preliminary assessment of the amount of the charge

7. In accordance with Section 29(1)(b) of the FOI Act, the Department has undertaken a preliminary assessment of the amount of the charge you are liable to pay in relation to your FOI request. Accordingly, you are liable to pay \$690.75. A breakdown of this charge, as well as the basis on which the assessment is made, is provided for in detail at Schedule 1.

Deposit

8. As the charge is more than \$100.00, you will need to pay a deposit of \$172.69 (which is 25% of the total charges applying to your request) before further action can be taken on your request. This amount is set in Regulation 12(2)(b) of the Freedom of Information (Charges) Regulations 1982.
9. The deposit is not refundable except in some limited circumstances (for example, if the Department 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.

If you disagree with the Department's decision to impose a charge or the preliminary assessment of charges

10. Under the FOI Act, you have the right to contend that the charge has been wrongly assessed, should be reduced, or should not be imposed.
11. In deciding whether a charge should be reduced or not imposed, the decision-maker in our agency must take into account:
 - whether payment of the charge, or part of it, would cause you financial hardship;
 - whether giving access to the document is in the general public interest or in the interest of a substantial section of the public; and
 - any other relevant matter.

The time you have to respond and what you need to do

12. You have 30 days to respond in writing to this notice. We therefore expect a response from you by Monday, 29 October 2018. By that date, you must do one of the following things in writing:
 - agree to pay the charge, and:
 - forward a cheque for the charge in full, in the amount of \$690.75; or
 - forward a cheque for the required deposit, in the amount of \$172.69 (this will mean that you will not be entitled to access the requested documents until the full charge is paid);
 - contend that the charge has been wrongly assessed, or should be reduced or not imposed and explain your reasons; or
 - withdraw your request.

13. Please send your response, including payment of the charge in full or the required deposit, to:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6316
Email: information.law@dva.gov.au

14. The period for processing your request is suspended from the day that you receive this notice and resumes on either the day you pay the charge (in full or the required deposit) or the day on which this agency makes a decision not to impose a charge.

15. If you fail to give the Department such notice within 30 days from the date of this notice, your request for access to the document will be taken to have been withdrawn.

Your rights of review

16. If you disagree with the Department's decision to impose charges in relation to your FOI request, you can ask for the decision to be reviewed. There are two ways you can ask for review of a decision: internal review by the Department, and external review by the Office of the Australian Information Commissioner (OAIC).

Internal Review

17. Under Section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision to impose a charge and/or the preliminary assessment of charge. There is no charge for internal review. You must apply within 30 days of being notified of the decision, unless the Department extends the application time. You should contact the Department if you wish to seek an extension. The Department must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed. The review will be carried out by a different departmental officer, usually someone at a more senior level. Where possible, please attach reasons why you believe review of the decision is necessary. You can lodge your application in one of the following ways:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6316

Email: information.access@dva.gov.au

Information Commissioner review

18. Under section 54L of the FOI Act, you may apply directly to the Information Commissioner to review my decision to impose a charge and/or the preliminary assessment of charge. An application for review by the Information Commissioner must be made in writing within 60 days of the date of this notice. The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that the Department's decision is wrong, it will be treated as an application for a review. You do not need to seek an internal review from the Department before seeking an internal review from the Information Commissioner. However, going through the Department's internal review process gives the Department the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process. The Information Commissioner's review is free. You must apply to the Information Commissioner within 60 days of being given notice of the decision. You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances. You can lodge your application in one of the following ways:

Online: www.oaic.gov.au

Post: Office of the Australian Information Commissioner
GPO Box 2999, Canberra ACT 2601

Facsimile: (02) 9284 9666

Email: enquiries@oaic.gov.au

In person: 4 National Circuit, Barton ACT; or at
Level 3, 175 Pitt Street, Sydney NSW.

19. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the Office of the Australian Information Commissioner: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-fact-sheets/foi-factsheet-12-your-review-rights>

Contact us

20. If you wish to discuss this decision to impose a charge, or the preliminary charges estimate, please do not hesitate to contact me using the following details:

Post: Legal Services & Assurance, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6316
Email: information.law@dva.gov.au

Yours Sincerely,

Position Number 62210022

Information Law

Legal Services & Assurance

27 September 2018



Preliminary charges estimate made under the FOI Act

DOCUMENT ESTIMATE	
Number of relevant documents (once created)	1
Number of relevant pages (or other size descriptor) <i>(only charged at a rate of 1 page p/mth)</i>	12

PROCESSING CHARGES		
Search and retrieval		
Task	Time	Cost @ \$15/hr
Search and retrieval of relevant electronic and registry files <i>(examination of in excess of 700 relevant estimated files)</i>	36	540.00
Search and retrieval of relevant pages in file <i>(to transpose data in format requested)</i>	10	150.00
Preparation of schedule of documents <i>(at 3 minutes)</i>	0.05	0.75
Search and retrieval subtotal	46.05	690.75
Decision making		
Task	Time	Cost @ \$20/hr
Examination of documents	1.00	20.00
Consultation with third parties	0.00	0.00
Preparation of documents for release	0.00	0.00
Preparation of notice of access decision	1.05	20.00
Decision making subtotal (before deduction of 5 hours)	- 5 hours	- \$100.00
Decision making subtotal (after deduction of first 5 hours free)	0.00	0.00

ESTIMATED TOTALS AND DEPOSIT	
ESTIMATED TOTAL	\$690.75
REQUIRED DEPOSIT	\$172.69