



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

Decision to impose a charge and preliminary assessment of charge of Position Number 62210022, Information Law Section, Legal Services and Assurance Branch, Department of Veterans' Affairs

Applicant: Verity Pane

Notice date: 24 October 2018

FOI reference number: FOI 24762

Documents: Document to be created under section 17 of the FOI Act (External legal services expenditure for the month of June 2018)

Summary

1. I have made a decision to impose charges in the amount of \$413.47.

Authority to make this decision

2. I, Position Number 62210022, Assistant Director, Information Law Section, am an officer authorised by the Secretary of the Department of Veterans' Affairs (**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* (**FOI Act**).

Background

3. On 27 September 2018, you made a request for the Department to create a document from data 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-...>) 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 month of June 2018 - 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). An example of the layout I seek is below:

*.....June 2018\$......
Other
Veteran A
Veteran B
etc...*

Your liability to pay a charge

- 4. 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

- 5. 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 \$413.47. 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

6. As the charge is more than \$100.00, you will need to pay a deposit of \$103.37 (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*.
7. 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.
8. Please note that payment of a charge does not guarantee access to the document, in full or in part.

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

9. 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.
10. Section 29(5) of the FOI Act requires me to take into account the following matters in deciding whether a charge should be reduced or not imposed:
 - 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

11. You have 30 days to respond in writing to this notice. We therefore expect a response from you by **23 November 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 \$413.47; or
 - forward a cheque for the required deposit, in the amount of \$103.37 (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.

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

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

13. In accordance with section 31 of the FOI Act, 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 the Department makes a decision not to impose a charge.
14. If you contend that a charge should be reduced or not imposed and the Department confirms that a charge is payable (either the original amount or a reduced amount), the time limit for processing your request would resume on the day you pay that charge (in full or the required deposit).
15. In accordance with section 29(2) of the FOI Act, if you fail to respond 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. Please note this is not a charges decision and as such, review rights are not yet available. Depending on the outcome of this notice, you will be advised of your review rights either through a subsequent charges decision, or through a decision your request, should the charges be paid in full or the deposit received.
17. More information about charges can be found in section 29 of the FOI Act and Chapter 4 of the Office of the Australian Information Commissioner FOI Guidelines:
<https://www.oaic.gov.au/freedom-of-information/foi-guidelines/part-4-charges-for-providing-access>

Contact us

18. 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 & General Counsel Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601
Facsimile: (02) 6289 6337
Email: information.law@dva.gov.au

Yours sincerely,

Position Number 62210022

Assistant Director

Information Law Section | Legal Services & General Counsel Branch

Legal Assurance and Governance Division

24 October 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)	2

PROCESSING CHARGES		
Search and retrieval*		
Task	Time	Cost @ \$57.99 p/hr (EL1)
Search and retrieval of relevant electronic and registry files <i>(examination of 61 files)</i>	5.08	294.59
Search and retrieval of relevant pages in file <i>(to transpose data in format requested)</i>	2	115.98
Preparation of schedule of documents <i>(at 3 minutes)</i>	0.05	2.90
Search and retrieval subtotal	7.13	413.47
Decision making		
Task	Time	Cost @ \$20/hr
Examination of documents	0.03	0.67
Consultation with third parties	0.00	0.00
Preparation of documents for release	0.00	0.00
Preparation of notice of access decision	1.01	20.16
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	\$413.47
REQUIRED DEPOSIT	\$103.37

*charges are based on actual costs incurred in accordance with the Charges Regulations Schedule (Part I, item 3)



Schedule of relevant provision in the FOI Act

29 Charges

- (1) Where, under the regulations, an agency or Minister decides that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document, the agency or Minister must give to the applicant a written notice stating:
 - (a) that the applicant is liable to pay a charge; and
 - (b) the agency's or Minister's preliminary assessment of the amount of the charge, and the basis on which the assessment is made; and
 - (c) that the applicant may contend that the charge has been wrongly assessed, or should be reduced or not imposed; and
 - (d) the matters that the agency or Minister must take into account under subsection (5) in deciding whether or not to reduce, or not impose, the charge; and
 - (e) the amount of any deposit that the agency or Minister has determined, under the regulations, that the applicant will be required to pay if the charge is imposed; and
 - (f) that the applicant must, within the period of 30 days, or such further period as the agency or Minister allows, after the notice was given, notify the agency or Minister in writing:
 - (i) of the applicant's agreement to pay the charge; or
 - (ii) if the applicant contends that the charge has been wrongly assessed, or should be reduced or not imposed, or both--that the applicant so contends, giving the applicant's reasons for so contending; or
 - (iii) that the applicant withdraws the request for access to the document concerned; and
 - (g) that if the applicant fails to give the agency or Minister such a notice within that period or further period, the request for access to the document will be taken to have been withdrawn.
- (2) If the applicant fails to notify the agency or Minister in a manner mentioned in paragraph (1)(f) within the period or further period mentioned in that paragraph, the applicant is to be taken to have withdrawn the request for access to the document concerned.
- (3) An agency or Minister must not impose a charge in respect of a request for access to a document, or the provision of access to a document, until:
 - (a) the applicant has notified the agency or Minister in a manner mentioned in paragraph (1)(f); or
 - (b) the end of the period or further period mentioned in that paragraph.
- (4) Where the applicant has notified the agency or Minister, in a manner mentioned in subparagraph (1)(f)(ii), that the applicant contends that the charge should be reduced or not imposed, the agency or Minister may decide that the charge is to be reduced or not to be imposed.

- (5) Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister 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 application 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.
- (6) If the applicant has notified the agency or Minister in the manner mentioned in subparagraph (1)(f)(ii), the agency or Minister must take all reasonable steps to enable the applicant to be notified of the decision on the amount of charge payable as soon as practicable but in any case no later than 30 days after the day on which the applicant so notified the agency or Minister.
- (7) If:
- (a) that period of 30 days has elapsed since the day on which the agency or Minister was so notified; and
 - (b) the applicant has not received notice of a decision on the amount of charge payable;
- the principal officer of the agency, or the Minister, as the case requires, is, for all purposes of this Act, taken to have made, on the last day of the period, a decision to the effect that the amount of charge payable is the amount equal to the agency's or Minister's preliminary assessment of the amount of the charge mentioned in paragraph (1)(b).
- (8) If:
- (a) the applicant makes a contention about a charge as mentioned in subsection (4); and
 - (b) the agency or Minister makes a decision to reject the contention, in whole or in part;
- the agency or Minister, as the case requires, must give the applicant written notice of the decision and of the reasons for the decision.
- Note: Section 25D of the Acts Interpretation Act 1901 sets out rules about the contents of a statement of reasons.
- (9) A notice under subsection (8) must also state the name and designation of the person making the decision and give the applicant appropriate information about:
- (a) his or her rights with respect to review of the decision; and
 - (b) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (c) the procedure for the exercise of those rights;
- including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (10) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (8).
- (11) A notice under subsection (8) is not required to contain any matter that is of such a nature that its inclusion in a document of an agency would cause that document to be an exempt document.