



Revised decision made under section 55G of the *Freedom of Information Act 1982*

Revised decision and reason for decision of Leia (Position Number 62210022),
Information Law Section, Legal Services and Audit Branch, Department of Veterans'
Affairs

Applicant: Verity Pane
Date of primary decision: 2 November 2018
FOI reference number: FOI 24762
Revised decision date: 31 May 2019
Revised decision reference number: ICR MR18/00860

Dear Verity Pane,

1. The purpose of this letter is to issue you a revised decision in accordance with section 55G of the *Freedom of Information Act 1982 (FOI Act)*. This decision relates to your application for Information Commissioner Review of FOI 24762 (MR18/00860 refers).
2. I have made a decision to vary the original decision I made on 24 October 2018 to apply charges in the amount of \$217.41 to process your FOI request.
3. I have decided that charges do apply, but that the charges payable amount is \$103.99. This takes into account a 50 per cent reduction of the overall charge of \$207.96, given the general public interest and in the interests of resolving the related IC Review. A deposit of \$25.99 is required.

Authority to make this decision

4. I, Leia (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 access to documents in the possession of the Department in accordance with section 23(1) of the FOI Act.

Summary

5. 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 report, 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 refused) 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 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..... “

6. On 24 October 2018, the Department provided you with a Charges Notice, advising of a preliminary assessment of charges for processing your request in the amount of \$413.47. You were also advised that a deposit of \$103.37 was required before any further action could be taken on your request.
7. On 25 October 2018, you sent an email disputing the charge. You specifically noted:

“...Charges levy of \$413.47 made by DVA for one recent month (July 2018) of external legal services expenditure data

<https://www.righttoknow.org.au/request/4847/resppnse/13318/attach/4/FOI%2024762%20Charges%20notice.pdf>

Contrast to charges levy of \$690.75 made by DVA for some data, but for the whole of FY15/16, which included according to submissions made by DVA to the OAIC, the need to access offsite storage due to the age of the financial year.

<https://www.righttoknow.org.au/request/4697/response/13131/attach/3/FOI%2023544%20Charges%20Decision.pdf>

Again, DVA's charges levies have little to do with the actual work involved, but rather are a measure of how much DVA dislikes the applicant and the topic of the FOI, contrary to the Act.

The wild discrepancies between calculations confirm this – the actual cost of providing one month of identical data does not equate to 2/3rds of 12 months of exactly the same type of data. Relevantly, the prior FOI was one where DVA practically refused the request for three financial years of data, because it would take 60 hours, but when scope was reduced to just one financial year, said it would take 40 hours, despite the reduction in two thirds in scope.

Again, even DVA would be hard pressed to ignore these discrepancies and clearly these grossly inflated charges levied are made in intentional bad faith, which is an ongoing consistent theme with DVA (and perhaps why your Secretary has to apologise for the Department's conduct multiple times a year)

The charges levy is challenged ...

8. On 2 November 2018, the Department issued you with a decision that advised the charges remained payable, but that the charges amounted to \$217.41 (**Charges Decision**).
9. On 2 November 2018, you applied for external review of the Department's decision to apply charges to your FOI request (MR18/00860 refers). In your application you noted:

I apply for IC review of DVA FOI 24762, namely grossly inflated charged decision.

The history of this FOI is available at:

https://www.righttoknow.org.au/request/external_legal_services_provider

I seek that this IC Review be considered as part of the other IC Reviews dealing with spurious and grossly inflated charges decisions issues of late by DVA, that have been made not for reasonable cost recovery, but reflect the hatred of DVA towards the subject of the FOI request and the person that made it.

A history of DVA charges, obtained from data.gov.au, is below

FY17/18 – 20/3,261 - \$2,367

FY16/17 – 57/3,095 - \$4,578

FY15/16 – 78/3,338 - \$6,396

FY14/15 - 72/3,436 - \$5,894

FY13/14 - 84/3,681 - \$6,445

FY12/13 - 67/4,245 - \$11,603

FY11/12 - 119/4,401 - \$7,610

As can be seen, there are very little non-personal information FOIs made to DVA, so the number of FOIs DVA can levy charges on is comparatively low compared to other agencies (and overall the number of FOIs made to DVA have dropped considerably since the start of the decade, with the number of non-PIs declining proportionally).

On average, in the past, charges per non-PI FOI fluctuated around \$100 per FOI charges were levied on.

This year, however, that number has multiplied by an order of magnitude with DVA making charges notices in the thousands of dollars, with even the lower ones around the \$500 mark.

Of course, if this actually reflected the lowest possible cost of the work involved, this would be reasonable (if albeit a reason DVA should acknowledge its poor record keeping practices contributes to these high costs, and not penalise applicants for their own problems).

But the recent history here is that DVA randomly picks a high number (or on rare occasion, a low number so low as it's collection is uneconomical for both the agency and the applicant) and then constructs a fraudulent estimate to match that desired number.

That practice is evident by how wildly similar amounts of work can be charged, and also by some of the dramatic increases DVA has applied to some estimates (in one case, it quadrupled its original estimate to over \$2,500!).

It is also demonstrated by the fact that DVA bases its estimates for things like compiling a list or scanning a document (not for release, which might reasonably require a higher level officer, but

for an administrative task like scanning for a particular word) on Executive Level or senior APS employees, when an APS 3 would be able to perform the task without repeated supervision (clerical duties do not require an Assistant Director or Team Leader and this is not duties they would normally perform, given their supervisory and management roles).

The fact of the matter is that DVA has, yet again, not provided any evidence beyond unsupported claims of them, of the work involved. They have used the less inefficient, most expensive schemes possible to artificially inflate costs well above the lowest cost alternative.

DVA also insist on the most inefficient and expensive method of payment in addition - only accepting cheques sent directly to them, when the use of personal cheques in Australia has almost vanished, with the RBA predicting they will cease to exist by next year.

Other agencies do not enforce the least practical method possible, but DVA does, providing no other option (it's completely unnecessary to even send DVA money, as the funds should be payed to the Collector of Public Monies on behalf of the Commonwealth).

Bank cheques cost \$15 from the CBA, and secure postage and handling easily doubles that.

DVA is quite able to adopt other methods, but enforces only this one, well aware it discourages applicants.

Again, when will the OAIC stop enabling DVA's mockery of the FOI Act and act like the regulator it is required to be.

DVA doesn't even attempt to hide its abuses now, knowing it can always rely on the free pass of the OAIC.

10. On 10 May 2019, the Department received a notice under section 54Z of the FOI Act from the OAIC, advising of the IC Review. In response, the Department has elected to issue you with a revised decision.

Decision

11. I have made a decision to vary the original decision I made on 24 October 2018 to apply charges in the amount of \$217.41 to process your FOI request.
12. I have decided that charges do apply, but that the charges payable amount to \$103.99. This takes into account a 50 per cent reduction of the overall charge of \$207.98, given the public interest and in the interests of resolving the related IC Review. A deposit of \$25.99 is required.

Material taken into account

13. I have taken the following material into account in making my revised decision:

- The terms of your FOI request dated 27 September 2018;
- Your response to the Charges Notice issued 24 October 2018;
- The Charges Decision issued 2 November 2018;
- Your application for Information Commissioner Review of the charges applied to FOI 24762 dated 2 November 2018;
- Information in relation to another FOI request where you have requested the same or similar data for different periods of time (FOI reference number 23544);
- Sections 3, 11 and 11A of the FOI Act which give the Australian community a legally enforceable right to obtain access to information held by the Government of the Commonwealth;
- The *Freedom of Information (Charges) Regulations 1982 (Charges Regulations)* (which continue to apply in relation to a request for access to a document made before the commencement of the *Freedom of Information (Charges) Regulation 2019* on 21 March 2019);
- The Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**); and
- The IC reviews and AAT decisions of *'ND' and Department of Human services (Freedom of Information)* [2017] AICmr 119 (20 November 2017), *MacTiernan and Secretary, Department of Infrastructure and Regional Development (Freedom of Information)* [2015] AATA 584, *Australian Associated Press Pty Ltd and Department of Foreign Affairs and Trade* [2017] AICmr 131 and *Jon Patty and Attorney-General's Department (Freedom of Information)* [2018] AICmr 28 (2 March 2018).

14. A full extract of all provisions I used to make my decision are provided in **Schedule 1**.

Reasons for Decision

15. Two matters are raised by the IC Review 54Z notice which I have further considered in this section 55G decision, namely:

- a. the assessment of the charge for processing your FOI request under the Schedule to the Charges Regulations; 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 (in accordance with section 29(5)(b) of the FOI Act).

16. I have also had regard to whether the decision to impose a charge on you would cause you financial hardship (in accordance with section 29(5)(a) of the FOI Act) and whether it would be appropriate in the circumstances to apply a reduction of the charge in the interests of resolving your application for IC Review.

Assessment of charges

17. Item 2 of Part 1 of the Schedule to the Charges Regulations sets out the charges applicable in respect of search and retrieval time and specifies a rate of \$15.00 per hour for the search and retrieval of a document.
18. Item 3 of Part 1 of the Schedule to the Charges Regulations provides that an agency can charge an amount not exceeding the actual cost incurred by the agency in producing a document that is not available in a discrete form in the documents of the agency.
19. I have reviewed the charges calculated for the processing of your FOI request and consider the charge set out in Schedule 2 to the Charges Decision to have been incorrectly stated. Specifically, it applies an hourly rate of \$49.13 and \$59.77 variously for the search and retrieval of information rather than for the actual cost incurred by the agency in producing a document in circumstances where the request relates to information that is not available in a discrete form.
20. I have assessed the charges applicable for the processing of your FOI request and have detailed in **Schedule 2** of this section 55G decision the correct charges.
21. I provide the following by way of explanation as to the calculation of the charges in Schedule 2:
 - a. No charges have been calculated for the searching and retrieving a document of the agency (as specified in Item 2 of Part 1 of the Schedule to the Charges Regulations) on the basis that the document to which access is sought by your FOI request is not a document held by the Department;
 - b. Charges have been calculated in accordance with Item 3 of Part 1 of the Schedule to the Charges Regulations being the actual cost incurred by the agency in producing a document responsive to your FOI request, that is not available in a discrete form in the documents of the Department;
 - c. To assist with the revised decision I confirmed there are a total of 68 line items that need to be investigated for the month of June 2018. I have applied a rate of 3 minutes per item to retrieving and review the initial data, sort that data in order to gain a more accurate reflection of the stages of work required and then investigate each item in order to process your request and collate the data into the format that you have requested. I have also factored in 5 minutes (in total) to arrange the data in the manner you have specified. Based on the amount of data

required to be reviewed and the time to arrange the overall data, it is expected to take 209 minutes (3.48 hours) to create the document as requested;

- d. The actual costs involved in producing a document responsive to your FOI request requires an EL1 to undertake the work. The hourly rate I have applied is derived from the Department's Enterprise Agreement;
- e. No charges have been applied for the first five hours of time spent in making an access decision including the time involved in preparing the schedule of documents (in accordance with Item 5 of Part 1 of the Schedule to the Charges Regulations); and
- f. No charges have been imposed under Part 2 of the Charges Regulations for accessing the document.

Discretion to impose charges

- 22. In relation to the discretion to impose a charge set out in clause 3(1) of the Charges Regulations, I have had regard to the objects of the FOI Act which, relevantly, require an agency to perform and exercise the powers and functions given by the FOI Act, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost. In that regard, I note the IC's review decision in *McBeth and Australian Agency for International Development* [2012] AICmr 24 at paragraph [15] where the Information Commissioner found that an agency's decision to use the charge rates specified in the Schedule to the Charges Regulations did not mean that the agency had not applied the 'lowest reasonable cost' objective in calculating the charge.
- 23. I have also had regard to those factors set out in paragraph [4.4] of the FOI Guidelines and in the IC review decision of '*ND' and Department of Human Services (Freedom of Information)* [2017] AICmr 119 (in particular, paragraph [15]) when deciding to impose a charge, including:
 - a. the cost to you, the cost to the agency in calculating and collecting the charge and the likely costs of this review; and
 - b. the amount of time required by an appropriately qualified officer of the agency to process your FOI request, create the document to which access is sought and make a determination.
- 24. In order to satisfy myself that the charge is fair and accurate, I have had also had regard to the Charges Decision provided to you in relation to FOI 23544, where you requested the same data, but for a period of the financial year of 15/16. I have had regard to the time estimated to process that information (not the hourly rates used to calculate the charges). That Charges Decision took into account the actual costs incurred for staff to retrieve and review the data and create the document in the format you requested, for a significantly larger number of line items.

25. Your request is specific, in that you have asked the Department to create a document for you. Having reviewed the above, I am satisfied that it would take an estimated 3.48 hours to process this specific request, with additional decision making time that is not to be charged for. I am also satisfied that the application of a charge to process your request is reasonable in the circumstances.
26. As I have detailed at **Schedule 2**, the Department will charge the actual costs involved for an EL1 to process your request (in accordance with the Charges Regulations Schedule Part 1 Item 3).

Whether or not to reduce or not to impose a charge

27. Section 29(5) of the FOI Act sets out a number of matters an agency must take into account in determining whether or not to reduce or not to impose a charge.
28. The first of those factors set out in section 29(5)(a) requires the agency to have regard to whether the payment of the charge, or part of the charge, would cause you financial hardship. As you have not advised, either through the original FOI process or through the IC Review, that payment of the charge would cause you financial hardship, I have not considered a waiver or reduction on the basis of financial hardship.
29. The second of those factors set out in section 29(5)(b) requires the agency to consider whether the giving access to the document in question is in the general public interest or in the interest of a substantial section of the public.
30. Paragraph [4.81] of the FOI Guidelines state that an applicant relying on section 29(5)(b) of the FOI Act should identify or specify the 'general public interest' or the 'substantial section of the public' that would benefit from the disclosure of the document and lists a number of matters to be considered. In your FOI application you have referred to a general public interest in the public understanding how the Department is spending public funds on external legal services. You also note the Department publishes information about its external legal spend in its annual report, but not in the level of detail you seek.
31. I have had regard to paragraph [4.83] of the FOI Guidelines and the decisions of *Australian Associated Press Pty Ltd and Department of Foreign Affairs and Trade* [2017] AICmr 131 and *Jon Patty and Attorney-General's Department (Freedom of Information)* [2018] AICmr 28 and the examples provided of circumstances where the giving access to information may be in the general public interest or in the interests of a substantial section of the public, for example:
 - a. the document relates to a matter of public debate or a policy issue under discussion within the agency and disclosure of the document would assist the public comment or participate in the debate or discussion – I do not consider this public interest consideration applies in this instance. The Department's external legal services expenditure is not a matter of public debate, nor is it a policy issue currently being discussed by the Department. The Department reports overall legal expenditure within its Annual Reports;

- b. the document relates to an agency decision that has been a topic of public interest or discussion – this public interest consideration does not apply in this instance;
 - c. the document would add to the public record on an important and recurring aspect of agency decision making – this public interest consideration does not apply in this instance;
 - d. the document is to be used for research that is to be published widely or that complements research being undertaken in an agency or elsewhere in the research community – so far as I am aware, this public interest consideration does not apply in this instance;
 - e. the document is to be used by a community or non-profit organisation in preparing a submission to a parliamentary or government inquiry – so far as I am aware, this public interest consideration does not apply in this instance;
 - f. the document is to be used by a member of Parliament in parliamentary or public debate on an issue of public interest or general interest in the member’s electorate – so far as I am aware, this public interest consideration does not apply in this instance; and
 - g. the document is to be used by a journalist in preparing a story for publication that is likely to be of general public interest – again, so far as I am aware, this public interest consideration does not apply in this instance.
32. Notwithstanding the above, I accept that the cost of the Department’s external legal expenditure may be of interest to some members of the public and note the extent to which that information is publicly available in the Department’s annual report and other publicly available reports (such as the Attorney-General’s Department’s Legal services expenditure report).
33. In light of the above, I have decided that reducing the charge for disclosure of the document in question is in the general public interest as contemplated in section 29(5) of the FOI Act generally, but that this interest does not warrant a full waiver of the charge. As such, the charge has been reduced by 25 per cent on public interest grounds.

Discretion to reduce the charge

34. In the interests of resolving this IC Review, I have decided to apply a further 25 per cent discount to the applicable charges (that is, an additional 25 per cent discount in addition to the 25 per cent discount on public interest grounds). This reduction brings the total charges payable down from \$207.98 to \$103.99.

Your liability to pay a charge

35. As the charges is more than \$100.00, you will need to pay a deposit of \$25.99 (which is 25 per cent 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 Charges Regulations.

36. 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 charges is less than the deposit paid.
37. On payment of the charges in full, or the required deposit, processing of your request will commence. Payment can be made by:

(a) forwarding a cheque for the required amount to:

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

Required Reference: FOI24762/Verity Pane

or

(b) paying by electric funds transfer directly into the Department's banking account using the following details:

Account name: Reserve Bank of Australia

BSB: 092009

Account number: 112084

Required Reference: FOI24762/Verity Pane

Access to the document

38. The Department will process your request once the deposit (or the full charges if you prefer) is received. If you pay the deposit, the document will not be released to you until payment of the remaining charges has been made.

Application for Information Commissioner Review — Request to withdraw application

39. In light of my decision to revise the charges applicable to your FOI request, I request that you consider withdrawing your application for IC Review of FOI 24762.

Your rights of review

40. If you are dissatisfied with my decision, you may advise the Information Commissioner that you do not wish to withdraw your application for Information Commissioner review.
41. 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

42. If you wish to discuss this decision, please do not hesitate to contact me using the following details:

Post: Legal Services and Audit Branch, Department of Veterans' Affairs
GPO Box 9998, BRISBANE QLD 4001
Facsimile: (02) 6289 6337
Email: Information.Law@dva.gov.au

Yours sincerely

Leia (Position Number 62210022)

Assistant Director
Information Law Section / Legal Services and Audit Branch
Integrity, Assurance and Communications Division

31 May 2019



Schedule of relevant provisions in the FOI Act

3 Objects—general

- (1) The objects of this Act are to give the Australian community access to information held by the Government of the Commonwealth or the Government of Norfolk Island, by:
 - (a) requiring agencies to publish the information; and
 - (b) providing for a right of access to documents.
- (2) The Parliament intends, by these objects, to promote Australia's representative democracy by contributing towards the following:
 - (c) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (d) increasing scrutiny, discussion, comment and review of the Government's activities.
- (3) The Parliament also intends, by these objects, to increase recognition that information held by the Government is to be managed for public purposes, and is a national resource.
- (4) The Parliament also intends that 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.

11 Right of access

- (1) Subject to this Act, every person has a legally enforceable right to obtain access in accordance with this Act to:
 - (a) a document of an agency, other than an exempt document; or
 - (b) an official document of a Minister, other than an exempt document.
- (2) Subject to this Act, a person's right of access is not affected by:
 - (a) any reasons the person gives for seeking access; or
 - (b) the agency's or Minister's belief as to what are his or her reasons for seeking access.

11A Access to documents on request

Scope

- (1) This section applies if:
 - (a) a request is made by a person, in accordance with subsection 15(2), to an agency or Minister for access to:
 - (i) a document of the agency; or
 - (ii) an official document of the Minister; and
 - (b) any charge that, under the regulations, is required to be paid before access is given has been paid.
- (2) This section applies subject to this Act.

Note: Other provisions of this Act are relevant to decisions about access to documents, for example the following:

- (a) section 12 (documents otherwise available);
- (b) section 13 (documents in national institutions);
- (c) section 15A (personnel records);
- (d) section 22 (access to edited copies with exempt or irrelevant matter deleted).

Mandatory access—general rule

- (3) The agency or Minister must give the person access to the document in accordance with this Act, subject to this section.

Exemptions and conditional exemptions

- (4) The agency or Minister is not required by this Act to give the person access to the document at a particular time if, at that time, the document is an exempt document.

Note: Access may be given to an exempt document apart from under this Act, whether or not in response to a request (see section 3A (objects—information or documents otherwise accessible)).

- (5) The agency or Minister must give the person access to the document if it is conditionally exempt at a particular time unless (in the circumstances) access to the document at that time would, on balance, be contrary to the public interest.

Note 1: Division 3 of Part IV provides for when a document is conditionally exempt.

Note 2: A conditionally exempt document is an exempt document if access to the document would, on balance, be contrary to the public interest (see section 31B (exempt documents for the purposes of Part IV)).

Note 3: Section 11B deals with when it is contrary to the public interest to give a person access to the document.

- (6) Despite subsection (5), the agency or Minister is not required to give access to the document at a particular time if, at that time, the document is both:
- (a) a conditionally exempt document; and
 - (b) an exempt document:
 - (i) under Division 2 of Part IV (exemptions); or
 - (ii) within the meaning of paragraph (b) or (c) of the definition of exempt document in subsection 4(1).

23 Decisions to be made by authorised persons

- (1) Subject to subsection (2), a decision in respect of a request made to an agency may be made, on behalf of the agency, by the responsible Minister or the principal officer of the agency or, subject to the regulations, by an officer of the agency acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the responsible Minister or the principal officer of the agency.
- (2) A decision in respect of a request made to a court, or made to a tribunal, authority or body that is specified in Schedule 1, may be made on behalf of that court, tribunal, authority or body by the principal officer of that court, tribunal, authority or body or, subject to the regulations, by an officer of that court, tribunal, authority or body acting within the scope of authority exercisable by him or her in accordance with arrangements approved by the principal officer of that court, tribunal, authority or body.

26 Reasons and other particulars of decisions to be given

- (1) Where, in relation to a request, a decision is made relating to a refusal to grant access to a document in accordance with the request or deferring provision of access to a document, the decision-maker shall cause the applicant to be given notice in writing of the decision, and the notice shall:
- (a) state the findings on any material questions of fact, referring to the material on which those findings were based, and state the reasons for the decision; and
 - (aa) in the case of a decision to refuse to give access to a conditionally exempt document—include in those reasons the public interest factors taken into account in making the decision; and

Note: Access must generally be given to a conditionally exempt document unless it would be contrary to the public interest (see section 11A).

- (b) where the decision relates to a document of an agency, state the name and designation of the person giving the decision; and
- (c) give to the applicant appropriate information concerning:
 - (i) his or her rights with respect to review of the decision;

- (ii) his or her rights to make a complaint to the Information Commissioner in relation to the decision; and
 - (iii) the procedure for the exercise of the rights referred to in subparagraphs (i) and (ii); including (where applicable) particulars of the manner in which an application for internal review (Part VI) and IC review (Part VII) may be made.
- (1A) Section 13 of the Administrative Decisions (Judicial Review) Act 1977 does not apply to a decision referred to in subsection (1).
- (2) A notice under this section 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. (see section 11A).

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.

55G Procedure in IC review--revocation or variation of access refusal decision

- (1) An agency or Minister may vary (or set aside and substitute) an access refusal decision (the original decision) in relation to a request or an application under section 48 at any time during an IC review of the access refusal decision if the variation or substitution (the revised decision) would have an effect of:
- (a) giving access to a document in accordance with the request; or
 - (b) relieving the IC review applicant from liability to pay a charge; or
 - (c) requiring a record of personal information to be amended or annotated in accordance with the application.

Note: When making the revised decision, a consultation requirement under section 26A (documents affecting Commonwealth-State relations etc.), 27 (business documents) or 27A (documents affecting personal privacy) may apply.

- (2) If an agency or Minister varies (or sets aside and substitutes) an access refusal decision under subsection (1):
- (a) the agency or Minister must, in writing, notify the Information Commissioner as soon as practicable after the agency or Minister makes the variation or substitution; and
 - (b) the Information Commissioner must deal with the IC review application for review of the original decision as if it were an IC review application for the review of the varied or substituted decision, subject otherwise to this Part.



Charge payable under the FOI Act

DOCUMENT ESTIMATE	
Number of relevant documents (once created)	1
Number of relevant pages (or other size descriptor)	1

PROCESSING CHARGES		
<i>Freedom of Information (Charges) Regulations 1982 (Schedule 1, Part I, Item 3)</i>		
Task	Time/hr	Cost and rate
Production of document containing the information in discrete form <u>Note:</u> based on a rate of 3 minutes to access/review each record (68 records) and an additional 5 minutes to generate the document as requested <u>Costs:</u> EL1 @ \$59.77 p/hr (rate under previous EBA)	3.48	\$207.99
<i>Production of document total</i>	3.48	\$207.99
<i>Freedom of Information (Charges) Regulations 1982 (Schedule 1, Part I, Item 5)</i>		
Task	Time	Cost @ \$20/hr
Examination of documents	0.05	\$1.00
Consultation with third parties	0.00	0.00
Preparation of documents for release	0.05	\$1.00
Preparation of notice of access decision	1.00	\$20.00
Decision making subtotal (before deduction of 5 hours)	- 5 hours	- \$100.00
<i>Decision making subtotal (after deduction of first 5 hours free)</i>	0.00	0.00

ESTIMATED TOTALS AND DEPOSIT	
ESTIMATED TOTAL	\$207.99
Amount applied to reduction of charge (50% of total)	\$103.99
Amount remaining after discount applied	\$103.99
REQUIRED DEPOSIT (25% of charge)	\$25.99