



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

Decision and reason for decision of Position Number 62212962, Information Law Section, Legal Services and General Counsel Branch, Department of Veterans' Affairs

Applicant: Verity Pane
Charges Notice issued: 24 October 2018
Decision date: 7 November 2018
FOI reference number: FOI 24761
Issued by email: foi+request-4848-05c3e85b@righttoknow.org.au

Dear Verity Pane,

Freedom of Information Request: FOI 24761

1. I have made a decision to impose a charge in the amount of \$119.54. A deposit of \$29.88 is required.

Authority to make this decision

2. I, Position Number 62212962, Legal Officer, 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 *Freedom of Information Act 1982* (**FOI Act**).

Summary

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:

"...Under s 17 of the FOI Act I require DVA to compile from its Human Resource Information Management Information System, the names and position numbers of all positions identified in Internal Review Decision 22524 of FOI 22031 (being all DVA FOI delegates) as at 27 Sep 2018..."

4. 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 \$119.54. You were also advised that a deposit of \$29.88 was required before any further action could be taken on your request.
5. On 25 October 2018, you requested a reduction/waiver of charges associated with your request on the basis that the charges were wrongly assessed. Your request was made in the following terms:

“...Notably, no charges were levied for the collection of this information released in the prior FOI, which arguably would have taken longer to compile given it involved more than producing a standard position report in DVA’s human resource management information system (HRMIS) and required questions to be asked of the officers involved as to the extent of their FOI duties.

It does not take two hours to produce a position report in a HRMIS, rather less than 5 minutes (and that’s being for someone unfamiliar with the HRMIS).

I therefore challenge the charges assessment, which appears to have been made solely to impede access, and for no other purpose...”

Material taken into account

6. In accordance with section 26(1)(a) of the FOI Act, my findings on any material question of fact, the material on which those findings were based and the reasons for my decision to affirm the charges.
7. I have taken the following material into account in making my decision:
 - the terms of your request;
 - the Charges Notice, dated 24 October 2018;
 - your correspondence contending the Charges Notice, dated 25 October 2018;
 - the types of documents that are in the possession of the Department;
 - the ease in which the Department can retrieve the data/information you have requested to create a document that does not already exist;
 - information received by the relevant business area about the work involved in comparing the previous document released to you against current documents and information;
 - 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. I also considered section 29 of the FOI Act (**Charges**) relevant to my decision;
 - the *Freedom of Information (Charges) Regulations 1982* (**Charges Regulations**);

- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (**FOI Guidelines**).

8. A full extract of all FOI Act provisions used to make my decision are provided in Schedule 1.

Decision

9. I have made a decision to impose a charge in the amount of \$119.54. A deposit of \$29.88 is required.

Reasons for Decision

10. Section 29 of the FOI Act provides that charges can be imposed for processing requests. Unless a decision is made to waive the processing charge in whole or in part, the combined effect of section 11A(1)(b) of the FOI Act and Regulation 11(1) of the Charges Regulations is that an applicant is required to pay any charge before any access is given.

11. The Charges Regulations specify different rates for the various activities involved in processing a request with the first five hours of decision-making time free for all FOI applicants.

Is the charge wrongly assessed?

12. I have considered your response to the Charges Notice, dated 25 October 2018 as detailed above. You contended that no charges were levied for the original document and as such, is unreasonable for the Department to levy charges for this request. You further contended “...*It does not take two hours to produce a position report in HRMIS, rather less than 5 minutes...*”

13. Part 4 of the FOI Guidelines state that an agency or minister can impose a charge that does not exceed the actual costs incurred by the agency or minister in:

- retrieving and collating information stored on a computer or on like equipment (Charges Regulations, Schedule, Part I, Item 3)
- retrieving and collating information stored on a computer and using the computer or other equipment to make deletions from the record of the information (Schedule, Part II, Item 4) producing a computer tape or disk (Schedule, Part II, Item 4A)
- arranging for an applicant to hear a recording or view a stored image (Schedule, Part II, Item 5) producing a copy of a recording, film or videotape (Schedule, Part II, Item 6)
- posting or delivering a document to an applicant, as requested by the applicant (Schedule, Part II, Item 8).

14. The FOI Guidelines at [4.3], provides that a Department has the discretion to impose or not impose a charge. Therefore, the Department has used its discretion not to charge for the original document

released in FOI 22524. This does not prevent the Department from using its discretion to charge in this request or future requests.

15. You have requested for the Department to list the names and position numbers of all positions identified in FOI 22524.
16. In calculating processing charges for FOI requests, the Department applies relevant provisions of the Charges Regulations, FOI Act and FOI Guidelines in relation to the amounts it is permitted to charge.
17. In matters where an applicant requests the Department to create a document in accordance with section 17 of the FOI Act, Part I, Item No 3 of the Charges Regulation Schedule provides that:

“Where the request, being a request made to an agency, is in respect of information that is not available in discrete form in documents of the agency – a charge in respect of the production of a document containing the information in discrete form by the use of a computer or other equipment that is ordinarily available to the agency for retrieving or collating stored information”

then the amount of rate of charge applicable is:

“an amount not exceeding the actual cost incurred by the agency in producing the document”

18. The data you are requesting took an EL1 two (2) hours to search, make phone calls, and liaise with various line areas within the Department to identify the names and position numbers of all positions identified in FOI 22524. The EL1 confirmed they had to do more than produce a position report due to staff movements and departures in the team since the date of the document. It is noted that position numbers do not follow staff as they move within different areas of the Department, nor do those position numbers cease to exist when staff leave the Department. Position numbers are assigned to specific positions within the Department, not individual staff members. Work was needed to ensure appropriate cross-referencing could be done and that accurate information could be provided in response to this request.
19. As I have detailed at **Schedule 2**, the Department will charge for the actual costs involved for an EL1 to process your request. The hourly rates applicable to this EL1 is set by and derived from the Department’s Enterprise Agreement. The costs incurred for decision-making remain at the set rate in the Charges Regulations.
20. As such, I am satisfied the Department has calculated the charges correctly.

Would charges cause financial hardship?

21. As you have not advised that payment of the charge would cause you financial hardship, I have not considered a waiver or reduction on the basis of financial hardship.

Is giving access to the document(s) in the public interest?

22. As you have not advised that giving access to the document is in the public interest, I have not considered a waiver or reduction on the grounds of public interest.

Your liability to pay a charge

23. As the charge is more than \$100.00, you will need to pay a deposit of \$29.88 (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.
24. 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.
25. On payment of the charge 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 & Assurance Branch, Department of Veterans' Affairs
GPO Box 9998, Canberra ACT 2601

Required reference: FOI24761/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: FOI24761/Verity Pane

Access to the document requested

26. The Department will continue to process your request once the deposit (or the full charge if you prefer) is received. If you pay the deposit, the document will not be released to you until payment of the remaining charge has been made.
27. Please note that payment of a charge does not guarantee access to the document, in full or in part.

Your rights of review

28. If you are dissatisfied with my decision, you may apply for internal review or request the Office of the Australian Information Commissioner (**OAIC**) review my decision. We encourage you to seek internal review as a first step as it may provide a more rapid resolution of your concerns.

Internal review

29. Under section 54 of the FOI Act, you may apply in writing to the Department for an internal review of my decision. The internal review application must be made within 30 days of the date of this letter. Where possible please attach reasons why you believe review of the decision is necessary. The internal review will be carried out by another officer within 30 days.
30. You can make your application for internal review in one of the following ways:

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

OAIC review

31. Under section 54L of the FOI Act, you may apply to the OAIC to review my decision. An application for review by the OAIC must be made in writing within 60 days of the date of this letter, and be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: Office of the Australian Information Commissioner
GPO Box 5218, Sydney NSW 2001
Facsimile: (02) 9284 9666
Email: enquiries@oaic.gov.au
In person: Level 3, 175 Pitt Street, Sydney NSW.

32. More information about your review rights under the FOI Act is available in Fact Sheet 12 published by the OAIC: <http://oaic.gov.au/freedom-of-information/foi-resources/freedom-of-information-factsheets/foi-factsheet-12-your-review-rights>

Contact us

33. If you wish to discuss this decision, please do not hesitate to contact the Information Law Section using the following details:

Post: Legal Services & General Counsel, Department of Veterans' Affairs

GPO Box 9998, Canberra ACT 2601

Facsimile: (02) 6289 6337

Email: information.law@dva.gov.au

Yours sincerely,

Position Number 62212962

Legal Officer

Information Law Section | Legal Services & General Counsel Branch

Legal Assurance and Governance Division

7 November 2018



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:
 - (a) increasing public participation in Government processes, with a view to promoting better informed decision-making;
 - (b) 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.



Charge payable under the FOI Act

PROCESSING CHARGES		
Search and retrieval*Part I, item 3 of the Charges Regulation Schedule		
Task	Time/hr	Cost @ APS/EL rate
Search and retrieval to collate information as requested & prepare document with requested information, including scheduling <i>(EL1 @ \$59.77 p/hr)</i>	2.00	\$119.54
Search and retrieval subtotal	2.00	\$119.54
Decision making*Part I, item 5 of the Charges Regulation Schedule		
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	0.00	0.00
Preparation of notice of access decision	1.00	\$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	\$119.54
REQUIRED DEPOSIT	\$29.88