

6 November 2018

Ms Sarah Wright
Sent by email: foi+request-4850-b74973fc@righttoknow.org.au

David Brumby
FOI Coordinator
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CRICOS Provider No. 00120C

Dear Ms Wright

Freedom of Information Request 201800066

I refer to your request, received on 28 September 2018 by the Australian National University (University) for access to documents under the *Freedom of Information Act 1982* (the FOI Act)

I have taken your request to be for access to copies of the following documents:

1. *All agreements, such as Memorandums of Understanding, agreed between the Australian National University Crawford School of Public Policy and the ANU Law School, and the Commonwealth Parliamentary Library in the last two years.*
2. *All documents related to the negotiation and concluding of those agreements.*
3. *All documents related to the interactions between the Parliamentary Library and each of the Crawford School of Public Policy and the ANU Law School since those agreements came into effect.*
4. *All documents related to requests from the Parliamentary Library for work or services (however described) under those agreements*
5. *All work performed under those agreements.*

I refer to your email of 10 October 2018 in which you requested a waiver of charges pursuant to section 29(5)(b) of the FOI Act, on the following grounds:

I believe that charges should not be imposed in relation to this request because the request is in the public interest. The reasons that this request is in the public interest are as follows:

1. *No private interest*

No private interest is apparent from this request. The request, therefore, must be in the public interest.

2. *Senate Estimates Questions on Notice*

The Parliamentary Library has, in the last two years, provided two answers to Questions on Notice to the Senate Finance and Public Administration Committee in which the Library denied that it was intending to outsource function and activities. Those questions are 2017-18 Budget Estimates question number 48 asked on 7 July 2017, and 2017-18 Additional Estimates question number 36 asked on 26 February 2018.

*The Senate is an important institution in the Australian political system, which promotes scrutiny and accountability of governmental matters. Specially, the functions of the Senate, as set out in Odgers' *Australian Senate Practice* (14th edition, pages 28 to 30), state that the functions of the*

Senate include providing 'adequate scrutiny of financial measures [such as expenditure by government agencies], especially by committees considering estimates', and 'to keep itself and the public informed, and to insist on ministerial accountability for the government's administration.' In the case of matters pertaining to the Parliament, it is common practice to substitute the concepts of 'ministers' and 'the government' with the concepts of the 'parliamentary presiding officers' and 'the Parliament', but the concepts apply equally to the Parliament.

Resolutions of the Senate, which are given force because of Section 49 of the Constitution and the Parliamentary Privileges Act 1987, provide that it is a contempt of the Senate to mislead the Senate.

The documents requested go directly to whether or not the answers provided to the Senate Finance and Public Administration Committee were correctly answered, and whether, therefore, the Senate was misled. Given the functions of the Senate, including its function to 'keep itself and the public informed', the request is in the public interest because the documents within the scope of the request will go to the correctness, or otherwise, of the answers provided by the Library to the Senate Finance and Public Administration Committee while it was performing its scrutiny and public information roles.

3. Compliance with Commonwealth Procurement Rules

The Commonwealth Procurement Rules provide that 'standing offers,' regardless of their value, must be published on the AusTender website within 42 days of an entity having entered into an arrangement (Rule 7.18). I believe the MoUs constitute a standing offer under the Commonwealth Procurement Rules.

I have surveyed the AusTender website and I have not been able to identify where the MoUs have been notified in accordance with the Commonwealth Procurement Rules.

The release of documents that might disclose non-compliance with a Commonwealth law, particularly where that law is directed at publicly disclosing information which is the subject of this request, is in the public interest.

As an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests, I have decided under section 29(4) to reduce the amount by 25%, so that the estimated amount you are liable to pay is \$300. The reasons for my decision are set out below.

I have considered whether you sought a waiver or reduction of charges pursuant to section 29(5) on the following grounds:

- whether giving access to the documents is in the general public interest or in the interest of a substantial section of the public
- whether any additional reason was provided
- any other relevant matter

In coming to this decision I have taken in to account that the release of the relevant documents could be seen to be in the public interest of some members of the community. However, I do not believe that the charges should be waived or reduced by more than 25% as this would place an unreasonable financial burden on the University, given the administrative costs and time involved.

Next steps in processing your request

In accordance with section 31 of the FOI Act, the 30 day time limit is suspended from the date you were notified of the reduced charge until the earliest occurring of the following days:

- the day you pay the amount of the charge [or deposit]

- if the amount of the charge is changed following review under the FOI Act – the day you pay the revised charge [or deposit]
- if following review under the FOI Act, a decision is made not to impose a charge – the day you are notified of that decision.

Payment of a deposit

As the charge exceeds \$100, a 25 per cent deposit (\$75) must be paid to enable the processing of your request to continue (in accordance with reg 12).

The deposit is not refundable except in some limited circumstances (for example, if the University fails to make a decision on your request within the statutory time limit), or may be refunded in part if the final charge is less than the deposit paid.

Payments to the The Australian National University can be made by direct deposit to the following bank account:

Bank: NATIONAL AUSTRALIA BANK

Branch: CANBERRA CITY, LONDON CIRCUIT & AINSLIE AVE CIVIC SQUARE, AUSTRALIAN CAPITAL TERRITORY (ACT), AUSTRALIA. 2601

BSB: 082-902

Account Number: 674507553

Account Name: THE AUSTRALIAN NATIONAL UNIVERSITY GENERAL ACCOUNT

Reference: FREEDOM OF INFORMATION REQUEST

If wish to discuss this decision, please contact me using the details below.

Yours sincerely



David Brumby
FOI Coordinator
University Records
+61 2 6125 4237, foi@anu.edu.au

Your review rights

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

Application for Internal Review of Decision

Section 54A of the Act, gives you the right to apply for an internal review of my decision.

It must be made in writing within 30 days of receipt of this letter, no particular form is required but it is desirable to set out in the application the grounds on which you consider the decision should be reviewed.

The application should be addressed to:

Chief Operating Officer
Office of the Vice-Chancellor
Building 10
The Australian National University
Canberra ACT 2601

Or via email: chris.grange@anu.edu.au

Application for Information Commissioner Review of decision

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

online: <https://forms.business.gov.au/aba/oaic/foi-review/>
email: enquiries@oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001
in person: Level 3, 175 Pitt Street, Sydney NSW 2000

More information is available on the Office of the Australian Information Commissioner website. Go to www.oaic.gov.au/freedom-of-information/foi-reviews.