



Mrs P Gale and V Wilson

By email: foi+request-4875-dad2cf1d@righttoknow.org.au

Dear Mrs Gale and V Wilson

1. I refer to your request received by the Department of Education and Training (the department) on 11 October 2018 for access under the *Freedom of Information Act 1982* (FOI Act) to

"...(i) Anything to show the Minister's approval, and/or rejection, of any specific grants for projects following the 2018 investment plan.

(ii) Failing i above, anything to show the Minister was asked to approve any grants following the 2018 investment plan, and to list the grants

(iii) Failing ii above, anything to show the Minister approved the department to send invites for grants following the 2018 investment plan.

(iv) Failing iii above, anything to show the projects (general or specified) the department wants the Minister to invite applications for..."

Background

2. On 30 October 2018, the department advised you of the preliminary estimate of the charge for processing your request, being \$154.90 (the Charge).
3. In an email dated 27 November 2018, the department received your request for non-imposition of the Charge on public interest grounds pursuant to section 29 of the FOI Act. Specifically, you made the following submissions in support of your request for non-imposition of the Charge:

"We think that the charge is excessive and also that it should not be imposed... Also, we do not think any consultation time need be involved. To be clear, we are looking for information about who got grants, how much money, and what they got the grants for. We're not looking or details of every university that applied for a grant. That seems also like a reason for thinking the charge is excessive... [The department] published that information in previous years. All we're looking for is the same information for 2018. Our colleagues who invest a lot in trying to improve student equity, and who didn't even hear about the grants, definitely think they deserve some openness (sic) from Tertiary Education. We think [the department] should not impose a charge at all. We think [the department] should release the information as [the department has] done previously."

4. In that email you also confirmed that if there were any documents that fell within part (i) of your request, you were only seeking those documents.

Decision

5. I am authorised to make decisions under the FOI Act and the following is my decision in relation to your request for non-imposition of the Charge and the reasons for my decision.
6. Further to the clarification of your request on 27 November 2018, I have re-calculated the Charge on the basis that the department has in its possession approximately 7 pages of material relevant to

part (i) of your request, and this totals \$83.50 (the New Charge). For the reasons set out below, I have also decided to reduce the New Charge by 50% (the Reduced Charge). The Reduced Charge totals \$41.75.

7. However, I note that, for the reasons outlined below at paragraphs 25 to 27, you may like to consider withdrawing your FOI request.

Reasons for decision

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

- the department's letter dated 30 October 2018 notifying you of the Charge;
- your email received on 27 November 2018 seeking non-imposition of the Charge;
- the documents falling within the scope of your request;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the Regulations); and
- the Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (the Guidelines).

Calculation of the Charge

7. As a preliminary step in my consideration of whether a processing charge should apply to this request, I have examined the calculations which were used to determine the Charge.
8. In its letter dated 30 October 2018, the department advised that it has in its possession approximately 28 pages relevant to your request. The Charge, totalling \$154.90, was calculated as follows:

Search and retrieval time: 4 hours, at \$15.00 per hour:	60.00
Decision-making time: 9.75 hours minus the first 5 hours* at \$20.00 per hour:	94.92
TOTAL	\$154.90

*The FOI Act provides that the first five hours of decision-making time are free of charge and this is reflected in the calculation.

9. In calculating a processing charge for a freedom of information application, the department applies relevant provisions of the FOI Act, the Regulations and the Guidelines in relation to the amount it is permitted to charge. The department calculates the amount it may charge based on:
- the time taken to search for, and retrieve, files containing documents that fall within the scope of the request;
 - the number of third parties with whom it will be necessary to consult in the course of making a decision regarding release of the documents;
 - the number and size (volume) of the documents that have been identified as falling within the scope of the request and the time taken for decision-making in relation to each page of each document (less the first five hours of decision-making time, which are free of charge); and
 - the number of pages considered sensitive, requiring redaction (potentially requiring extra decision-making time).
10. The department enters the information regarding the number and nature of the documents into a calculator provided by the Australian Government Solicitor. While use of this calculator is not mandated, it is provided to agencies for use in the calculation of processing charges under the FOI

Act and is in common usage. The decision-maker then applies his or her own experience to evaluate the reasonableness of the amount calculated.

11. In relation to your request, the Charge was calculated on the time taken to search and retrieve the documents within the scope of your request, and on the basis that the department will need to consult with external third parties and, following this, the deletion of exempt material may be required, potentially increasing the decision-making time.

Calculation of the New Charge

12. As indicated above, in your correspondence dated 27 November 2018, you note that you are “*only looking for category ii documents if there's no category i documents...*”.
13. Accordingly, I have re-examined the material within the scope of your request and identified 7 pages of material relevant to part (i) of your request. On that basis I have re-calculated the charge applicable for the processing of this FOI request (the New Charge). The New Charge, totalling \$83.50, was calculated as follows:

Search and retrieval time: 4 hours, at \$15.00 per hour:	60.00
Decision-making time: 6.18 hours minus the first 5 hours* at \$20.00 per hour:	23.50
TOTAL	\$83.50

14. In calculating the New Charge, I note that your request still requires consultation with one external third party on the documents within the scope of your request.

Reduction or non-imposition of the New Charge

15. Subsection 29(5) of the FOI Act provides that, without limiting the matters that an agency may take into account when making a decision about whether to reduce, or not impose, a processing charge, the decision-maker must consider:
 - whether payment of a charge, or part of it, would cause financial hardship to an applicant; and
 - 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.

Financial hardship

16. As required by subsection 29(5) of the FOI Act, I have turned my mind to whether imposition of the New Charge would cause you financial hardship. However, I note that in your correspondence you have not contended that payment of the Charge, in full or in part, would cause you financial hardship. Accordingly, there is no basis upon which I can make a decision to reduce or not impose the New Charge by reason that doing so would cause you financial hardship.

Public interest

17. Paragraph 29(5)(b) of the FOI Act provides that the department must consider ‘*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.*’ This requires the decision maker to identify the ‘general public interest’ or the ‘substantial section of the public’ that will benefit from the disclosure of the documents.
18. The Guidelines explain at paragraph 4.81 that the question of whether the giving of access is in the ‘general public interest’ or in the interest of a ‘substantial section of the public’ may require consideration of both ‘*the content of the documents requested and the context in which their public*

release would occur. Matters to be considered include whether the information in the documents is already publicly available, the nature and currency of the topic of public interest to which the documents relate, and the way in which a public benefit may flow from the release of the documents’.

19. The Guidelines also note at paragraph 4.83 that the ‘public interest’ is a concept ‘*of wide import that cannot be exhaustively defined*’. The Guidelines provide examples that illustrate the circumstances in which the giving of access may be in the general public interest or a substantial section of the public. These include:
 - the document relates to an agency decision that has been a topic of public interest or discussion, and disclosure of the document would better inform the public as to why or how the decision was made, including highlighting any problems or flaws that occurred in the decision-making process; and
 - the document would add to the public record on an important and recurring aspect of agency decision making.

20. In support of your request for non-imposition of the Charge, you submitted that the release of the documents is in the public interest because:

“...your own website makes it obvious you think it is in the public interest to be transparent and open about who got grants, how much they got, and what for. You published that information in previous years. All we’re looking for is the same information for 2018. Our colleagues who invest a lot in trying to improve student equity, and who didn’t even hear about the grants, definitely think they deserve some openness (sic) from Tertiary Education.”

21. I accept that giving access to the documents within the scope of your request is in the general public interest or in the interest of a substantial section of the public insofar as the documents relate to a matter of public debate, and disclosure of the material could assist public comment on, or participation in, the debate or discussion.

22. However, I have also considered the cost of processing the FOI request and I consider that I have been conservative in my estimates of how long the decision-making process will take. The process includes examining the pages in scope, redacting pages, consulting with an external third party and departmental officers, and writing my statement of reasons for the decision. I have therefore decided not to waive the New Charge in full.

23. Upon consideration of the above factors, I have decided that, on balance, giving access to some of the material is in the general public interest or in the interests of a substantial section of the public. Accordingly, I have decided to reduce the New Charge by 50%, and the Reduced Charge now totals \$41.75. I find that the Reduced Charge is reasonable and fairly reflects the public interest in giving access to the material and the fact that there is a cost associated with the processing of your request.

24. It is important to note that the public interest test in paragraph 29(5)(b) of the FOI Act is different to the public interest test in subsection 11A(5) of the FOI Act that applies to conditionally exempt documents. This means that while the public interest test might be satisfied for the purposes of a decision to reduce a charge, a document might still be exempt from release because there is, on balance, countervailing harm which offsets the public interest in giving access.

Release of information to stakeholders since FOI request received

25. The department released the 2018 Investment Plan (‘the Plan’) in June this year, which is later than in previous years. This delay impacted on when the department was in a position to invite

expressions of interest for commissioned projects under the Plan's National Priorities Pool component of the Higher Education Participation and Partnerships Programme (HEPPP).

26. However, in the time since you lodged your FOI request, the department has now contacted its stakeholders seeking those expressions of interest. Following this process, decisions will be made regarding the specific grants approved under the Plan, and it is the department's intention to publish information about the grants approved as it has done in previous years.
27. Therefore, as some of the subject matter of your FOI request is now publically available, and as the department anticipates releasing further details regarding approved grants and projects under the Plan in the coming months, you may wish to consider withdrawing your request.

Options to proceed with your request

28. If, however, you would like to proceed with your request, and in order for the department to continue to process it, you are required to respond in writing in accordance with one of the following options:
 - (a) pay the Reduced Charge (either the deposit or in full); or
 - (b) request a review of the decision to impose the Reduced Charge.
29. Alternatively and as discussed above, if you wish to withdraw your request at this time, you may do so in writing.

Option A – pay the Reduced Charge

30. As the Reduced Charge is less than \$100.00, you are required to pay a deposit of \$20.00 within 30 days of receiving this notice. You may, of course, elect to pay the Reduced Charge in full at this point.

Option B – request a review of the decision to impose the Reduced Charge

31. I have enclosed information about your rights of review under the FOI Act at **Attachment A**.
32. If the department has not received payment of the charge within 30 days as specified under Option A, your FOI request will be taken to have been withdrawn.

Please contact me via email at foi@education.gov.au if you would like to discuss this matter.

Yours sincerely



Eleanor
A/g Senior Government Lawyer
Schools, Child Care and Corporate Legal Branch

21 December 2018

Attachment A

Internal Review

Section 54 of the *Freedom of Information Act 1982* (FOI Act) gives you the right to apply for an internal review of this decision. The review will be conducted by a different person to the person who made the original decision.

If you wish to seek an internal review of the decision you must apply for the review, in writing, within 30 days of receipt of this letter.

No particular form is required for an application for internal review, but to assist the decision-maker you should clearly outline the grounds upon which you consider the decision should be reviewed. Applications for internal review can be lodged in one of the following ways:

Email: foi@education.gov.au

Post: The FOI Coordinator
Schools, Child Care and Corporate Legal Branch
Department of Education and Training
Location code: C50MA10
GPO BOX 9880
CANBERRA ACT 2601

External Review by the Australian Information Commissioner

Section 54L of the FOI Act gives you the right to apply directly to the Australian Information Commissioner (AIC) to seek a review of this decision.

If you wish to have the decision reviewed by the AIC, you must apply for the review, in writing or by using the online merits review form available on the [AIC's website](#), within 60 days of receipt of this letter. To assist the AIC, your application should include a copy of this decision and your contact details. You should also clearly set out why you are objecting to the decision.

You can also complain to the AIC about how an agency handled an FOI request, or other actions the agency took under the FOI Act. The AIC advises that, before making a complaint to it, you should raise your concerns directly with the relevant agency.

Applications for review or complaint can be lodged in one of the following ways:

Online: www.oaic.gov.au
Post: GPO Box 5218 Sydney NSW 2001
Fax: +61 2 9284 9666
Email: enquiries@oaic.gov.au

For general enquiries, please call 1300 363 992 or +61 2 9284 9749 for international.

Credit Card Authorisation

About this form

You have advised the Department of Education and Training that you would like to pay the charge imposed for the processing of your freedom of information (FOI) request by credit card. This form collects the details required from you in order to process that payment by credit card. Please ensure all fields have been filled in correctly.

Part 1: Applicant Details

Name:

Contact number:

Part 2: Credit Card Details

I authorise the Department of Education to debit my credit card in the amount of: \$

Cardholder's Name (please print name in capital letters):

Credit Card Number:

Credit Card Type (Diner's Card not accepted):

Credit Card Expiry Date:

Card Holders Signature:

Date:

Privacy Statement

The personal information collected on this form is collected by the Department of Education and Training for the purposes of administering payment of the charge imposed for processing your freedom of information request. The information collected will not be disclosed unless authorised or required by law.