



Mrs P Gale and V Wilson

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

Dear Mrs Gale and V Wilson

Freedom of Information – Internal review of charge decision

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). The Charge was calculated on the basis that the department had in its possession approximately 28 pages of material relevant to your request.
3. By email dated 6 November 2018, you asked which parts of your request the 28 pages of material related to. By email dated 9 November 2018, you were advised the pages fell within parts (i) and (ii) of your request.
4. By email dated 27 November 2018, you clarified the scope of your request to explain you were only requesting documents referred to in parts (ii), (iii) or (iv) of your request if there were no documents within the earlier parts of your request. You also submitted that the Charge was excessive and should not be imposed.
5. Following clarification of the scope of your request, on 21 December 2018 the department recalculated the Charge to be \$83.50, on the basis that seven pages of material fell within part (i) of your request. The department decided to waive the recalculated charge by 50% on public interest grounds, and advised you that a charge of \$41.75 (the Reduced Charge) was payable in respect of the processing of your request.
6. On 21 January 2019, you requested that the information covered by your FOI request be released administratively by the department, and, if this was not possible, you requested internal review of the decision made by the department to impose the Reduced Charge. You asked that when reviewing the decision, the internal review decision maker consider your previous submissions in relation to non-imposition of charges, namely those in your email dated 27 November 2018 which were as follows:

“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 [sic] 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.”

7. The department advised you on 30 January 2019 that it is unable to provide administrative access to the information you have requested as this information is not yet available. The department provided you with additional information regarding the status of the grant process and asked that you let the department know by 8 February 2019 if you wished to withdraw your request. As the department has not heard from you, I assume that you wish to proceed with your request and your request for an internal review of the decision to impose a processing charge.

Documents held by the department

8. Part (i) of your request is for the following documents: “Anything to show the Minister’s approval, and/or rejection, of any specific grants for projects following the 2018 investment plan.” In your email dated 27 November 2018, you said “... we are looking for information about who got grants, how much money, and what they got the grants for ... [The department] published that information in previous years. All we're looking for is the same information for 2018.”
9. When the department notified you of the Reduced Charge, you were advised that the department possesses seven pages of material falling within part (i) of your request. In conducting this internal review, I have considered the publicly available information for previous years (available here: <https://www.education.gov.au/higher-education-participation-and-partnerships-programme-heppp>). I am advised that the publicly available information is the “National Priorities Pool Investment Plan” for each year and a list of “National Priorities Pool Projects” and successful university proponents for each year. From your email dated 27 November 2018, it appears you may be seeking these same two publications for 2018 only.
10. I am advised that for the 2018 Investment Plan, the “National Priorities Pool Investment Plan – 2018” has been published, together with information on the grants made in December 2018 under the 2018 Investment Plan to the National Centre for Student Equity in Higher Education, and the “2018 National Priorities Pool – Commissioned Projects Table A Expressions of Interest”. I am advised that the Expressions of Interest process is open until 21 February 2019. Once that process closes, the responses will be evaluated and I am advised that at this stage, the department expects to announce and publish the list of the successful applicants by June 2019. I understand you were advised of this via email dated 30 January 2019.
11. Therefore, as the Expressions of Interest process for the 2018 Investment Plan remains open, the department is not in a position to publish information about approved projects as the evaluation process has not yet commenced. I am advised that once the evaluation process has been finalised and the Conditions of Grant have been executed by successful applicants, details of the approved projects (including recipients and grant amounts) will be published on the department’s website as they have been for previous years.
12. In relation to the seven pages you have been advised fall within the scope of part (i) of your request, I have reviewed those pages and note that these pages do not contain the same information that is published on the department’s website for previous years (ie these seven pages do not contain a list of “National Priorities Pool Projects” for 2018). Given your email correspondence dated

27 November 2018 states that you are “looking for the same information for 2018” as has been published for previous years, I am providing you with a general summary of the documents held by the department so you can determine whether they are of interest to you.

13. The seven pages which have been identified as being within the scope of part (i) of your request relate to the approval of additional funds out of the 2018 Investment Plan for existing projects approved under previous years of the Investment Fund. As mentioned above, they do not contain a list of approved projects similar to the lists published on the department’s website for previous years as the Expressions of Interest process has not closed (and it follows that submissions have not yet been evaluated).

Decision

14. I am authorised to make internal review decisions under the FOI Act. Having considered your submissions dated 27 November 2018 and your request for internal review dated 21 January 2019, I have decided to affirm the decision made by the department on 21 December 2018 to impose the Reduced Charge.

Reasons for decision

15. I have taken the following into account in making my decision:
- your FOI request dated 11 October 2018
 - the department’s letter dated 30 October 2018 notifying you of the Charge;
 - your email dated 27 November 2018 seeking non-imposition of the Charge;
 - the department’s letter dated 21 December 2018 notifying you of the Reduced Charge;
 - your email dated 21 January 2019 seeking administrative release of the documents or alternatively, internal review of the decision to impose the Reduced Charge;
 - the department’s email to you dated 30 January 2019 regarding administrative access to documents;
 - the documents falling within the scope of your request;
 - discussions with departmental officers about the status of the 2018 Investment Plan and the documents falling within the scope of your request;
 - the publicly available information about the Investment Plan;
 - 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 Reduced Charge

16. As a preliminary step in my consideration of the department’s decision to impose the Reduced Charge, I have examined the calculations which were used to determine the relevant charges for your FOI request.

Calculation of the Charge

17. In its letter dated 30 October 2018, the department advised you that it has in its possession approximately 28 pages relevant to your request. The Charge, totalling \$154.90 (rounded down from \$154.92), 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.

18. 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 and requiring redaction (potentially requiring extra decision-making time).
19. 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.
20. In relation to your request, the Charge was calculated on the time taken to search for and retrieve the documents within the scope of your request, examine the documents, undertake consultation with external third parties and prepare a decision on access.

Calculation of the Reduced Charge

21. As indicated above, in your correspondence dated 27 November 2018, you noted that you are *“only looking for category ii documents if there's no category i documents...”*.
22. Accordingly, the department re-examined the material within the scope of your request and identified seven pages of material relevant to part (i) of your request. The remaining pages upon which the Charge was calculated fell within part (ii) of your request, and are therefore out of scope. On that basis, the charge applicable for the processing of this FOI request was recalculated (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

23. In calculating the New Charge, the department also determined that consultation with one external third party is still required.
24. Having considered the way the New Charge was calculated, it is my view that the New Charge has been calculated appropriately.
25. As noted above, on 21 December 2018 the decision maker decided to reduce the New Charge by 50% on public interest grounds, and advised you that the Reduced Charge of \$41.75 is payable in respect of your request.

Reduction or non-imposition of the Reduced Charge

26. 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

27. As required by subsection 29(5) of the FOI Act, when considering whether to reduce or not impose the New Charge, the department considered whether payment of the New Charge would cause you financial hardship. As you did not contend in your correspondence that payment of the Charge, in full or in part, would cause you financial hardship, there was no basis upon which the department could make a decision to reduce or not impose the New Charge by reason of financial hardship.
28. Your request for internal review of the charges decision also did not include any submissions or evidence to indicate that payment of the Reduced Charge would cause you financial hardship. As such, I am satisfied that there is no basis upon which I can make a decision to reduce or not impose the Reduced Charge on the grounds of financial hardship.

Public interest

29. 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.
30. 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'.
31. 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.
32. In your email dated 27 November 2018, 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."

33. I agree with the department's previous decision 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.
34. In considering the public interest factors you have raised, I have also had regard to the wording of part (i) of your request, which seeks access to *"anything to show the Minister's approval, and/or rejection, of any specific grants for projects following the 2018 investment plan"*. You were informed by email dated 30 January 2019 that the department will announce successful grant applicants in due course, and that once Conditions of Grant have been executed with successful applicants, details of the projects, grant amounts and recipients will be published on the department's website as they have been in previous years. You were also notified by email dated 30 January 2019 that the grant to the National Centre for Student Equity in Higher Education has already been publicly announced. While I accept that there is some public interest in the disclosure of the documents you have requested, I also consider that the public interest in openness and transparency in the grant process will largely be satisfied by the department's normal procedures in regard to the public announcement of grant recipients and details once the Expressions of Interest Process has closed and the submissions have been evaluated.
35. I have also considered the cost of processing the FOI request and I agree with the department's previous position that the department has been conservative in its 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 a statement of reasons for the decision.
36. For these reasons, I am satisfied that the decision to waive the New Charge by 50% on the grounds of public interest is appropriate. I find that the Reduced Charge is reasonable, and fairly balances the public interest in giving access to the material with the fact that there is a cost associated with the processing of your request. I therefore affirm the department's decision dated 21 December 2019 to reduce the New Charge by 50%, and to impose the Reduced Charge of \$41.75.
37. 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.

Options to proceed with your request

38. If you would like to proceed with your request, and in order for the department to continue to process it, you have the following options:
 - (a) pay the Reduced Charge (either the deposit or in full); or
 - (b) request external review of the decision to impose the Reduced Charge.

Option A – pay the Reduced Charge

39. 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 of \$41.75 in full at this point.

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

40. I have enclosed information about your rights of external review under the FOI Act at Attachment A.
41. 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



Emily
Principal Government Lawyer
Schools, Child Care and Corporate Legal Branch

15 February 2019

Rights of Review

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 at www.oaic.gov.au, 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. 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
In person: Level 3, 175 Pitt Street
Sydney, NSW 2000

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.