



18 January 2019

Our reference: 1811001

Mr Richard Smith: foi+request-4932-568e008c@righttoknow.org.au

Response to Charges Query

Dear Mr Smith,

I refer to your email of 15 January 2019 querying the charges levied on your Freedom of Information (FOI) request under the *Freedom of Information Act 1982* and the Freedom of Information (Charges) Regulations 1982 by the Australian Digital Health Agency (the Agency). I note that you consider the calculations in the charges letter to be unrealistic, even though the request you have made is very large, includes third parties and is for documents that are not of a personal nature.

The charges estimate is an estimate. It is based on standardised measures relating to the amount of time required for certain tasks. These estimates are based on assumptions regularly applied across the Commonwealth. The estimates in all FOI matters account for the:

- number of relevant files;
- number of relevant pages;
- number of relevant documents;
- number of exempt pages;
- number of pages released with deletions;
- number of any third parties to consult; and
- other costs.

In practice this means that the charges levied have considered the impact of the information in the documents on decision making time and preparing material, its analysis and redaction. This takes considerably more time than the estimated five minutes per page for some documents.

Also, the Agency may recalculate the estimate to determine the actual cost of processing. If less than the accepted estimated, a refund will be provided at the end of the FOI process of the difference of the actual and estimated costs of the FOI request

Under subsections 29(4) and 30A(1), the Agency retains the discretion to apply, reduce or remit charges, or to remit a fee. However, there is no automatic remission of fees or charges based solely on the status of the applicant or of the institution on behalf of which an applicant may be seeking access.

The FOI Act specifies two principal grounds for remission of fees and charges, which are financial hardship and public interest. The OAIC guidance advises that:

“It is important that you explain or provide evidence to support your claim for waiver or reduction. To support a claim that a charge will cause you financial hardship you might, for

example, provide a copy of a pension or welfare card. If you claim that disclosure would be in the public interest, you might explain how the documents will be used in public research, in preparing a submission to a parliamentary inquiry, or in advancing public debate on a topic of current importance.

*An agency is not obliged to waive or reduce a charge, even if it accepts your reason for requesting it. In particular, **an agency can decide to impose a charge even though it would cause you financial hardship or disclosure would be in the public interest.***

You have made a statement that financial hardship grounds be considered. However, you have not provided any evidence of your hardship such as a pension or welfare card.

You have also stated that the documentation you are seeking concerns public debate. You have failed to make a convincing argument to reduce a fee on public interest grounds. As you stated, the discussions about the issues you have raised have been aired in the press and social media extensively over the last six months and much of the information is available in the public domain.

The Agency holds with the estimated charges levied and requires you to pay the deposit to enable the FOI process to advance.

Review

Decisions in respect of the imposition of application fees or charges are reviewable by internal review under paragraphs 54(1)(d) and (e) of the FOI Act, or review by the OAI, or review by the Administrative Appeals Tribunal as set out in paragraphs 55(1)(d) and (e) of the FOI Act.

Contact officer

If you would like to ask any questions, the contact officer for your request is Cecilia who can be telephoned on (02) 6223 0780 or emailed at foi@digitalhealth.gov.au.

Yours sincerely



Bettina McMahon
Authorised Decision Maker