



8 August 2018

Revised decision made under section 55G of the *Freedom of Information Act 1982*

Applicant:	Julie: foi+request-4942-e008b563@righttoknow.org.au
Date of primary decision:	4 December 2018
FOI reference number:	1811002
Revised decision date:	8 August 2019
Revised decision reference number:	REQ-0002688

Dear Julie,

The purpose of this letter is to issue you a revised decision in accordance with section 55G of the Freedom of Information Act 1982 (the FOI Act). This decision relates to your application for Information Commissioner Review of FOI 1811002 (MR19/00030 refers).

I have made a decision to vary the original decision to apply charges in the amount of \$138.07 to process your FOI request.

I have decided to waive the charge of \$138.07.

Authority to make this decision

I, Bettina McMahon, am an officer authorised under section 23(1) of the FOI Act to make decisions in relation to FOI requests.

Summary

On 8 November 2018, you made a request for:

'In SoR issued 1 November 2018, for Application Number 1810003, the Australian Digital Health Agency (ADHA) referred to, and extracted some points from, briefs/documents prepared for ADHA's representatives to use at the recent Senate Estimates hearings.

I request, under FOI, copy of these briefs. While some of the contents would have been repeated by those subject to questioning by the Senate Estimates Committee, not everything briefed on gets said, as it is decided by what the Committee members ask, not what those being questioned wish for.

I note that as briefing material for Senate Estimates is all prepared on the basis it may be stated during these public proceedings, clearance for FOI release should be reasonably straightforward, and given the recency of Senate Estimates, should be able to be quickly located.'

I took your request to be for:

'Australian Digital Health Agency (the Agency) Senate Estimates Briefs documents prepared for the Agency's appearance at the Senate Supplementary Budget Estimates Hearing, Senate Community Affairs Legislation Committee, Wednesday, 24 October 2018'.

On 4 December 2018 the Agency provided you with a Charges Notice, advising of a preliminary assessment of charges for processing your request in the amount of \$138.07. You were also advised that a deposit of \$34.52 was required before any action could be taken on your request.

On 6 December 2018 you contested that the charges associated with your request were not properly calculated on the following grounds:

1. The charge was excessive and exceeded the threshold set by the Information Commissioner in IC reviews which states that delegates would not realistically take more than 5 minutes per page even for quite complex documents, and it is expected that (as decided in previous IC review decisions) such work is more likely to gravitate towards 30 seconds per page, than this upper threshold.; and
2. If the charge was adjusted for even the upper threshold limit, which applies to quite complex documents (not estimates briefs, which are just talking points), the adjusted cost would not exceed the costs to process such charges (including the transactional costs to collect them).

On 11 December 2019 I responded to your email of 6 December 2018 and advised the charges would not be reduced or waived as you had not stated any financial hardship grounds or public interest grounds.

On 13 December 2018, you applied for external review of the Agency's decision to apply charges to your FOI request (MR18/00030 refers).

On 6 February 2019, the Agency received a notice under section 54Z of the FOI Act from the OAIC, advising of the IC Review. In response the Agency revisited the documents and re-calculated the Charges Estimate to its actual cost and determined the actual cost to the Agency for this FOI application for non-personal information to be \$591.49 with a deposit of \$147.87.

The charge notified to you on 4 December 2018 represents a significant discount of the FOI charges that should have been imposed. The Agency offered to process the FOI application at the reduced rate advised to you on 4 December 2018, which was advised to the OAIC on 27 February 2019.

On 5 July 2019 the Agency received a request for further information from the IC Review and subsequently a request on 25 July 2019 asking the Agency to consider making a revised decision under section 55G of the FOI Act. In response, Agency has elected to issue you with a revised decision.

Decision

I have decided to vary the original decision to apply charges in the amount of \$138.07 to process your FOI request.

I have decided to waive the charge in the interests of resolving the related IC Review.

Material taken into account

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

- The terms of your FOI request dated 8 November 2018;
- Your response to the Charges Notice issued 4 December 2018;
- The notice issued to you in response to your contesting the charges 11 December 2018;
- Your application for Information Commissioner Review of the charges applied to FOI 1811002 dated 13 December 2018;
- 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;

- The *Freedom of Information (Charges) Regulations 1982* (Charges Regulations) (which continue to apply in relation to a request for access to a document made before the commencement of the Freedom of Information (Charges) Regulation 2019 on 21 March 2019); and
- The Guidelines issued by the Australian Information Commissioner under section 93A of the FOI Act (FOI Guidelines).

Reasons for Decision

Two matters are raised by the IC Review section 54Z notice which I have further considered in this section 55G decision, namely:

1. Agencies and ministers should interpret the 'lowest reasonable cost' objective broadly in imposing any charges under the FOI Act. That is, an agency or minister should have regard to the lowest reasonable cost to the applicant, to the agency or minister, and the Commonwealth as a whole. Where the cost of calculating and collecting a charge might exceed the cost to the agency to process the request, it would generally be more appropriate not to impose a charge.
2. In *Australian Associated Press Pty Ltd and Department of Immigration and Border Protection [2015] AICmr 65 [31]*, the former Information Commissioner stated:

'I note that in this case, there is a danger that the cost of calculating and collecting a charge might exceed the cost to the agency of processing the request, which would militate in favour of the waiver of the charge.'

I have also had regard to whether it would be appropriate in the circumstances to waive the charge in the interests of resolving your application for IC Review.

Before deciding to grant access to the documents in scope for your FOI request, the Agency is required to consult third parties. For this reason, the period for processing your request has been extended by 30 days in order to allow the Agency time to consult with affected third parties. The processing period for your request will now end on 12 September 2019.

Application for Information Commissioner Review — Request to withdraw application

In light of my decision to waive the charges applicable to your FOI request, I request that you consider withdrawing your application for IC Review of FOI 1811002.

Review

If you are dissatisfied with my decision, you may advise the Information Commissioner that you do not wish to withdraw your application for Information Commissioner review.

Contact officer

If you have any questions or wish to discuss this notice with us, please contact the Agency's FOI unit:

Email: FOI@digitalhealth.gov.au
Phone: (02) 6151 8684

Yours sincerely



Bettina McMahon
Chief Operating Officer
Authorised Decision Maker