



**Australian Government**  
**Department of Finance**

Reference: FOI14/14  
Contact: FOI Team  
Telephone: (02) 6215 1783  
e-mail: [foi@finance.gov.au](mailto:foi@finance.gov.au)

Elias Housen

**via email:** [foi+request-511-f6e8215c@righttoknow.org.au](mailto:foi+request-511-f6e8215c@righttoknow.org.au)

Dear Mr Housen,

**Freedom of Information Request – FOI14/14**

Thank you for your email, dated 29 January 2014, to the Department of the Prime Minister and Cabinet (PM&C) in which you sought access to the following under the *Freedom of Information Act 1982* (FOI Act).

*...copies of any determinations made under Section 12 of the Members of Parliament (Staff) Act 1984 made after September 18, 2013.*

In an email dated 17 February 2014, the Department of Finance (Finance) advised that the request had been transferred to the Department, in full, as the subject matter of the request is more closely related to the functions of Finance.

**Contention of the charges**

In an email dated 18 February 2014, you outlined your contention of my initial estimate of charges (\$15.50) where you sought waiver of charges for the following reasons:

*I wish to contest the imposition of a charge for this request as the request is estimated to take a total amount of 1.22 hours which is well within the amount of decision making time which is free of charge.*

*If the search and retrieval time and the photocopying costs are not considered to be part of the decision making time I still request that that charges be withdrawn due to the relatively low cost of those components.*

In accordance with subsections 29(8) and 29(9) of the FOI Act, this letter is a written notice of the reasons for my decision to reject your contention in full and an outline of your rights with respect to review of this decision.

## **Decision on remission or reduction of charges**

I confirm that I am an authorised officer for the purpose of subsection 23(1) of the FOI Act.

I have considered your request on its merits. In accordance with section 29 of the FOI Act, I have decided not to waive the charges.

## **Legislation**

Subsection 29(5) of the FOI Act provides:

*Without limiting the matters the agency or Minister may take into account in determining whether or not to reduce or not to impose the charge, the agency or Minister must take into account:*

- (a) whether the payment of the charge, or part of it, would cause financial hardship to the applicant, or to a person on whose behalf the application was made; and*
- (b) 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.*

As you have not contended that payment of the charge would cause financial hardship or that the giving of access to the document/s in question is in the general interest or in the interest of a substantial section of the public, I have not considered these factors any further.

I have taken into account your submissions outlined above and can confirm that the search and retrieval and photocopying costs are not included in the decision making time. As the first five hours of decision making time are free of charge, the total estimated charge reflects the remaining activities, particularly the functional aspects of responding to the request, which are calculated separately from the decision making time.

Your submission that the cost is relatively low supports the objects of the Act which states:

### *3 Objects –general*

- (4) The Parliament also intends that functions and powers given by this Act are to be performed and exercised, as far as possible, to facilitate and promote public access to information, promptly and at the lowest reasonable cost.*

As such, I consider that the charge has been estimated at the lowest reasonable cost to promote access to documents to help increase scrutiny, discussion, comment and review of the Government's activities.

In light of the above, I have decided not to waive the charges.

## **Liability to pay a charge**

My affirmed assessment of the charge to process this request is as follows:

<b>Task</b>	<b>Rate</b>	<b>Units</b>	<b>Charge</b>
Search & retrieval	\$15 per hour	1.02 hours	\$ 15.30
Decision-making	\$20 per hour	0.2 hours	\$ 4.00
<i>less first 5 hours free</i>		5 hours	\$ -100.00
Photocopies	0.10 per page	2 pages	\$ 0.20
<b>TOTAL</b>			<b>\$ 15.50</b>

In accordance with the *Freedom of Information (Charges) Regulations 1982* (Charges Regulations), this estimate has included five hours of decision making time free of charge.

You can agree to pay the charge. If you agree, processing of your request will resume as soon as the Department receives payment.

Payment in full is \$15.50. Payment in full entitles you to receive a decision in relation to your request, a schedule which lists the documents relevant to your request, and any documents released.

Your cheque/money order should be made payable to the Collector of Public Monies and addressed to:

FOI Coordinator  
 Legal and Strategic Support Branch  
 Department of Finance  
 John Gorton Building  
 King Edward Terrace  
 PARKES ACT 2600

If you wish to pay by credit card, you should forward a letter which sets out the credit card details and authorises the Department to charge that amount to the card. Please note that the department only accepts Mastercard and Visa.

Consistent with paragraph 29(1)(f) of the FOI Act, within 30 days of the date of this notice, you need to either:

- agree to pay the charge indicated above and forward the deposit; or
- withdraw your request; or
- exercise your review rights.

If you fail to notify this Department in a manner described above within 30 days of the date on this notice, it will be taken that you have withdrawn your request.

Please note that should you forward a deposit in accordance with section 29 of the FOI Act, you will then accept liability for settlement of the debt with the Department upon completion of processing the FOI request. The outstanding charge amount is a debt created in favour of the Commonwealth and therefore, Finance is obliged to pursue recovery of the debt in accordance with the Financial Management and Accountability Act 1997.

### **Review and Appeal Rights**

You are entitled to request an internal review of my decision to not waive charges. Your appeal rights are set out in Attachment A as prescribed by 29(9) of the FOI Act.

### **Processing Time**

In relation to the preliminary assessment of charges, in accordance with section 31 of the FOI Act, the time period for processing your request is suspended from the date of this notice and resumes on either day you pay the deposit or the day on which Finance makes a decision not to impose a charge. However, the actual processing time may also be affected by third party consultation.

### **Publication**


The FOI Act requires Commonwealth agencies to publish:

- information in documents to which the agency routinely gives access in response to FOI requests except where that information is exempt under the FOI Act; and
- information in documents released under the FOI Act.

Subject to certain exceptions, any documents provided to you under the FOI Act will be published on Finance's FOI Disclosure Log ([www.finance.gov.au](http://www.finance.gov.au)) as soon as possible after they are released to you, usually 1 – 2 working days.

Please contact the FOI Team on the above contact details if you wish to discuss your request.

Yours sincerely,



Tony Nairn,  
Director, Employment Framework  
Entitlements Policy Branch  
Department of Finance

24 February 2014



## Australian Government

### Department of Finance

## Freedom of Information – Your Review Rights

If you disagree with the decision made by the Department of Finance (Finance) under the *Freedom of Information Act 1982* (the FOI Act), you can ask for the decision to be reviewed. You may want to seek review if you sought certain documents and were not given full access, if you have been informed that there will be a charge for processing your request, if you have made a contention against the release of documents that has not been agreed to by the Department, or if your application to have your personal information amended was not accepted. There are two ways you can ask for review of a decision: internal review by Finance, or external review by the Australian Information Commissioner.

### Internal Review

If Finance makes an FOI decision that you disagree with, you can ask Finance to review its decision. The review will be carried out by a different agency officer, usually someone at a more senior level. There is no charge for internal review.

You must apply within 30 days of being notified of the decision, unless Finance agrees to extend the application time. You should contact Finance if you wish to seek an extension.

Finance is required to make a review decision within 30 days. If Finance does not do so, the original decision is considered to be affirmed.

### How to apply for internal review

You must apply in writing and should include a copy of the notice of the decision provided and the points you are objecting and why.

You can lodge your application in writing through one of the contact details provided at the end of this document.

### Review by the Australian Information Commissioner (IC)

The IC is an independent office holder who can review the decisions of agencies and ministers under the FOI Act. The IC can review access refusal decisions (s 54L(2)(a) of the FOI Act), access grant decisions (s 54M(2)(a)), refusals to extend the period for applying for internal review under s 54B (s 54L(2)(c)), and agency internal review decisions under s 54C (ss 54L(2)(b) and 54M(2)(b)).

If you are objecting to a decision to refuse access to documents, impose a charge or refuse to amend a document, you must apply to the IC within 60 days of being given notice of the decision. If you are objecting to a decision to grant access to another person, you must apply within 30 days of being notified of that decision.

### Do I have to go through Finance's internal review process first?

No. You may apply directly to the IC. However, going through Finance's internal review process gives Finance the opportunity to reconsider its initial decision, and your needs may be met more quickly without undergoing an external review process.

### Do I have to pay?

No. Review by the IC is currently free.

### How do I apply?

You must apply for IC review in writing and you can lodge your application in one of the following ways:



## Australian Government

### Department of Finance

**Post:** Office of the Australian Information  
Commissioner

GPO Box 2999

CANBERRA ACT 2601

**Email:** [enquiries@oaic.gov.au](mailto:enquiries@oaic.gov.au)

**Fax:** 02 9284 9666

**In person:** Level 3  
175 Pitt Street  
SYDNEY NSW 2000

An electronic application form is also available on the OAIC's website ([www.oaic.gov.au](http://www.oaic.gov.au)). Your application should include a copy of the notice of the decision that you are objecting to (if one was provided), and your contact details. You should also set out why you are objecting to the decision.

#### ***Making a complaint***

You may make a written complaint to the IC about actions taken by Finance in relation to your application. However, if you are complaining that a Finance decision is wrong, it is treated as an application for review. For further information, see [FOI fact sheet 13 – Freedom of Information: How to make a complaint](#).

#### ***When can I go to the Administrative Appeals Tribunal (AAT)?***

Under the FOI Act, you must seek external review through the IC prior to applying to the AAT for such a review. The fee for lodging an AAT application is \$816 (from 1 July 2012), although there are exemptions for health care and pension concession card holders and the AAT can waive the fee on financial hardship grounds.

#### **Investigation by the Ombudsman**

The Commonwealth Ombudsman can also investigate complaints about action taken by agencies under the FOI Act. However, if the issue

complained about either could be or has been investigated by the IC, the Ombudsman will consult the Commissioner to avoid the same matter being investigated twice. If the Ombudsman decides not to investigate the complaint, then they are to transfer all relevant documents and information to the IC.

The IC can also transfer a complaint to the Ombudsman where appropriate. This could occur where the FOI complaint is only one part of a wider grievance about an agency's actions. It is unlikely that this will be common. You will be notified in writing if your complaint is transferred.

Applications to the Ombudsman should be directed to the following address:

**Post:** Commonwealth Ombudsman  
PO Box 442  
CANBERRA ACT 2601

**Phone:** 02 6276 0111  
1300 362 072

#### **Finance FOI contact details**

FOI Coordinator

Legal Services Branch

Department of Finance

John Gorton Building

King Edward Terrace

PARKES ACT 2600

**Phone:** 02 6215 1783

**Email:** [foi@finance.gov.au](mailto:foi@finance.gov.au)

**Website:** [www.finance.gov.au/foi/foi.html](http://www.finance.gov.au/foi/foi.html)