



Australian Government

Department of the Prime Minister and Cabinet

ONE NATIONAL CIRCUIT
BARTON

FOI/2018/201

Name withheld

foi+request-5159-bdebb9af@righttoknow.org.au

Dear Sir/Madam

I refer to your emails of 4 April 2019 and 26 April 2019 in which you contend that the charge should not be imposed and that the charge has been wrongly assessed in respect of your request of 29 December 2018 under the *Freedom of Information Act 1982* (the FOI Act) to the Department of the Prime Minister and Cabinet (the Department). By letter dated 7 March 2019, the Department had notified you that the preliminary assessment of the charge for your request was \$149.50.

I write to advise you of my decision on your contentions that the charge not be imposed and has been wrongly assessed.

Authorised decision maker

Under arrangements approved by the Department's Secretary, I am authorised to make this decision.

Decision

I have decided to:

- re-calculate the estimated charge to be \$139.50; and
- to reduce the estimated charge of \$139.50 by 50% to \$69.75.

In making my decision, I have had regard to the following:

- the FOI request;
- the document relevant to the FOI request;
- the preliminary assessment of the charge of 7 March 2019;
- the FOI Act;
- the *Freedom of Information (Charges) Regulations 1982* (the FOI Charges Regulations)¹;

¹ Regulation 13(2) of *Freedom of Information (Charges) Regulations 2019*, which came into force on 1 April 2019, provide as follows: 'The *Freedom of Information (Charges) Regulations 1982*, as in force immediately before the commencement of this instrument, continue to apply on and after that commencement in relation to a request for access to a document made before that commencement.' As the FOI request was made on 29 December 2018, the *Freedom of Information (Charges) Regulations 1982* apply to the FOI request.

- the ‘Guidelines issued by the Australian Information Commissioner under s 93A of the *Freedom of Information Act 1982*’ (the FOI Guidelines)²;
- the contentions in your emails of 4 April 2019 and 26 April 2019; and
- ‘PE’ and *Australian Taxation Office (Freedom of information)*³, ‘MZ’ and *Department of Communications and the Arts (Freedom of information)*⁴, *Baljurda Comprehensive Consulting Pty Ltd and Australian Agency for International Development*⁵;
- previous similar FOI requests dealt with by the Department;⁶
- base salary information for officers at the SES Band 3 level published in the Department’s annual reports;⁷ and
- average annual reportable remuneration paid to substantive executives in the Department published on the Department’s web site.⁸

Reasons

Has the charge been correctly assessed?

Section 29(1) of the FOI Act and regulation 3 of the FOI Charges Regulations provide that an agency may decide that an applicant is liable to pay a charge in respect of a request for access to a document, or the provision of access to a document.

The FOI Guidelines provide that in exercising the discretion to impose or not impose a charge, the agency should take into account the ‘lowest reasonable cost’ objective, stated in section 3(4) of the FOI Act.⁹

... 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.

The FOI Guidelines provide that a charge must not be used to unnecessarily delay access or discourage an applicant from exercising the right of access conferred by the FOI Act, and that charges should fairly reflect the work involved in providing access to documents on request.¹⁰

² The references to the FOI Guidelines in this decision are to the version of the FOI Guidelines combined January 2019 published on the web site of the Office of the Australian Information Commissioner at <https://www.oaic.gov.au/freedom-of-information/foi-guidelines/>.

³ [2018] AICmr 58 (6 July 2018).

⁴ [2017] AICmr 109 (27 October 2017).

⁵ [2011] AICmr 8 (18 November 2011).

⁶ Department’s references are FOI/2017/035 and FOI/2017/188. The documents released in response to both of these FOI requests are published on the Department’s FOI disclosure log at <https://www.pmc.gov.au/government/departmental-foi-disclosure-logs>. Correspondence relating to these FOI requests is published on the Right to Know website at https://www.righttoknow.org.au/request/group_certificatespayg_payment_s_4#incoming-11323.

⁷ See Department of the Prime Minister and Cabinet Annual Report, 2015-16, Figure 3.5 Trends in base salary, at p 60: <https://www.pmc.gov.au/sites/default/files/publications/DPMC-AR-2016-full.pdf>; Department of the Prime Minister and Cabinet Annual Report Annual Report, 2016-17, Figure 3.5 Trends in base salary, at p 64: <https://www.pmc.gov.au/sites/default/files/publications/pmc-annual-report-16-17.pdf>; Department of the Prime Minister and Cabinet Annual Report Annual Report, 2017-18, Table 3.6 Base salaries available at 30 June 2018 for Senior Executive Service (SES) staff, at p 128: <https://annualreport.pmc.gov.au/sites/default/files/pdf/pmc-annual-report-17-18.pdf>.

⁸ Average annual reportable remuneration paid to substantive executives in the Department for the 2016-17 and 2017-18 reporting periods are published on the Department’s web site at <https://www.pmc.gov.au/who-we-are/accountability-and-reporting/executive-remuneration>.

⁹ FOI Guidelines, [4.3].

¹⁰ FOI Guidelines, [4.5].

The document relevant to your FOI request

The terms of your FOI request are relevantly:

Under the FOI Act, I seek access to the information that the Review found there to be a clear public interest in, and that it recommended be publicly reported. Specifically, I seek access to the names and associated remuneration of DPMC's SES Band 3 officers for the 2015/16, 2016/17 and 2017/18 financial years. This information might exist in contracts, s.24 Public Service Act determinations or perhaps a document under s.17 of the FOI Act. Alternatively, I'm happy for this request to be satisfied by DPMC's provision of the Group Certificates/PAYG summaries of DPMC's SES Band 3 officers with all information redacted with the exception of the relevant person's first name and last name, the period of payment, and the gross payment amount.

Having regard to the terms of your FOI request, the Department's handling of similar prior FOI requests for the same kind of information¹¹, and consistent with the 'lowest reasonable cost' objective, the Department has created a document (the Document) to meet the terms of your FOI request. The Document contains a table listing 19 individuals according surname, names, an identifier, and remuneration for financial years 2015-16, 2016-17, and 2017-18, respectively. The information in the Document has been sourced from:

- the Department's payroll system, and
- determinations made under section 24(1) of the *Public Service Act 1999*.

The preliminary assessment of the charge and what it was based on

The Department's letter dated 7 March 2019 in which you were notified of the preliminary assessment of the charge gave you a high-level breakdown of the charge. A more detailed breakdown of what the charge was based on is set out in the table below.

¹¹ See Department of the Prime Minister and Cabinet FOI disclosure log for financial year 2016-17 references FOI/2017/035 and FOI/2017/188: <https://www.pmc.gov.au/government/departmental-foi-disclosure-logs>.

Task	Rate	Units	Charge
Search and retrieval			
Time required to execute searches	\$15 per hour	1.5 hours	\$22.50
Search and retrieval sub total			\$22.50
Decision making			
Examine relevant pages for decision making (1 page)	\$20 per hour	19 minutes	\$6.33
Redacting pages that are partially disclosed (1 page to be partially redacted)	\$20 per hour	2 minutes	\$0.67
Consult third parties (20 individuals)	\$20 per hour	30 minutes per third party	\$200.00
Writing statement of reasons	\$20 per hour	1 hour	\$20.00
Decision making subtotal (before deduction of first five hours of decision making time)			\$227.00
Decision making subtotal (after deduction of first five hours of decision making time)			\$127.00
Total charge			\$149.50

The FOI Charges Regulations specify search and retrieval time is charged at \$15 per hour¹² and decision making time at \$20 per hour.¹³

In preparing the preliminary assessment of the charge, the Department had regard to ‘MZ’ and *Department of Communications and the Arts (Freedom of information)*.¹⁴

Time required to execute searches

The actual time spent by the Department in obtaining the information relevant to the FOI request from the Department’s payroll system and determinations made under section 24(1) of the *Public Service Act 1999* was 1.5 hours.

¹² Schedule, Part 1, item 2, FOI Charges Regulations.

¹³ Schedule, Part 1, item 5, FOI Charges Regulations.

¹⁴ [2017] AICmr 109 (27 October 2017).

Examine relevant pages for decision making and redacting pages that are partially disclosed

The Information Commissioner has generally considered a total of 30 seconds to 5 minutes per page for both these tasks as reasonable, except where documents contain a substantial amount of sensitive information.¹⁵

For the task of examining the Document for decision-making, the Department estimated an average of 1 minute per SES B3 officer having regard to the following factors:

- the information relevant to the FOI request is in one document,
- the information in the document is in a uniform format,
- the time to consider an individual's response to a consultation for the purpose of making a decision on access,
- the likelihood that most SES B3 officers would have no objections to release of their personal information in the form proposed by the Department.

For redaction, the Department estimated 2 minutes to apply relevant redactions based on a time-and-motion exercise applying expected redactions to the Document.

The total time for examination for decision making and redaction was therefore estimated to be 21 minutes or an average of about 1 minute 6 seconds per SES B3 officer. While the total time for these tasks is above the range the Information Commissioner considers reasonable on a per page basis, in the Department's view the higher estimate was justified when regard is had to factors listed above and the time to apply redactions.

Consult with any person or body

In estimating the time required to consult with any person or body, the Department noted the Information Commissioner in 'MZ' considered that a total of 9 hours to consult the 33 officers would be reasonable,¹⁶ which implies an average of 16.36 minutes per consultation.

For your FOI request the Department considered that a higher average time per consultation was warranted having regard to the actual time spent preparing and sending the consultation correspondence and the actual and anticipated time in dealing with queries from consultees. Accordingly, the Department assessed a higher average of 30 minutes per consultation as reasonable, or a total of 10 hours.

Writing a statement of reasons

The Department estimated that writing the decision for your request would take 1 hour given that, subject to the Department making a final access decision, up to two exemptions were expected to be claimed over certain information in the Document under section 47F (personal information) and section 47E(c) (management of agency personnel) of the FOI Act.

Re-calculation of the estimated charge

The Department initially identified 20 SES B3 officers meeting the terms of your FOI request and consulted each of those individuals. Following these consultations it became apparent that one SES Band 3 officer was not within the scope of your FOI request. As this SES Band 3

¹⁵ See 'PE' and *Australian Taxation Office (Freedom of information)* [2018] AICmr 58 (6 July 2018), [22].

¹⁶ See [2017] AICmr 109, [32].

officer was not within the scope of your FOI request, I consider that it would be appropriate to recalculate the estimated charge accordingly. As the average time to consult a third party was 30 minutes and the charge rate is \$20 per hour, this means that the estimate of the charge is reduced by \$10 to \$139.50.

Your contentions regarding assessment of the charge

In your email of 4 April 2019 you have referred the Department to the Information Commissioner's decision in 'MZ'. Having regard to the Information Commissioner's findings in 'MZ' regarding what the Information Commissioner considered reasonable estimates of time in that matter, in summary you have contended that:

- for search and retrieval time, given your FOI request involves 25% of the number of payment summary documents/relevant persons that were the subject of 'MZ', a reasonable estimate of time it would take a suitably experienced departmental officer to search pay records and collate each of the payment summaries is less than 30 minutes and not the 90 minutes assessed by the Department;
- given your FOI request involves approximately 25% of the number of payment summary documents/relevant persons the subject of 'MZ' that a reasonable estimate of the time to fully process your request is less than 4 hours.

Consideration

In my view, the facts of 'MZ' and this FOI request are not comparable in all respects and therefore it would not be appropriate to apply the estimates of time in 'MZ' on a proportional basis to all aspects of processing in estimating the time for this FOI request.

In relation to search and retrieval, the documents in 'MZ' comprised one document type namely pay summaries for three financial years, but for this FOI request there were two document types to be located namely pay summaries and determinations made under section 24(1) of the *Public Service Act 1999* for three financial years.

In relation to decision making, the Information Commissioner in 'MZ' found that 4 hours to prepare a decision and 1 hour to apply exemptions and to finalise the edited payment summaries for release, or a total of 5 hours, was reasonable. For your FOI request, the time to make a decision, apply redactions and write a decision was estimated to be a total of 1 hour and 21 minutes. Therefore, in 'MZ' the average decision making time for each officer covered by the FOI request was 9.09 minutes per officer, and for your FOI request the average decision making time for each officer is estimated to be 4.26 minutes per officer.

In relation to third party consultation, for the reasons given above, the Department assessed a higher average of 30 minutes per consultation as reasonable compared to the average of 16.36 minutes per consultation in 'MZ'.

Having reviewed the preliminary assessment and what it is based on, and having regard to 'MZ', I am satisfied that the charge has been accurately assessed and fairly reflects the work involved in providing access to the Document, having regard to the lowest reasonable cost objective of the FOI Act.

Should the charge be reduced or not imposed?

Section 29(5) of the FOI Act provides that without limiting the matters an agency may take into account in determining whether or not to reduce or not impose a charge, the agency must take into account:

- 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 (section 29(5)(a) of the FOI Act); 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 (section 29(5)(b) of the FOI Act).

The FOI Guidelines provide that:

- in addition to considering financial hardship and the public interest under section 29(5) of the FOI Act, an agency may consider any other relevant matter, and in particular should give genuine consideration to any contention or submission made by an applicant as to why a charge should be reduced or waived;¹⁷
- the agency should always consider whether disclosure of a document would advance the objects of the FOI Act, even though an applicant has not expressly framed a submission on that basis. The objects of the FOI Act include promoting better informed decision making, and increasing scrutiny, discussion, comment and review of the Government's activities (section 3 of the FOI Act).¹⁸

Financial hardship

I note that you have not contended that payment of the charge or a part of the charge would cause you financial hardship. I am therefore not satisfied that the charge should either be reduced or not imposed on the ground of financial hardship.

Public interest

Section 29(5)(b) of the FOI Act requires an agency to 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'. The FOI Guidelines relevantly provide as follows:

- An applicant relying on section 29(5)(b) of the FOI Act should identify or specify 'the general public interest' or the 'substantial section of the public' that would benefit from disclosure. This may require consideration both of the content of the documents requested and the context in which their 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 release of the documents.¹⁹

¹⁷ FOI Guidelines, [4.71].

¹⁸ FOI Guidelines, [4.72].

¹⁹ FOI Guidelines, [4.81].

- When considering the public interest, it is important that the agency directs its attention to the advancement or the interest or welfare of the public, and this will depend on each particular set of circumstances.²⁰

Your contentions regarding the public interest

In summary, you have contended that the giving of access to the documents would be in the general public interest or in the interest of a substantial section of the public for the following reasons:

- The Independent Review into the operation of the Public Governance, Performance and Accountability Act 2013 and Rule (the Review) conducted by Elizabeth Alexander AM and David Thodey AO²¹ observed that ‘The Parliament and citizens have a strong interest in the proper use and management of public resources, from which Commonwealth executive remuneration is funded’ and recommended that accountable authorities should disclose the individual remuneration (including allowances and bonuses) of accountable authorities and their key management personnel on an accrual basis, in line with the disclosure by Australian Securities Exchange listed companies.²²
- Tribunals with jurisdiction to consider FOI matters have found that the precise remuneration paid to senior public servants for performing public duties is a matter of wide public interest.²³
- The public interest in the precise quantum of public monies used to fund senior executive public servant salaries is highlighted in media articles.²⁴
- The precise quantum of public monies used to fund senior executive public servant salaries is of wide interest to public servants and their families in relation to their living standards, and to the Australian workforce more generally due to the influence of the public sector on private sector industrial relations and wages.²⁵
- The public interest in assessing whether the Prime Minister has engaged in a mistruth by the statement that ‘The Labor Party thinks to make some better off, you’ve got to make some worse off. That’s the Labor Party economic plan – the politics of envy.’
- Information of the type contained in the documents the subject of your request is now required, by law, to be publicly disclosed by the *Public Governance, Performance and Accountability Amendment (Reporting Executive Remuneration) Rules 2019* (the PGPA Amendment (Reporting Executive Remuneration) Rules 2019), thereby clearly indicating Parliament’s intention that it is in the general public interest for the precise remuneration of senior executive public servants to be disclosed.²⁶

²⁰ FOI Guidelines, [4.83].

²¹ Elizabeth Alexander AM and David Thodey AO, *Independent review into the operation of the Public Governance, Performance and Accountability Act 2013 and Rule*, available at <https://www.finance.gov.au/pgpa-independent-review/html/>.

²² See your FOI request of 29 December 2018.

²³ See your email of 4 April 2019.

²⁴ See your email of 4 April 2019.

²⁵ See your email of 4 April 2019.

²⁶ See your email of 26 April 2019. I observe that the PGPA Amendment (Reporting Executive Remuneration) Rules 2019 were made by the Hon Mathias Cormann, Minister for Finance and the Public Service and commenced on 5 April 2019. Section 34 of the PGPA Amendment (Reporting Executive Remuneration) Rules 2019 states that its amendments ‘apply in relation to any reporting period that begins on or after 29 June 2018’, and therefore does not include any of the financial years covered by this FOI request.

The content of the document

The Document covered by your FOI request contains the names and remuneration of a total 19 SES Band 3 officers who were employed by the Department at any relevant time in financial years 2015-16, 2016-17 and 2017-18. It enables one to see the remuneration and any changes in remuneration over the three financial years for particular officers during their period of employment at the SES Band 3 level in the Department.

Publicly-available information

Base salary information for officers employed at the SES Band 3 level in the Department in 2015-16, 2016-17 and 2017-18 is published in the Department's annual reports for those financial years,²⁷ and average annual reportable remuneration paid to substantive executives for 2016-17 and 2017-18 is published on the Department's web site.²⁸

Consideration

Subject to what I have to say below about the impact of the publicly-available material described above, I consider that the giving of access to the Document is in the general public interest or of a substantial section of the public on the ground that it could promote effective oversight of public expenditure.²⁹

However, as noted above, a matter to be considered in whether the giving of access to the document in question is in the general public interest or a substantial section of the public is whether the information in the document is already publicly available.³⁰ Further, an instance given by the FOI Guidelines where an agency may decide that it is appropriate to impose an FOI charge is where the information in the documents has already been published by an agency and the documents do not add to the public record.³¹

Accordingly, having regard to the publicly-available information described above, it is my view that the potential contribution of the information in the Document to the general public interest in the oversight of public expenditure is relatively diminished. For example, the base salary information for officers at the SES Band 3 level reported in the Department's annual reports and the average annual reportable remuneration paid to substantive executives published on the Department's web site for the financial years covered by your FOI request already contribute to the effective oversight of public expenditure by enabling the public to:

- see the relative amounts of base salary and average remuneration;
- calculate changes in the relative amounts of base salary and average remuneration over time.

²⁷ See Department of the Prime Minister and Cabinet Annual Report, 2015-16, Figure 3.5 Trends in base salary, at p 60: <https://www.pmc.gov.au/sites/default/files/publications/DPMC-AR-2016-full.pdf>; Department of the Prime Minister and Cabinet Annual Report Annual Report, 2016-17, Figure 3.5 Trends in base salary, at p 64: <https://www.pmc.gov.au/sites/default/files/publications/pmc-annual-report-16-17.pdf>; Department of the Prime Minister and Cabinet Annual Report Annual Report, 2017-18, Table 3.6 Base salaries available at 30 June 2018 for Senior Executive Service (SES) staff, at p 128: <https://annualreport.pmc.gov.au/sites/default/files/pdf/pmc-annual-report-17-18.pdf>.

²⁸ Average annual reportable remuneration paid to substantive executives in the Department for the 2016-17 and 2017-18 reporting periods are published on the Department's web site at <https://www.pmc.gov.au/who-we-are/accountability-and-reporting/executive-remuneration>.

²⁹ See section 11B(3)(c) of the FOI Act, and the FOI Guidelines, [6.19], which both lists 'promote effective oversight of public expenditure' as a public interest factor favouring disclosure.

³⁰ FOI Guidelines,

³¹ FOI Guidelines, [4.73].

In my view, the effect of the diminution of the public interest in the light of the publicly-available information supports a reduction rather than a waiver of the charge.

Other relevant considerations

The FOI Guidelines state that an agency has a general discretion to reduce or not impose a charge, and this discretion is not limited to financial hardship and public interest grounds.³²

In your email of 4 April 2019 you refer to what you state are your prior FOI requests to the Department on 6 February 2017³³ and 24 November 2017³⁴. For the purposes this decision, and taking account that you have not contended that payment of the charge would cause you financial hardship and you are not seeking your own personal information, I do not consider that your identity is a relevant factor.³⁵ You submit that

... DPMC did not impose charges in respect of those FOI applications (because the information contained in the documents at issue is clearly in the general public interest and the amount of work involved in processing those requests was not sufficient to attract charges).

The FOI Guidelines state that an agency cannot fetter the discretion to reduce or not impose a charge by adopting a rule that confines the matters that will be considered or the circumstances in which a charge will be reduced or waived.³⁶ I note that in FOI/2017/035 the decision maker stated that she had ‘decided not to impose processing charges in relation to the applicant’s request.’³⁷ I note that in FOI/2017/188 the decision maker stated that she ‘decided not to impose processing and access charges for this request as the document relevant to the request was able to be retrieved easily and at minimal cost.’³⁸ In my view, this FOI request can be distinguished from the prior FOI requests on the grounds that this FOI request covers significantly more SES Band 3 officers and therefore has entailed significantly more work to process than the prior FOI requests.

The FOI Guidelines state that an agency is entitled to consider matters that weigh against those relied upon by an applicant.³⁹

In my view, a factor to weighing in favour of imposition of a charge is the policy of the FOI Act that charges can be imposed for processing FOI requests.⁴⁰

On balance, I have decided that a reduction of the charge by 50% to \$69.75 is warranted in the light of my findings regarding the public interest and the policy of the FOI Act that charges can be imposed for processing FOI requests.

³² FOI Guidelines, [4.88].

³³ Department’s reference FOI/2017/035.

³⁴ Department’s reference FOI/2017/188.

³⁵ The FOI Guidelines at [3.38] state: ‘The FOI Act does not require an applicant who is a natural person to disclose or provide proof of their identity, nor require a body corporate or politic to establish that it is a legal entity. The Act does not prevent a natural person using a pseudonym.’

³⁶ FOI Guidelines, [4.71].

³⁷ See the Department’s decision of 30 March 2017 available on the Right to Know website at https://www.righttoknow.org.au/request/group_certificatespayg_payment_s_4#incoming-11323.

³⁸ See the Department’s decision of 25 January 2018 available on the Right to Know website at https://www.righttoknow.org.au/request/group_certificatespayg_payment_s_4#incoming-11323.

³⁹ FOI Guidelines, [4.73].

⁴⁰ See *Baljurda Comprehensive Consulting Pty Ltd and Australian Agency for International Development* [2011] AICmr 8 (18 November 2011), [32].

Your options following this decision

You have the following options:

- (1) You can agree to pay the charge. If you agree, processing of your request will resume as soon as the Department receives a payment, either in full or a deposit.
 - Payment in full is \$69.75. Payment in full entitles you to receive a decision in relation to your request, a schedule which lists the document relevant to your request, and any document released.
 - Alternatively, payment of a deposit in the amount of \$20 entitles you to receive a decision in relation to your request and a schedule which lists the document relevant to your request. The relevant document would only be released on payment of the balance of the charge. Regulation 14 provides that a deposit paid by an applicant is not refundable unless the Department decides to waive the charge or fails to make a decision on the applicant's FOI request within the statutory time limit, including any extension.

Payment should be made by cheque or postal order and made out to the 'Collector of Public Monies.' 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.

- (2) You can seek review of this decision.
- (3) You can withdraw your FOI request.

In accordance with section 31 of the FOI Act, the time period for processing your request is suspended until the earliest occurring of the following days:

- the day you pay the amount of the charge or deposit;
- if the amount of the charge is changed following review under the FOI Act, the day you pay the revised charge or deposit; or
- if, following review under the FOI Act, a decision is made not to impose a charge, the day you are notified of that decision.

Please note that if you do not seek review of this decision or you do not make payment in full or by way of deposit within 60 days after receiving this decision, the Department will treat your request as withdrawn.

Review rights

Information about your rights of review is attached to this decision.

Complaint rights

You may make a complaint to the Information Commissioner about the Department's actions in relation to this FOI request. Making a complaint about the way the Department has handled an FOI request is a separate process to seeking review of the Department's decision. Further information about how to make a complaint is available at <https://www.oaic.gov.au/freedom-of-information/foi-complaints>.

If you have any queries, please contact the FOI and Privacy Section on (02) 6271 5849 or email to foi@pmc.gov.au.

Yours sincerely



Belinda Campbell
Assistant Secretary
People Branch

6 May 2019



Freedom of information – Your review rights

July 2012

If you disagree with the decision of an Australian Government agency or minister 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 someone is to be granted access to information that is about you, if the agency has informed you that it will impose a charge for processing your request 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 the agency, and external review by the Australian Information Commissioner.

Internal review

If an agency makes an FOI decision that you disagree with, you can ask the agency 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 the agency extended the application time. You should contact the agency if you wish to seek an extension. The agency must make a review decision within 30 days. If it does not do so, its original decision is considered to be affirmed.

Internal review is not available if a minister or the chief officer of the agency made the decision personally.

Review by the Information Commissioner

The Information Commissioner is an independent office holder who can review the decisions of agencies and ministers under the FOI Act.

Is a review the same as a complaint?

No. The Information Commissioner also investigates complaints about agency actions under the FOI Act. However, if you are complaining that an agency decision is wrong, it will be treated as an application for a review. Your matter will be treated as a complaint when a review would not be practical

or would not address your concerns (for example, if you were not consulted about a document that contains your personal information before it was released). For more information see [How do I make an FOI complaint?](#)

Do I have to go through the agency's internal review process first?

No. You may apply directly to the Information Commissioner. However, going through the agency's internal review process gives the agency 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. The Information Commissioner's review is free.

How do I apply?

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

online: www.oaic.gov.au
post: GPO Box 5218, Sydney NSW 2001
fax: +61 2 9284 9666
email: enquixxx@xxxx.xxv.au
in person: Level 3
175 Pitt Street
Sydney NSW 2000



An application form is available on the website at 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.

Can I get help in completing the application?

Yes. The Information Commissioner's staff are available to help you with your application if anything is unclear.

When do I have to apply?

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 Information Commissioner 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.

You can ask the Information Commissioner for an extension of time to apply, and this may be granted if the Information Commissioner considers it is reasonable in the circumstances.

Who will conduct the review?

Staff of the Information Commissioner will conduct the review. Only the Information Commissioner, the FOI Commissioner or the Privacy Commissioner can make a decision at the end of the review.

Does the Information Commissioner have to review my matter?

No. The Information Commissioner may decide not to review an application that is frivolous, misconceived or lacking in substance, or if you fail to cooperate with the process or cannot be contacted after reasonable attempts. You cannot appeal against that decision.

Alternatively the Information Commissioner may decide that the Administrative Appeals Tribunal (AAT) would be better placed to review the matter, and if so, will advise you of the procedure for applying to the AAT. This will not be common.

Can I withdraw my application?

Yes. An application can be withdrawn at any time before the Information Commissioner makes a decision.

What happens in the review process?

The review process is designed to be as informal as possible. The Information Commissioner may contact you or any of the other parties to clarify matters and seek more information. The Information Commissioner may also ask the agency or minister to provide reasons for their decision if the reasons given were inadequate.

Most reviews will be made on the basis of the submissions and papers provided by the parties. Sometimes the Information Commissioner may decide to hold a hearing if one of the parties applies. Parties may participate in a hearing by telephone. If confidential matters are raised, the hearing may be held partly or wholly in private.

Will there be other parties to the review?

There may be. The Information Commissioner can join other parties who are affected by the application. For example, if you are objecting to someone else being granted access to information that concerns you, that person may be joined in the review.

Can someone else represent me?

Yes, including a lawyer. However, the Information Commissioner prefers the process to be as informal and cost-effective as possible and does not encourage legal representation.

Will the Information Commissioner look at all documents, including ones that are claimed to be exempt?

Yes. The Information Commissioner's review is a fresh decision, so all the relevant material must be examined, including documents that the agency or minister has declined to release. Developments that have occurred since the original decision may also be considered.

What powers does the Information Commissioner have?

While the review process is designed to be informal, the Information Commissioner has formal powers to require anyone to produce information or documents, to compel anyone to attend to answer questions and to take an oath or affirmation that their answers will be true.

An agency or minister can also be ordered to undertake further searches for documents.

What decisions can the Information Commissioner make?

After reviewing a decision, the Information Commissioner must do one of three things:

- set the decision aside and make a fresh decision
- affirm the decision, or
- vary the decision.

The Information Commissioner will give reasons for the decision.

Will the decision be made public?

Yes. The Information Commissioner will publish decisions on the website. Exempt material (that is, material that is not released) will not be included. Nor will the name of the review applicant, unless that person requests otherwise or there is a special reason to publish it.

What can I do if I disagree with the Information Commissioner's review decision?

You can appeal to the AAT. The Information Commissioner will not be a party to those proceedings. There is a fee for lodging an AAT application, although there are exemptions for health care and pension concession card holders, and the AAT can waive the fee on financial hardship grounds. For further information see www.aat.gov.au/FormsAndFees/Fees.htm.

FOI applications made before 1 November 2010

The Information Commissioner can only review an agency's or minister's FOI decision if you made your FOI request on or after 1 November 2010. If you made your FOI request before 1 November, even if the decision was made after that date, the review process is different.

You must first ask the agency for internal review of the decision. You may then appeal to the AAT if you are not satisfied with the decision.

The information provided in this fact sheet is of a general nature. It is not a substitute for legal advice.

For further information

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